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The Giving of Reasons: Judgment Writing, Judicial Reasoning, and GenAI

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This article focuses on the core judicial role of giving reasons for a judge's decision and the use of generative artificial intelligence ('GenAI') tools based on LLMs in the crafting of judgments. Considering specifically GenAI and judgment writing in common law systems, it deals with the connection between the act of decision-making and the giving of reasons for that decision. Our argument is that judgment writing should remain the domain of human judges, for reasons that are both institutional (the impact on the judicial system) and individual or processual (the impact on judges performing their roles). We seek to analyse the nature and extent of judicial use of GenAI tools that preserves this as a human domain. Ultimately, we conclude that it is not appropriate to use GenAI for judgment writing, but peripheral or adjacent uses may be supportable, provided they do not undercut the core judicial role.

I Introduction

Judicial use of generative artificial intelligence has attracted considerable attention. In early 2023, a Colombian judge, Judge Padilla, consulted ChatGPT to help draft a ruling on medical rights for an autistic

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child.¹ Later that year, a senior British judge used ChatGPT for a summary of a point of law,² and in an August 2025 judgment, another English judicial officer referred to using artificial intelligence ('AI') to summarise documents.³ Recently, the English Family Court reported using Microsoft's Copilot to summarise a judgment, the summaries being appended to the end of the full judgment for the benefit of the parents who both had learning and cognitive difficulties.⁴

In addition to these reported individual uses, on 26 June 2024, the Shenzhen Intermediate Court unveiled its Intelligent Adjudication System, a proprietary Large Language Model (LLM) trained on Chinese laws, court judgments, and academic literature, where judges and the LLM work together.⁵ Meanwhile, in early 2026 the Los Angeles County Court announced a pilot of an AI tool that can help judges summarise motions and draft rulings in civil proceedings.⁶

This article focuses on the core judicial role of giving reasons for a judge's decision⁷ and the use of generative artificial intelligence ('GenAI') tools based on LLMs in the crafting of judgments. There is much academic writing on the idea of the 'robot judge' or harnessing

¹ Luke Taylor, 'Colombian judge says he used ChatGPT in ruling', *The Guardian* (online, 3 February 2023) <<https://www.theguardian.com/technology/2023/feb/03/colombia-judge-chatgpt-ruling>>. The use of an artificial intelligence (AI) tool was appealed to the Constitutional Court of Colombia on the basis that there was a violation of due process of law because the judge had used the AI tool for his reasoning. On 16 August 2024, the court rejected the argument on the basis there was no substitution of AI for the exercise of the judicial function, essentially because the AI system was used after the judge had reasoned his decision: Lorenzo Villegas-Carrasquilla and Mariana Jaramillo, 'The Constitutional Court of Colombia pronounces on the use of generative artificial intelligence tools in judicial tutela proceedings', *CMS* (online, 14 August 2024) <<https://cms.law/en/col/publication/the-constitutional-court-of-colombia-pronounces-on-the-use-of-generative-artificial-intelligence-tools-in-judicial-tutela-proceedings>>. See also <<https://www.corteconstitucional.gov.co/relatoria/2024/T-323-24.htm>> [link to court decision in Spanish].

² Hibaq Farah, 'Court of appeal judge praises "jolly useful" ChatGPT after asking it for legal summary', *The Guardian* (online, 15 September 2023) <<https://www.theguardian.com/technology/2023/sep/15/court-of-appeal-judge-praises-jolly-useful-chatgpt-after-asking-it-for-legal-summary>>.

³ *Evans v The Commissioners for His Majesty's Revenue and Customs* [2025] UKFTT 1112 (TC) [48] ('Evans'). See also James O'Donnell, 'Meet the early-adopter judges using AI', *MIT Technology Review* (online, 11 August 2025) <<https://www.technologyreview.com/2025/08/11/1121460/meet-the-early-adopter-judges-using-ai/>>.

⁴ In the *Matter of B* [2026] EWFC 107 (14 May 2026).

⁵ Described in John Zhuang Liu and Xueyao Li, 'How do Judges use Large Language Models? Evidence from Shenzhen' (2024) 16 *Journal of Legal Analysis* 235, 237–40. The judge determines the facts of the case based on evidence and court hearings; the judge, with the help of the AI system, identifies the disputed issues in the case; the judge indicates their resolution of the issues; the LLM then generates reasoning based on the judicial decision; and finally the judge revises the reasoning generated by the LLM to produce the final judgment.

⁶ James Queally, 'AI pilot program in L.A. County courts will help judges craft rulings in some cases', *Los Angeles Times* (online), 18 March 2026, <<https://www.latimes.com/california/story/2026-03-18/ai-pilot-program-la-county-courts>>.

⁷ See *Wainohu v New South Wales* [2011] HCA 24; 243 CLR 181, [54] (French CJ and Kiefel J) ('Wainohu'); *Public Service Board of New South Wales v Osmond* (1986) 159 CLR 656, 666–67 (Gibbs CJ) ('Osmond').

predictive artificial intelligence⁸ to supplement or even perform judicial decision-making.⁹ Much of this scholarship has focused on the crucial role that machine learning for prediction might play as a factor in human decision-making, such as the determination of applications for bail or administrative decisions.¹⁰

However, in considering specifically GenAI and judgment writing in common law systems, this article deals with the connection between the act of decision-making and the giving of reasons for that decision.¹¹ Decision-making and reasons are interconnected as the process of preparing reasons can precede and determine the decision. Alternately, when a decision is reached first the reasons may come later and perform an explanatory or justificatory role. The sequence may depend on the complexity or uncertainty of the matters to be decided, including the law and facts. Indeed, as we discuss below, both may occur in some form of iterative back-and-forth as the judge reaches tentative decisions that are then worked through – supported or challenged and revised – as part of preparing reasons. The use of GenAI in writing and associated tasks is affecting knowledge professionals across different domains¹² but as we explain below, is crucially important for judges due to their institutional role – exercising judicial power as the third arm of government with the responsibility of upholding the rule of law.¹³

The structure and argument of this article is as follows. We first discuss, in Part II, what we mean by GenAI and how it may be – or indeed, is being – used by judges around the world. In Part III we discuss why it is that giving reasons has come to be seen as an essential facet of the

⁸ Sandra Wachter, ‘Limitations and Loopholes in the EU AI Act and AI Liability Directives: What This Means for the European Union, the United States, and Beyond’ (2024) 26(3) *Yale Journal of Law and Technology* 671, 674, noting that ‘some [GenAI] can also be predictive. The point is to distinguish between ‘traditional’ AI (e.g., classification systems) and [GenAI] (e.g., LLMs)’.

⁹ See, eg, Eugene Volokh, ‘Chief Justice Robots’ (2019) 68(6) *Duke Law Journal* 1135; Andrew C Michaels, ‘Artificial Intelligence, Legal Change, and Separation of Powers’ (2020) 88(4) *University of Cincinnati Law Review* 1083; Monika Zalnieriute and Felicity Bell ‘Technology and the Judicial Role’ in Gabrielle Appleby and Andrew Lynch (eds), *The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press, 2021); Tania Sourdin and Ella Brown, ‘Judging the Robot Judge’ in Fernando Esteban de la Rosa et al (eds), *Digitalization and Artificial Intelligence in Courts: Opportunities and Challenges* (Oxford Academic, 2025) 388.

¹⁰ See, eg, Monika Zalnieriute, Lyria Bennett Moses and George Williams, ‘The Rule of Law and Automation of Government Decision-Making’ (2019) 82(3) *Modern Law Review* 425.

¹¹ See Richard Re, ‘Artificial authorship and judicial opinions’ (2024) 92(6) *The George Washington Law Review* 1558; Lord Briggs, ‘AI and Civil Justice: Preparing for the Tsunami’ (Keynote Address, Oxford Civil Justice Systems in the 21st Century Conference, Oxford, 15 May 2026).

¹² Hao-Ping (Hank) Lee et al, ‘The Impact of Generative AI on Critical Thinking: Self-Reported Reductions in Cognitive Effort and Confidence Effects from a Survey of Knowledge Workers’, *CHI ’25: Proceedings of the 2025 CHI Conference on Human Factors in Computing Systems*, Article No. 1121, 1 <<https://doi.org/10.1145/3706598.3713778>>.

¹³ *Fencott v Muller* (1983) 152 CLR 570, 608 (Mason, Murphy, Brennan and Deane JJ); Sir Gerard Brennan, ‘Judicial Independence’ (Speech, The Australian Judicial Conference, Canberra, 2 November 1996).

exercise of institutional power and also analyse process-driven motives to write reasons – how writing reasons for judgment is intimately connected to individual thinking and reasoning. Guidance developed for judges tends to assume that decision-making itself can be separated both from administrative, auxiliary or preparatory tasks, and from the giving of reasons for that decision. But our analysis suggests that this is not really so. Close attention to the precise ways that GenAI might be used by courts or judges is important and defining the parameters of acceptable use is challenging, especially in a changing environment.

In Part IV, we consider the risks of using GenAI to write reasons for judgment, and the significance of the nature and extent of that use. While our argument is that judgment writing should remain the domain of human judges, for reasons that are both institutional (the impact on the judicial system) and individual or processual (the impact on judges performing their roles), we seek to analyse the nature and extent of judicial use of GenAI tools that preserves this as a human domain. Ultimately, we conclude in Part V that it is not appropriate to use GenAI for judgment writing, but peripheral or adjacent uses may be supportable, provided they do not undercut the core judicial role.

II How Might LLMs be Used in Writing Reasons?

In this article we use the term generative artificial intelligence or GenAI (as many others have) as shorthand to refer to AI applications based on LLMs and capable of generating novel text content,¹⁴ sometimes distinguished (as noted above) from predictive AI.¹⁵ It is important to recognise that issues arising in predictive AI, such as bias and explainability, are also found in GenAI, while simultaneously it also presents new issues.¹⁶ As Wachter, Mittelstadt and Russell observe, ‘LLMs are not designed to tell the truth in any overriding sense’.¹⁷ They predict probable next words in a string based on their training data, but without reasoning or understanding, hence the description ‘stochastic parrots’.¹⁸ GenAI outputs may be inaccurate, biased or wholly invented and untrue, termed ‘hallucinations’.¹⁹ We note that discussing what GenAI

¹⁴ See, eg, Genevieve Bell et al, ‘Generative AI: Language models and multimodal foundation models’, Rapid Response Information Report, Australia’s Chief Scientist, 24 March 2023; Wachter, ‘Limitations and Loopholes’ (n 8).

¹⁵ Wachter, ‘Limitations and Loopholes’ (n 8) 674.

¹⁶ Ibid 674–75.

¹⁷ Sandra Wachter, Brent Mittelstadt and Chris Russell, ‘Do large language models have a legal duty to tell the truth? (2024) 11(8) *Royal Society Open Science*, <<https://doi.org/10.1098/rsos.240197>>.

¹⁸ Emily M Bender et al, ‘On the Dangers of Stochastic Parrots: Can Language Models Be Too Big?’ (2021) *Proceedings of the 2021 ACM Conference on Fairness, Accountability, and Transparency*, <<https://doi.org/10.1145/3442188.344592>>, 610.

¹⁹ Ziwei Xu, Sanjay Jain and Mohan Kankanhalli, ‘Hallucination Is Inevitable: An Innate Limitation of Large Language Models’, Preprint arXiv:2401.11817v2, 13 Feb 2025.

may ‘do’ or ‘write’ may unwittingly imply anthropomorphism but this is not our intention.²⁰

A further complexity is that there are now many different GenAI models, applications, or features incorporated into existing office applications and research databases that may be available to judges. These span the gamut from open source to proprietary to custom designed for, or even by, courts or judiciaries.²¹ In addition to many possible tools, there are many different ways that judges might choose to use such tools, as illustrated by the examples given in the Introduction. In the English cases, GenAI was used to create a paragraph summarising the law, which the judge reviewed and incorporated, and in another instance to summarise documents in the case.²² In the Colombian matter, the judge posed questions to ChatGPT and included some of the questions and answers in his decision.²³ In contrast, the Shenzhen province of China appears to go much further with the LLM providing the first draft of the reasons, based on judicial input, which is then reviewed, modified and adopted by the judge.²⁴

A Court Guidance

With the rapid uptake of GenAI has come guidance from around the world about how courts and judiciary should or should not use such tools. An early advisory opinion on the use of AI by judicial officers advocated ‘extreme caution’ in using GenAI to draft reasons but also acknowledged this to be a ‘grey area’.²⁵ Further, we can anticipate that the issue is unlikely to disappear, and indeed that it is only a matter of time before some judges routinely use AI in some way when writing their judgments.²⁶

²⁰ This point is made by Armin Alimardani, ‘Generative artificial intelligence vs. law students: an empirical study on criminal law exam performance’ (2024) 16 *Law, Innovation and Technology* 777.

²¹ Press Release, ‘The Michigan Supreme Court Contracts with Learned Hand for Purpose-Built Judicial AI’, 11 August 2025, <<https://natlawreview.com/press-releases/michigan-supreme-court-contracts-learned-hand-purpose-built-judicial-ai/>>; Liu and Li (n 5) 238 (the Shenzhen Court’s Intelligent Adjudication System).

²² Farah (n 2); *Evans* (n 3).

²³ Juan David Gutiérrez, ‘ChatGPT in Colombian Courts: Why we need to have a conversation about the digital literacy of the judiciary’, *Verfassungsblog* (Blog Post, 23 February 2023) <<https://verfassungsblog.de/colombian-chatgpt/>> (arguing that the judge’s apparently uncritical reliance on ChatGPT’s responses is problematic).

²⁴ Liu and Li (n 5).

²⁵ Cited by Gary E Marchant, ‘AI in Robes: Courts, Judges, and Artificial Intelligence’ (2024) 50(3) *Ohio Northern University Law Review* 473, 483.

²⁶ Ibid 488; Scott Schlegel, ‘Judges Using AI Wrongly is Not Just a Problem. It’s a Crisis Waiting to Happen’ (Blog Post, 26 July 2025) <<https://judgeschlegel.com/blog/judges-using-ai-wrongly-is-not-just-a-problem-its-a-crisis-waiting-to-happen/>>; see also Shai Dothan and Gregor Maucec, ‘It Is Our Flaws that Make Us Humane: How Technology Ruined Judicial Craft’ (2025) 28 *Southern Methodist University Science and Technology Law Review* 451, 454; Anna-Katharina Dhungel, ‘“This Verdict was Created with the Help of Generative AI...” On the Use of Large Language Models by Judges’ (2025) 6(1) *Digital Government: Research and Practice*, Article 5, 4.

In this Part we outline different ways that GenAI might be used in relation to judgment writing, and where some of that guidance has landed. Guidelines range from approaches which recommend restricting the use of GenAI to, for example, administrative, supplemental or research purposes, to those such as the New South Wales Supreme Court guidelines, which state:

Judges in New South Wales should not use Gen AI in the formulation of reasons for judgment or the assessment or analysis of evidence preparatory to the delivery of reasons for judgment.

Gen AI should not be used for editing or proofing draft judgments, and no part of a draft judgment should be submitted to a Gen AI program.²⁷

The Queensland Courts guidance suggests that GenAI could be used as a ‘secondary tool for research or preparatory work’.²⁸ Notably, however, it stops short of suggesting that GenAI could be used for drafting a judgment itself. Moreover, it raises additional questions such as what is meant by ‘secondary’ use and what preparatory work might look like. The Supreme Court of Victoria guidance refers to permissible supportive uses of AI including ‘using it to organise and locate case materials, produce summaries and chronologies from case materials, as an aid to legal research and for proof-reading’.²⁹ Finally, the Australian and New Zealand Chief Justices’ *Guide to Judicial Conduct* states only that ‘Judges must not use Generative AI for judicial decision-making. The prohibition on AI use for judicial decision-making does not encompass supportive uses of AI’.³⁰

Education is clearly a primary goal of the guidance: seeking to ensure that judicial officers and court staff are aware of the risks of GenAI. Issues raised include the ‘limits and shortcomings of large language model Gen AI’, including ‘hallucinations’ (meaning ‘the generation of inaccurate, fictitious, false or non-existent citations and fabricated legislative, case or other secondary references’), the risk of loss of confidentiality in materials submitted to the LLM, and the underlying datasets being incomplete, out of date, based on the law from other jurisdictions, or potentially biased.³¹

²⁷ Supreme Court of New South Wales, *Guidelines for New South Wales Judges in Respect of Use of Generative AI*, [4]–[5] (emphasis added). See also Supreme Court of Victoria, *The Use of Artificial Intelligence by Judicial Officers*, 14 May 2026, [3.1] (stating that ‘Judicial Officers must not use GenAI for judicial decision-making.’).

²⁸ Queensland Courts, *The Use of Generative AI: Guidelines for Judicial Officers* (15 September 2025) [24].

²⁹ Supreme Court of Victoria (n 27) [3.4].

³⁰ The Council of Chief Justices of Australia and New Zealand, *Guide to Judicial Conduct* (4th ed, 2026, Australasian Institute of Judicial Administration Limited) 13.

³¹ Supreme Court of New South Wales, *Practice Note SC Gen 23 – Use of Generative Artificial Intelligence* (January 2025) [6]; Queensland Courts (n 28) [2]; American Bar Association, *Guidelines for U.S. Judicial Officers Regarding the Responsible Use of Artificial Intelligence. Potential Judicial Uses for AI or GenAI* (6 May 2025) <<https://www.americanbar.org/resources/2025-spring>>.

Some guidance has adopted a values-based approach, wherein key principles are presented and the ways that they might be impacted by the use of AI set out,³² while others adopt both principles and practical steps. For example, the US National Center for State Courts outlines seven core ethical principles and common risk areas, but also contains a ‘self-assessment checklist’ that includes questions such as: ‘Do I personally review and verify all AI-generated content before using it in any court-related work? Do I verify all legal citations and references provided by AI to avoid use of AI “hallucinations”?’.³³ Guidelines for judges, judicial officers, tribunal members and support staff produced in December 2023 by the New Zealand Courts contains examples, identifies different tasks that GenAI may be used for, and explains how to mitigate risks associated with those tasks.³⁴

The Appendix summarises four different sets of guidance that adopt a principle-based approach.³⁵ Transparency and fairness/procedural fairness are two values consistent across the different forums. In May 2025, the American Bar Association’s *Judges Journal* published *Guidelines for Judicial Officers: Responsible Use of Artificial Intelligence* (‘ABA Guidelines’). The key theme underpinning this guidance is that ‘judicial officers and those with whom they work must ensure that any use of AI strengthens rather than compromises the independence, integrity, and impartiality of the judiciary’.³⁶ Similarly, the Queensland Courts guidance notes: ‘you must ensure that any use of AI tools by you or your staff is consistent with the core judicial values of open justice, accountability, impartiality and equality before the law, procedural fairness, access to justice and efficiency’.³⁷ Requirements for human oversight and verification, as well as competence and accountability, mirror requirements also imposed upon lawyers using AI.³⁸

³² This approach has been used also by academics, see, eg, Zalnieriute and Bell (n 9).

³³ National Center for State Courts, *Principles and Practices for Using AI Responsibly and Effectively in State Courts* (2025) <<https://nationalcenterforstatecourts.app.box.com/v/AI-principles-and-practices>> 9–10.

³⁴ New Zealand Courts, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals for Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (7 December 2023).

³⁵ National Center for State Courts (n 33); United Nations Educational, Scientific and Cultural Organization (UNESCO) *Guidelines for the Use of AI Systems in Courts and Tribunals* (3 December 2025) <<https://www.unesco.org/en/articles/guidelines-use-ai-systems-courts-and-tribunals>> (‘UNESCO Guidelines’); Felicity Bell et al, *Guide to AI Decision-Making and the Courts* (Australasian Institute for Judicial Administration, 2026 update) <<https://aija.org.au/publications/ai-decision-making-and-the-courts-a-guide-for-judges-tribunal-members-and-court-administrators-2026-update/>> (9 July 2026); Victorian Law Reform Commission, *Artificial Intelligence in Victoria’s Courts and Tribunals: Report* (3 February 2026) <<https://www.lawreform.vic.gov.au/publication/artificial-intelligence-in-victorias-courts-and-tribunals-report/>>.

³⁶ American Bar Association (n 31).

³⁷ Queensland Courts (n 28) [24].

³⁸ See, eg, Zubair Abbasi, ‘Responsible Legal Augmentation: Integrating Generative AI into Legal Practice’ (2025) 7(3) *Law, Technology and Humans* 5, 8–9, discussing *Ayinde v Harin-gey; Al-Haroun v Qatar National Bank* [2025] EWHC 1383 (Admin) [7]–[8] and [21]–[22].

B *Adjacent or Preparatory Tasks: Legal research, summarising documents, creating timelines*

Several types of tasks adjacent or preparatory to writing a judgment are susceptible to GenAI use, such as conducting legal research, summarising documents or creating chronologies.³⁹ These adjacent tasks may or may not be incorporated into or reflected in the final judgment. As mentioned, there are now many legal research tools that use AI in some form.

The ABA Guidelines state that ‘AI and GenAI tools may be used to conduct legal research, provided that the tool was trained on a comprehensive collection of reputable legal authorities and the user bears in mind that GenAI tools can make errors’.⁴⁰ The Guidelines continue:

GenAI tools may be used to search and summarize depositions, exhibits, briefs, motions, and pleadings;

GenAI tools may be used to create timelines of relevant events...⁴¹

The *Guidelines for the Use of AI Systems in Courts and Tribunals* by the United Nations Educational, Scientific and Cultural Organization (‘UNESCO Guidelines’) also include these preparatory type activities within acceptable use, referring to ‘comparing texts and sources’ and ‘generating summaries’.⁴² Guidelines for judges in Ireland suggest that summarising information could be amenable to the use of GenAI, but caution against using it for legal research or analysis.⁴³

In relation to legal research, the New Zealand Courts Guidelines specify: ‘With straightforward areas of law or for material you would recognise as correct but do not have to hand, GenAI chatbots might be able to produce helpful, higher-level legal explanations or summaries of relevant legal principles...’.⁴⁴ However, the guide also advocates caution and, as with the Irish guidance, does not recommend using GenAI for ‘legal analysis’.⁴⁵

Finally, the ABA Guidelines envisage that ‘GenAI tools may be used to assist in determining whether filings submitted by the parties have misstated the law or omitted relevant legal authority...’.⁴⁶ In other

³⁹ These are also uses common to lawyers: see, eg, Victorian Law Reform Commission, *Artificial Intelligence in Victoria’s Courts and Tribunals: Report* (Oct 2025) 9; Legal Services Research Centre, *Generative AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Victorian Legal Services Board and Commissioner, 2026).

⁴⁰ American Bar Association (n 31).

⁴¹ *Ibid.*

⁴² UNESCO Guidelines (n 35).

⁴³ Oifig an Príomh Bhreitheamh/Office of the Chief Justice, *Guidelines for Judges on the Responsible Use of Generative Artificial Intelligence* (online, June 2024) <[https://judicialcouncil.ie/assets/uploads/AI%20Guidance%20-20Guidelines%20For%20Judges%20\(June%202024\).pdf](https://judicialcouncil.ie/assets/uploads/AI%20Guidance%20-20Guidelines%20For%20Judges%20(June%202024).pdf)> 7–8.

⁴⁴ *Ibid.* 6. This appears similar to the use described by Lord Justice Birss: see Farah (n 2).

⁴⁵ New Zealand Courts (n 34) 6.

⁴⁶ *Ibid.*

words, GenAI tools could be used to identify whether lawyers or parties have themselves used GenAI tools inappropriately.

C *Creating a First Draft*

Especially in jurisdictions with substantial delays and backlogs, or simply high volumes of cases, the prospect of increasing the speed at which judgments are delivered while tempering judicial workloads, may be attractive, and efficiency is recognised as a judicial value that may be affected by AI.⁴⁷ In the UK, a Practice Direction for First Tier Tribunal members (though not specifically directed toward the use of AI) emphasises the importance of efficiency, encouraging members to deliver reasons succinctly.⁴⁸ The guidance continues:

Modern ways of working, facilitated by digital processes, will generally enable greater efficiencies in the work of the tribunals, including the logistics of decision-making. Full use should be made of any tools and techniques that are available to assist in the swift production of decisions.⁴⁹

The ABA Guidelines state that ‘GenAI tools may be used to assist in drafting routine administrative orders’.⁵⁰ Somewhat similarly, IBM has reported that in partnership with the Frankfurt District Court, it designed an AI system specifically for cases related to complaints by passengers traveling by air.⁵¹ Thousands of cases of this type come before the court every year but writing the judgments was ‘a very laborious and repetitive task for the judges, who had to collect the relevant data and, in the end, repeatedly write almost identical judgements’.⁵² Schmitz-Berndt reports that the tool can identify ‘relevant data from the memoranda... compiling a draft decision from preconfigured text modules’.⁵³ Judges in a pilot program in the Netherlands are also using

⁴⁷ Liu and Li (n 5) 240; referencing Jayr Pereira et al, ‘INACIA: Integrating Large Language Models in Brazilian Audit Courts: Opportunities and Challenges’ (2024) 6(1) *Digital Government: Research and Practice* 1; Amy B Cyphert et al, ‘Judicial Use of Generative AI: Lessons Learned’ (National Center for State Courts, AI Policy Consortium for Law and Courts, March 2026) 4–5; Zalnieriute and Bell (n 9); Victorian Law Reform Commission (n 34).

⁴⁸ Courts and Tribunals Judiciary, ‘Practice Direction from the Senior President of Tribunals: Reasons for decisions’ (Web Page) <<https://www.judiciary.uk/guidance-and-resources/practice-direction-from-the-senior-president-of-tribunals-reasons-for-decisions/>>.

⁴⁹ Ibid [4]. Judge McNall referred to this guidance in his decision saying: ‘I regard AI as such a tool, and this is the first decision in which I have grasped the nettle of using it’: *Evans* (n 3) [45].

⁵⁰ American Bar Association (n 31).

⁵¹ IBM, ‘Judicial systems are turning to AI to help manage vast quantities of data and expedite case resolution’ (Web Page, 4 February 2025) <<https://www.ibm.com/case-studies/blog/judicial-systems-are-turning-to-ai-to-help-manage-its-vast-quantities-of-data-and-expedite-case-resolution>>.

⁵² Ibid.

⁵³ Sandra Schmitz-Berndt, ‘Interfering with Judicial Independence? The Legal Constraints in the Realm of AI-Powered Judicial Decision-Making’ (2024) 1(2) *Journal of AI Law and Regulation* 199, 205.

GenAI to draft their initial ‘verdicts’ in criminal cases.⁵⁴ Liu and Li studied Chinese judges’ use of a purpose built LLM to produce judgments, explaining: ‘AI partially replaces judges’ task of reason writing. Previously, judges usually needed to draft their own reasoning, but with the use of AI, judges only need to make modifications to the draft reasoning provided by AI’.⁵⁵

D *Editing or Improving a Draft*

The ABA Guidelines state that ‘AI and GenAI tools may be used for editing, proofreading, or checking spelling and grammar in draft opinions’⁵⁶ and the UNESCO Guidelines also include ‘improving’ drafts as the first acceptable use on its list, as follows (emphasis added):

1. Correct or improve initial drafts of administrative reports, meeting minutes, e-mails, speaking notes, *judicial decisions and rulings*.

Case-use examples: Improve grammar, spelling and structure of the texts. Editing the text’s tone, for example, making it more accessible for different target audiences or for plain language. Preparing draft translations of passages [...]

The UNESCO Guidelines fall short of implying that GenAI could be used for initial drafting, but refer to closely associated tasks, such as structuring, changing tone and language and summarising. A key benefit posited for GenAI in terms of judgment writing (including by UNESCO) is that it could be an effective editor of judgments, making them better written or stylistically more accessible or understandable. In an English family law decision, the following Note explained ‘two additional judgments appended at the end’:

They were produced from the full judgment, but wholly using the secure Judicial Copilot AI application, following prompts given to simplify and summarise the full judgment. The first one is a simplified summary and the second one is in bullet point format. They were for the benefit of the parents who both have learning and cognitive difficulties and for use by the intermediaries in discussions. All advocates agreed that they were immensely useful and they have been attached specifically to show how useful AI can be when carefully used in such situations.⁵⁷

It has been suggested that modern word processing has also led to a judicial tendency to ‘cut and paste’ text such as quotes from previous

⁵⁴ Ljubiša Metikoš and Iris van Domselaar, ‘Procedural Justice and Judicial AI: Substantiating Explainability Rights with the Values of Contestation’ (2025) 3 *Journal of Human-Technology Relations*, <<https://doi.org/10.59490/jhtr.2025.3.8163>> (citing District Court of Rotterdam, Rechtbank Rotterdam doet proef met Artificial Intelligence als schrijfhulp in een strafvonnis, 26 March 2025).

⁵⁵ Liu and Li (n 5) 245.

⁵⁶ American Bar Association (n 31).

⁵⁷ *In the Matter of B* [2026] EWFC 107.

judgments, submissions, and so on, which contributes to verbiage.⁵⁸ It has also been suggested that one reason judgments are so long is a lack of effective editing, which ‘has a high time cost’.⁵⁹ GenAI tools might provide a means of making judgments more accessible, for example by rewriting in clearer language or more succinctly.

E *Structuring, Feedback and Criticism*

The UNESCO Guidelines suggest that two additional, acceptable uses of GenAI by the judiciary are:

1. Structuring of arguments.
2. Explore alternative or critical explanations about points of law.⁶⁰

Re also identifies these areas of AI use, terming them Recommendation (essentially, structuring) and Commentary (analysing style, strengths and weaknesses).⁶¹ These uses of GenAI differ from those above in that they might be used either to begin or edit a judgment. For example, a judge could use GenAI to create a judgment structure, or to restructure an existing draft or summary. Likewise, GenAI can be used to identify weaknesses, to generate alternative ideas or explanations, and generally to critique written material – whether a full text, a summary or a single idea. Lawyers have reported using GenAI to suggest questions an appeal court may ask of counsel and for ideation or to brainstorm new ways to approach a problem.⁶² A judge could use GenAI as a ‘sparring partner’ to test their reasoning or ask about avenues for appeal as part of seeking feedback on a judgment.⁶³

III Why Write Reasons?

In this Part, we consider two inter-related reasons for judges to author their own reasons, which we characterise as the institutional (those related to judgment-writing as an exercise of institutional judicial power),

⁵⁸ Ibid. On problematic ‘cutting and pasting’ by judges, see below at Part IV.D.

⁵⁹ Mary Arden, ‘Judgment Writing: Are Shorter Judgments Achievable? What Could Judges Do About the Problem?’ (2012) *Law Quarterly Review* 518, 519.

⁶⁰ UNESCO Guidelines (n 35).

⁶¹ Richard Re, ‘Artificial authorship and judicial opinions’ (2024) 92(6) *The George Washington Law Review* 1558, 1568. Re also refers to Argumentation and Composition.

⁶² Isabel Gottlieb, ‘Paul Weiss Assessing Value of AI, But Not Yet on Bottom Line’ Bloomberg Law (online, 14 May 2024) <<https://news.bloomberglaw.com/business-and-practice/paul-weiss-assessing-value-of-ai-but-not-yet-on-bottom-line>>.

⁶³ Victoria Hendrickx, ‘The Judicial Duty to State Reasons in the Age of Automation? The Impact of Generative AI Systems on the Legitimacy of Judicial Decision-Making’ (2024) (3) *Erasmus Law Review* 1, 7, available at SSRN: <<http://dx.doi.org/10.2139/ssrn.5043685>>. See also Neal Kumar Katyal, ‘What Really Won the Trillion-Dollar Supreme Court Case’ (YouTube, 17 April 2026) <https://youtu.be/g3M3WaixeOw?si=8jzwZQv9iXq6zK_6> (describing the use of a bespoke Gen AI tool analysing each US Supreme Court judges’ judgments, writings and questions at oral argument for the past 25 years to predict the questions that would be asked at oral argument).

and the individual and processual (those related to the benefits of individual judges engaging in the process of writing reasons).

A *Institutional Reasons to Write Reasons*

Australia has a common law system in which judicial officers interpret and apply precedential case law and legislation to the facts of cases before them. Judges are usually also fact finders: only trials of more serious criminal matters involve juries, and in some states, even in those types of matter, a defendant can elect to have a judge-alone trial.⁶⁴ Although judges are generally thought of as having a duty to give reasons for their decision in a given case, authors have pointed out that in fact, historically, the common law did not recognise such a duty.⁶⁵ The Chief Justice of the Federal Court, Debra Mortimer, has noted extra-judicially that early on, arguments about efficiency were in fact invoked as a basis for judges to resist being compelled to give reasons. Seventeenth-century jurist Lord Coke reputedly said: ‘in truth, if Judges should set down the reasons and causes of their judgments within every record, that immense labor should withdraw them from the necessary services of the commonwealth’.⁶⁶ Of course, this predated the many later technologies, from the pen to the Dictaphone, that have since significantly eased the production of text.

Over time, the giving of reasons increased. Dyzenhaus and Taggart attribute this to (among other things) the decline of the jury as fact finder.⁶⁷ While it became generally accepted in the twentieth century that Australian judges should give reasons, it was not until case law developments in the 1980s that this was propelled further. Writing in 1994, Justice Michael Kirby (then President of the NSW Court of Appeal) considered that judges were ‘usually’ obliged to give reasons for their decisions.⁶⁸ As we detail below, reason-giving is important for a several interlinked reasons: reasons are a check on judicial power, enable open justice and procedural fairness, and in turn promote public

⁶⁴ See Michael Chesterman, ‘Criminal Trial Juries in Australia: From Penal Colonies to a Federal Democracy’ in Neil Vidmar (ed), *World Jury Systems* (Oxford University Press, 2000) 125, 130–31.

⁶⁵ Debra (‘Debbie’) Mortimer, ‘Some Thoughts on Writing Judgments in, and for, Contemporary Australia’ (2018) 42(1) *Melbourne University Law Review* 274, 278–79 and 282–83; citing David Dyzenhaus and Michael Taggart, ‘Reasoned Decisions and Legal Theory’ in Douglas E Edlin (ed), *Common Law Theory* (Cambridge University Press, 2007) 134, 135; and Michael Kirby, ‘On the Writing of Judgments’ (1990) 64(11) *Australian Law Journal* 691.

⁶⁶ Mortimer (n 65) 279; quoting the US case *Houston v Williams* 13 Cal 24 at 25 (1859) (Field J). Field J concluded that while giving reasons was important, especially in important cases, not every case needed or warranted expending time in writing a judgment, and he noted that many cases involved no new legal principles.

⁶⁷ Dyzenhaus and Taggart (n 65) 139.

⁶⁸ Michael Kirby, ‘Reasons for Judgment: “Always Permissible, Usually Desirable and Often Obligatory”’ (1994) 12(2) *Australian Bar Review* 121.

confidence in the judiciary.⁶⁹ Ultimately, reason-giving supports judicial legitimacy.

However, not all reasons for decisions must be lengthy, erudite expositions. Reasons may be brief or ‘workmanlike’, in Chief Justice Mortimer’s words.⁷⁰ Indeed, a contemporary concern around judgment writing is that reasons for judgment are overly lengthy. Chief Justice Mortimer attributes this to the complexity of modern law, the prevalence of case law in electronic form, dictation and word processing, the ability to ‘cut and paste’, and perhaps a desire on the part of first instance judges to ‘appeal proof’ their judgments.⁷¹

The general principles concerning what is necessary to satisfy the duty to provide reasons were summarised by Justice Nettle in *Hunter v Transport Accident Commission*, where his Honour wrote:

...while the extent of the reasons will depend upon the circumstances of the case, the reasons should deal with the substantial points which have been raised; include findings on material questions of fact; refer to the evidence or other material upon which those findings are based; and provide an intelligible explanation of the process of reasoning that has led the judge from the evidence to the findings and from the findings to the ultimate conclusion.⁷²

At the conclusion of this passage, Nettle J stressed that a reader should not be left ‘wondering’ about how the outcome was arrived at, saying: ‘Failure to expose the path of reasoning is an error of law’.⁷³ We return to this below in Part IV, where we consider whether using GenAI may result in a failure to truly expose the judicial thought process.

(i) *Judicial Power and Process*

The unique and essential function of judicial power ‘is the quelling of ... controversies by ascertainment of the facts, by application of the law and by exercise, where appropriate, of judicial discretion’.⁷⁴ Justice Gummow in *Grollo v Palmer* added to these essential attributes ‘which are delivered in public after a public hearing, and, where a judge is the tribunal of fact as well as law, are preceded by grounds for decision which are animated by reasoning’.⁷⁵ A judge’s reasons explain what the controversy is, the facts as they found them to be (and why), the applicable law (and why) and how the law requires a particular result when

⁶⁹ Jason Bosland and Jonathan Gill, ‘The Principle of Open Justice and the Judicial Duty to Give Public Reasons’ (2014) 38 *Melbourne University Law Review* 482, 488.

⁷⁰ Mortimer (n 65). See also *Sullivan v Council of the City of Gold Coast* [2026] QCA 105, [17]-[22] (Doyle JA).

⁷¹ Mortimer (n 65) 283.

⁷² *Hunter v Transport Accident Commission* (2005) 43 MVR 130, 136–37.

⁷³ *Ibid* 137.

⁷⁴ *Fencott* (n 13) 608.

⁷⁵ *Grollo v Palmer* (1995) 184 CLR 348, 394; *Wainohu* (n 7) [56] (French CJ and Kiefel J).

applied to the given set of facts.⁷⁶ The giving of reasons has been described as ‘an incident of the judicial process’,⁷⁷ or as ‘a defining characteristic of a court’.⁷⁸ This is because ‘without the articulation of reasons, a judicial decision cannot be distinguished from an arbitrary decision’.⁷⁹

Related to the exercise of judicial power is the principle of stare decisis⁸⁰ and the common law system of precedent.⁸¹ The giving of reasons will identify binding case law and its application to the current facts. In this way, the system of precedent is developed and reinforced. Certainty is promoted. This is of significance because courts not only resolve disputes but also formulate rules for application in future cases. The giving of reasons enables practitioners, legislators and members of the public to ascertain the basis upon which like cases will probably be decided in the future.⁸² However, care must be taken to recognise that identifying and following precedent is often not straightforward, with courts needing to address parties’ competing submissions as to which law is binding and which cases should be distinguished, before applying a rule to the facts found by the judge.⁸³

Law also changes. Past decisions are revisited and reinterpreted or simply overruled. New situations arise and society seeks change.⁸⁴ Giving reasons supports the development of the law.⁸⁵ Yet this development must also be incremental: judges are the custodians of a ‘coherent body of law’.⁸⁶ McIntyre explains: ‘This role flows from the institutional nature of judicial dispute resolution ... and the publicly discursive nature of the judicial decision’.⁸⁷ Through his analysis, McIntyre

⁷⁶ Rupert Cross and J W Harris, *Precedent in English Law* (Clarendon Press, 4th ed, 1991) 39.

⁷⁷ *Osmond* (n 7) 667 (Gibbs CJ).

⁷⁸ *Wainohu* (n 7) [44] (French CJ and Kiefel J).

⁷⁹ *Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247, 279 (McHugh JA) (‘*Soulemezis*’). See also Victoria Hendrickx, ‘AI and the Judicial Duty to State Reasons’ in Monika Zalnieriute and Agne Limante (eds), *The Cambridge Handbook of AI and Technologies in Courts* (Cambridge University Press, 2026) 282, 285.

⁸⁰ *Favelle Mort Ltd v Murray* (1976) 133 CLR 580, 591 (Barwick CJ); *Businessworld Computers Pty Ltd v Australian Telecommunications Commission* (1988) 82 ALR 499, 504 (Gummow J) (a court lower in the particular judicial hierarchy should follow a decision of a court higher in that hierarchy).

⁸¹ Louis Waller, *Derham, Maher and Waller - An Introduction to Law* (LBC Information Services, 7th ed, 1995) 99 (‘a system of precedent means that a question should be answered in a certain way today because a similar question was so answered yesterday’); Belinda Smith et al, *Laying Down the Law* (LexisNexis, 12th ed, 2023) 209.

⁸² *Soulemezis* (n 79) 279 (McHugh JA).

⁸³ See Edward Levi, *An Introduction to Legal Reasoning* (University of Chicago Press, 1948) 1–2; Cross and Harris (n 76) 43–47.

⁸⁴ Levi (n 83) 4; Karl Llewellyn, *The Bramble Bush* (Oxford University Press, 2008) 60.

⁸⁵ Aharon Barak, ‘Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy’ (2002) 116 *Harvard Law Review* 19, 121; cited by Joe McIntyre, ‘Re-Examining the Judicial Function in Australia’ in Gabrielle Appleby and Andrew Lynch (eds), *The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press, 2021) 22, 42.

⁸⁶ McIntyre (n 85) 40.

⁸⁷ *Ibid.*

shows that judges are not just providing a dispute resolution ‘service’⁸⁸ but, as the third arm of government, are doing so in a manner that develops the law coherently while retaining its dynamism.⁸⁹ Moreover, the capacity of judges to ‘be persuaded’ illustrates the role of the legal community and society more broadly in shaping the direction of the law.⁹⁰

(ii) *Enabling Appeals*

Judges are under an obligation to give reasons where that is necessary for the matter to be properly considered on appeal.⁹¹ Without reasons the parties are unable to exercise a right of appeal as they cannot discern how facts were determined and the law applied. Moreover, an appellate court is left to guess if and how an error occurred.

(iii) *Open Justice*

In contemporary Australia, the obligation to give reasons has developed ‘such that it is now seen not only as an “incident of the judicial process” but also by some courts as an expression of the open justice principle’.⁹² In a speech originally delivered in 1970, Justice Kitto quoted *Scott v Scott*⁹³ on the topic of giving reasons ‘in open court’, then continued: ‘It is not enough that the hearing of a case has been in public. The process of reasoning which has decided the case must itself be exposed to the light of day...’.⁹⁴ In *Wainohu v New South Wales*, French CJ and Kiefel J explained:⁹⁵

A court which does not give reasons for a final decision or for important interlocutory decisions withholds from public scrutiny that which is at the heart of the judicial function: the judicial ascertainment of facts, identification of the rules of law, the application of those rules to the facts and the exercise of any relevant judicial discretion.

⁸⁸ See also Michaels (n 9) who makes a similar point (‘The judiciary is more than just an opinion factory’).

⁸⁹ McIntyre (n 85) 43–45; Dyzenhaus and Taggart (n 65) 146.

⁹⁰ Michaels (n 9) 1084.

⁹¹ *Osmond* (n 7) 667 (Gibbs CJ); *Wainohu* (n 7) [55] (French CJ and Kiefel J); *DL v The Queen* (2018) 266 CLR 1, [32] (Kiefel CJ, Keane and Edelman JJ) (‘DL’).

⁹² *Osmond* (n 7) 667 (Gibbs CJ), quoting *Housing Commission (NSW) v Tatmar Pastoral Co Pty Ltd* [1983] 3 NSWLR 378, 386 (Mahoney JA); *Soulemezis* (n 79) 278 (McHugh JA) (the duty to give reasons ‘rests on a wider basis: its foundation is the principle that justice must not only be done but it must be seen to be done.’).

⁹³ [1913] AC 417, 473.

⁹⁴ Frank Kitto, ‘Why Write Judgments?’, Speech delivered in 1970, first published in (1992) 66 *Australian Law Journal* 787; reprinted in Ruth Sheard (ed), *A Matter of Judgment: Judicial Decision-Making and Judgment Writing* (Judicial Commission of New South Wales, 2003) 70.

⁹⁵ *Wainohu* (n 7) [58] (French CJ and Kiefel J).

(iv) *Procedural Fairness*

Procedural fairness encapsulates a bundle of requirements pertaining to the right to be heard, to have access to evidence and to test that evidence in an impartial forum. However, its precise dictates are grounded in the practical and may be specific to the circumstances.⁹⁶ Giving reasons for decisions is foundational to ensuring procedural fairness. The provision of reasons ‘enables the parties to see the extent to which their arguments have been understood and accepted as well as the basis of the judge’s decision’.⁹⁷ The ‘losing party is entitled, at a bare minimum, to an explanation why their case has not been preferred’.⁹⁸ The provision of reasons may also require addressing evidence – why evidence was rejected or why competing evidence was preferred.⁹⁹

(v) *Public Confidence in the Judiciary*

The link between reasons and open justice and procedural fairness extends to the promotion of public confidence in the judiciary, and in turn illustrates the responsible use of institutional power.¹⁰⁰ Reasons ‘work to encourage the acceptance of decisions and to reinforce confidence in the administration of justice’.¹⁰¹ In *AK v Western Australia* it was said:

the general acceptability of judicial decisions is promoted by the obligation to explain them. ... it is consistent with the idea of democratic institutional responsibility to the public that those who are entrusted with the power to make decisions, affecting the lives and property of their fellow citizens, should be required to give, in public, an account of the reasoning by which they came to those decisions.¹⁰²

The need for reasons and judicial legitimacy takes on particular meaning in relation to constitutional interpretation. In *Marbury v Madison*, the US case which established the concept of judicial review, Chief Justice Marshall stated: ‘It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule.’¹⁰³ In a system with a written Constitution and a government of

⁹⁶ *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam* (2003) 214 CLR 1, 14; *Condon v Pompano Pty Ltd* (2013) 252 CLR 38, [68].

⁹⁷ *Soulemezis* (n 79) 279 (McHugh JA); *DL* (n 91) [131] (Nettle J).

⁹⁸ *Assad v Eliana Construction & Developing Group Pty Ltd* [2015] VSCA 53 [34].

⁹⁹ *DL* (n 91) [131] (Nettle J).

¹⁰⁰ Hendrickx, ‘AI and the Judicial Duty to State Reasons’ (n 79) 283–86.

¹⁰¹ Bosland and Gill (n 69) 488, citations omitted; see also *Soulemezis* (n 79) 279 (McHugh JA) (‘the articulation of reasons provides the foundation for the acceptability of the decision by the parties and by the public’).

¹⁰² *AK v Western Australia* (2008) 232 CLR 438, 470 [89] (Heydon J), citing Murray Gleeson, ‘Judicial Accountability’ (1995) 2 *The Judicial Review* 117, 122.

¹⁰³ *Marbury v Madison* (1803) 5 US 137; see also *Communist Party Case* (1951) 83 CLR 1, 262–63.

specific but limited powers, when a court says a law that would otherwise have been democratically enacted is invalid, an explanation is needed.¹⁰⁴ The court must explain why it has overturned the value choices of other branches of the Government.¹⁰⁵

While the making of orders is the exercise of institutional power, and the giving of reasons supports this, reason-giving itself is by the individual who exercised that institutional power.¹⁰⁶ As Justice Pagone has explained, the judge does not exercise individual power but the ‘power of the community’, and reason-giving is foundational to accountability in the exercise of this public power.¹⁰⁷ Pagone J continued: ‘The reasons ... need to be *a sufficient explanation of a decision-maker’s reasoning process to explain why or in what way a conclusion was reached*’.¹⁰⁸

B *The Process of Writing Reasons*

As section A explained, there are many reasons, connected to judicial decision-making as an exercise of institutional power, for judicial officers to give reasons that reflect their decision-making. In this section, we consider a further aspect, related to the process of writing itself. Numerous judges, and others, have discoursed on judgment writing and the connection between making decisions and writing down the reasons for those decisions.¹⁰⁹ Former High Court Justice Michael Kirby wrote several extra-curial pieces on this topic, opening one with a quote from Canadian judge Gérard La Forest: ‘Frequently enough one thinks one has the answer; but on sitting down, it will not write.’¹¹⁰ In an earlier article, Kirby J had written that: ‘It ... seems reasonable to suppose that ideas are themselves influenced to some extent by verbal explanations of what the judge wants to say’.¹¹¹ This idea of a symbiotic relationship between the words of judgments and their ideas is a long-standing refrain among judges reflecting on the process of judgment writing:

¹⁰⁴ Neomi Rao, ‘Textualism’s Political Morality’ (2022) 73 *Case Western Reserve Law Review* 191, 202.

¹⁰⁵ G Edward White, ‘The Constitutional Journey of *Marbury v. Madison*’ (2003) 89 *Virginia Law Review* 1463, 1559, citing Herbert Wechsler, *Toward Neutral Principles of Constitutional Law* (1959).

¹⁰⁶ Mortimer (n 65).

¹⁰⁷ G T Pagone, ‘Centipedes, Liars and Unconscious Bias’ (2009) 83 *Australian Law Journal* 255, 260.

¹⁰⁸ Ibid 260 (emphasis added).

¹⁰⁹ More generally, many have researched and elucidated the relationships between thinking, writing and speech: see Kellen McClendon, ‘The Convergence of Thinking, Talking, and Writing: A Theory for Improving Writing’ (1999) 38(1) *Duquesne Law Review* Article 6; Arthur N Applebee, ‘Writing and Reasoning’ (1984) 54(4) *Review of Educational Research* 577.

¹¹⁰ Michael Kirby, ‘Judging: Reflections on the Moment of Decision’ in Ruth Sheard (ed), *A Matter of Judgment: Judicial Decision-Making and Judgment Writing* (Judicial Commission of New South Wales, 2003) 43, 43.

¹¹¹ Michael Kirby, ‘Literature in Judicial Reasoning’ (2001) 75 *Australian Law Journal* 602, 605.

Even with the benefit of hindsight, a judge may find it hard to identify the exact moment when he or she reached a final decision. For many judges the critical moment seems to be closely related to finalisation of the reasons for judgment. This suggests that in difficult cases the moment of decision and the act of writing are as one – they come together, they merge, as if by instinct.¹¹²

That a relationship between thinking and writing exists is also supported by research. Considering the interconnection, one review summarised the reasons why these activities may improve one another, as follows:

- a) the permanence of the written word, allowing the writer to rethink and revise over an extended period;
- b) the explicitness required in writing, if meaning is to remain constant beyond the context in which it was originally written;
- c) the resources provided by the conventional forms of discourse for organizing and thinking through new ideas or experiences and for explicating the relationships among them; and
- d) the active nature of writing, providing a medium for exploring implications entailed within otherwise unexamined assumptions.¹¹³

Very similar points were made by Justice Kitto, who said, in the context of considering the difference between delivering a judgment *ex tempore* (orally) or reserving judgment: ‘*the very exercise of writing ensures more careful thinking and rethinking*, gives greater opportunity for detecting hidden fallacies, and reduces the chance that some relevant point has been missed or glossed over in the argument’.¹¹⁴ These words have found support in research into human thinking in general, which also applies to judges (as professional decision-makers),¹¹⁵ and as Justice Gageler (as he then was) noted when reflecting in 2013 on Kitto J’s speech.¹¹⁶ Like everyone else, judges ‘have two cognitive systems for making judgments – the intuitive and the deliberative – and the intuitive

¹¹² Nicholas Hasluck, ‘A Judicial Dilemma: Will It Write?’ (2017) 44(8) *Brief* 34, 35.

¹¹³ Applebee (n 109) 577.

¹¹⁴ Kitto (n 94) 43; Richard Posner made a similar point in ‘Judges’ Writing Styles (and Do They Matter)’ (1995) 62(4) *University of Chicago Law Review* 1421.

¹¹⁵ See Chris Guthrie, Jeffrey J Rachlinski and Andrew J Wistrich, ‘Blinking on the Bench: How Judges Decide Cases’ (2007) 93(1) *Cornell Law Review* 1; Jeffrey J Rachlinski and Andrew J Wistrich, ‘Gains, Losses, and Judges: Framing and the Judiciary’ (2019) 94 *Notre Dame Law Review* 521; Steven A Sloman, ‘Two Systems of Reasoning’ in Thomas Gilovich, Dale W Griffin and Daniel Kahneman (eds), *Heuristics and Biases: The Psychology of Intuitive Judgment* (Cambridge University Press, 2002) 379; Daniel Kahneman and S Frederick, ‘Representativeness Revisited: Attribute substitution in intuitive judgment’ in Thomas Gilovich, Dale W Griffin and Daniel Kahneman (eds), *Heuristics and Biases: The Psychology of Intuitive Judgment* (Cambridge University Press, 2002) 49–81; Zhuang Liu, ‘Does Reason Writing Reduce Decision Bias? Experimental Evidence from Judges in China’ (2018) 47(1) *The Journal of Legal Studies* 83.

¹¹⁶ Stephen Gageler, ‘Why Write Judgments?’ (Sir Frank Kitto Lecture, University of New England Law School, 11 November 2013). Reprinted in Judicial Commission of New South Wales, *Handbook for Judicial Officers* (2021) 312.

system appears to have a powerful effect on judges' decision making'.¹¹⁷ In *Thinking, Fast and Slow*, psychologist Daniel Kahneman popularised this idea of two modes of thinking: one fast, intuitive and reliant on heuristics or mental shortcuts; the other slow, careful and logical.¹¹⁸ While the intuitive system can arrive at the correct answer, it is also prone to errors, including errors of unconscious bias and emotional reaction.¹¹⁹ However, quick, intuitive judgements can be tempered or overcome by the use of slow and deliberative thinking, though this requires more time and additional cognitive effort.

In relation specifically to the judiciary, Guthrie and colleagues posited four ways that the temptation to resort to intuitive thinking could be overcome: one is through writing judgments.¹²⁰ These authors explain: 'the discipline of opinion writing might enable well-meaning judges to overcome their intuitive, impressionistic reactions. The *process of writing* might challenge the judge to assess a decision more carefully, logically, and deductively.'¹²¹ As Kitto J eloquently put it: 'What we think that we think on the spur of the moment often undergoes a remarkable change when we go through the discipline of putting it down on paper and looking at it.'¹²² In this formulation, the lengthy process of writing is intimately connected to the cognitive process of arriving at the correct conclusion, untainted by prejudice or bias in the form of 'emotions, sympathies, dislikes and predilections'.¹²³ Kitto J referred to writing as a 'disciplining' process, a deliberate slowing down, which assists to overcome the influence of innate biases.¹²⁴ In more recent times, Justice Mortimer has made a similar point, explaining how the act of describing evidence in the writing of a judgment is interconnected with its evaluation, and can correspondingly show up gaps or weaknesses:

In formulating the words needed to explain... an impression is formed: the evidence does not seem as credible as it first appeared; or, once written, the explanation for accepting or rejecting it seems less persuasive or less logical. Sometimes, evidence sounds weaker written down in context than it did when given in court. Or it no longer seems rational. Sometimes, as a

¹¹⁷ Guthrie, Rachlinski and Wistrich (n 115) 43.

¹¹⁸ Daniel Kahneman, *Thinking, Fast and Slow* (Penguin Press, 2012).

¹¹⁹ Ozkan Eren and Naci Mocan, 'Emotional Judges and Unlucky Juveniles' (2018) 10(3) *American Economics Journal: Applied Economics* 171.

¹²⁰ Guthrie, Rachlinski and Wistrich (n 115) 33–43.

¹²¹ Ibid 37 (emphasis added). See also Winston Sieck and J Frank Yates, 'Exposition Effects on Decision Making: Choice and Confidence in Choice' (1997) 70(3) *Organizational Behavior and Human Decision Processes* 207.

¹²² Kitto (n 94) 77. A similar sentiment is expressed by Hasluck (n 112) 34 ('the very exercise of thinking and rethinking gives greater opportunity for detecting hidden fallacies').

¹²³ Ibid.

¹²⁴ Ibid.

judge writes, the initial impression is revealed to be incomplete because an aspect of the evidence has been omitted.¹²⁵

Similar remarks were made by American jurist William Rehnquist, who noted that while everyone has ‘a mind imprinted with previous experience’,¹²⁶ the process of deliberation can enable judges to overcome prejudices. Discussing appellate judging, in particular, Justice Rehnquist drew attention also to the important role of collegiality:

A judge’s vote may be exactly the same as his tentative inclination was at the time he first read the briefs. But it may not be; in the interim between reading the briefs and finally voting, he has had the benefit of oral argument, listening to the views of colleagues at conference, and seeing the way in which a proposed result is justified in writing. Minds can and do change at any stage in this process.¹²⁷

Justice Gageler also drew on behavioural science in considering judicial independence, particularly on multi-member benches.¹²⁸ His Honour expounded on the ways that small group decision-making may result in ‘intellectual conformity’,¹²⁹ referencing Kahneman’s idea that all group members should write down a summary of their position before deliberation starts. The writing of reasons is also a creative process, not because judges are inventing reasons, but because they may be applying law to novel sets of facts, re-interpreting the law, or combining precedent in new ways. The process of writing reasons for judgment may also ‘[stimulate] new thinking’¹³⁰ and new ideas. Justice Gageler also referenced the idea of judges in multi-member courts writing solely for the purpose of reasoning, without the need to deliver those reasons.¹³¹ Finally, in a 2016 speech, High Court Justice Gordon explained her preference for typing out her own judgments, including typing out the words of statutes, rather than cutting and pasting.¹³² Her Honour explained that this allowed her to become more familiar with the text of the statute.¹³³

IV The Risks of Using GenAI for Judgment Writing

In this Part, we discuss the potential impact of judges using GenAI in the giving of reasons for their decisions. In the subsections that follow, we turn to consider different categories of risk that also might ensue. In

¹²⁵ Mortimer (n 65) 286 (emphasis in original).

¹²⁶ William H Rehnquist, ‘Remarks on the Process of Judging’ (1992) 49(2) *Washington and Lee Law Review* 263, 263–64.

¹²⁷ *Ibid* 269.

¹²⁸ See Gageler’s discussion of slow thinking: (n 116) 322–23.

¹²⁹ *Ibid*.

¹³⁰ Arden (n 59).

¹³¹ Gageler (n 116) 357.

¹³² Michelle Gordon, ‘Applying Reason to Reasons – Start, Middle and End’ (Speech, AGS Administrative Law Forum, Canberra, 11 November 2016) 5.

¹³³ *Ibid*.

subsection A, we consider operational or practical risks, such as the risk of error. In subsection B, we discuss the potential effects on judges, and in subsection C we examine broader threats to the institutional authority of the court and the rule of law. Finally, in section D, we consider the relevance of the nature and extent of the use of GenAI in judgment writing and whether any of the risks of using it can be mitigated.

A *Operational and Practical Risks of GenAI for Judgment Writing*

The risks of using GenAI for judgment writing may be considered from two perspectives. First, there is the possibility that any promised or perceived benefits of use are not realised, for example, there is a lack of accuracy and a lack of efficiency.¹³⁴ Second, there is the possibility that GenAI introduces new risks such as bias and opacity, and that the law will stagnate rather than develop.

Judgment writing requires a statement of the facts and a statement of the relevant law. The risk of using GenAI is that it may be inaccurate in relation to the facts and the law.¹³⁵ Inaccuracy may come from hallucinations. The model may confidently invent a detail because it is statistically probable. In the legal context this includes fake case law or legislation. Numerous lawyers and self-represented litigants have experienced this to their detriment.¹³⁶ It may also include inaccurately summarising claims or evidence, such as leaving out important details, fabricating or misattributing quotes from individuals or confusing the chronological order of events.¹³⁷ The risks of GenAI causing inaccuracies to be included in judgments is illustrated by two United States Federal District Courts. Judge Neals of the US District Court for the District

¹³⁴ Victoria Hendrickx, 'Rethinking the Judicial Duty to State Reasons in the Age of Automation' (2025) 1 *Cambridge Forum on AI: Law and Governance* e26, 1, 18.

¹³⁵ Nikola Datzov, 'AI Jurisprudence: Toward Automated Justice' (2025) 23 *Northwestern Journal of Technology and Intellectual Property* 1, 23.

¹³⁶ Michael Legg, Vicki McNamara and Armin Alimardani, 'The Promise and the Peril of the Use of Generative Artificial Intelligence in Litigation' (2025) 48(4) *UNSW Law Journal* 1196; Centre for the Future of the Legal Profession, *GenAI, Fake Law & Fallout: A review of the misuse of generative artificial intelligence in legal proceedings*, Report (November 2025) <<https://www.unsw.edu.au/news/2025/11/genai-fake-law-and-fallout-report>> ('GenAI, Fake Law & Fallout Report').

¹³⁷ See eg *Aksakal v Kivaway2 Ltd trading as the Odeon* (Irish Workplace Relations Commission, ADJ-00053151, 20 May 2025) (complaint under the Employment Equality Acts 1998-2015 drafted with assistance from ChatGPT included allegations inconsistent with the evidence); *Pauliah v University of Mississippi Medical Center*, 2025 WL 3776049 (SD Miss, 30 Dec 2025) at 2 ('*Pauliah*') (declaration in opposition to application for summary judgment contained 'fabricated quotations, presented to the Court along with manufactured citations to deposition transcripts'); see also *Fletcher v Experian Information Solutions Inc*, 25-20086, 2026 WL 456842, at 3 (5th Cir. Feb. 18, 2026) ('*Fletcher*').

of New Jersey and Judge Wingate of the Southern District of Mississippi both withdrew judgments after it was discovered that they contained hallucinated case law produced by GenAI.¹³⁸

The GenAI model used (law-specific rather than general, retrieval augmented generation, specialised fine-tuning, or external database checks) and the way in which it is used (drafting of prompts, including chain-of-thought prompting or chain-of-verification, and requests for sources) can ameliorate the risk of errors.¹³⁹ However, it has been stated that ‘hallucination is inevitable for any computable LLM, regardless of model architecture, learning algorithms, prompting techniques, or training data’.¹⁴⁰ Put more simply, hallucinations are here to stay, even though they can be mitigated.

To guard against inaccuracy the judicial user needs education about how GenAI operates to use a model effectively. The judge also needs to add a verification step or process. Both of these safeguards are widely included in the judicial guidance discussed in Part II. Without GenAI it would be expected that a judgment would be subject to proofreading, including ensuring accurate citation of fact and law. However, the need for the court to check AI outputs to prevent incorrect law or facts being included in a judgment can add an additional layer of work as cites need to be found not to exist, or the proposition of law for which the cases stand is incorrect, and then replacement citation found.¹⁴¹ Both of the US examples above were stated to be due to the unauthorised use of GenAI by a law clerk and intern, where the outputs were not adequately checked.¹⁴² However, if the law or facts are different to those upon which the judgment was prepared this may require reconsideration by the judge as it may impact the reasoning and outcome.¹⁴³

¹³⁸ Justin Henry, ‘Judges Admit to Using AI After Made-Up Rulings Called Out’, Bloomberg Law (online, 24 October 2025) <<https://news.bloomberglaw.com/business-and-practice/judges-called-out-for-nonfactual-rulings-admit-to-use-of-ai>>.

¹³⁹ Matthew Dahl, Varun Magesh, Mirac Suzgun and Daniel Ho, ‘Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models’ (2024) 16 *Journal of Legal Analysis* 64, 88; Satyadhar Joshi, ‘Comprehensive Review of AI Hallucinations: Impacts and Mitigation Strategies for Financial and Business Applications’ (2025) 14(6) *International Journal of Computer Applications Technology and Research* 38.

¹⁴⁰ Xu, Jain and Kankanhalli (n 19) 2; see also Adam Tauman Kalai and Santosh S Vempala, ‘Calibrated Language Models Must Hallucinate’, STOC 2024: Proceedings of the 56th Annual ACM Symposium on Theory of Computing <<https://doi.org/10.1145/3618260.3649777>>.

¹⁴¹ *Pauliah* (n 137) (fabrications from a party ‘substantially slowed the judicial process, as it required opposing counsel, then the Court, to dedicate significant resources to first determine whether the “factual material” before the Court was even true, prior to considering any legal implications that may flow from these “facts”.’); *Fletcher* (n 137) 1 (‘hallucinations grow “all the more insidious and harder to guard against,” as the models are more sophisticated and appear more truthful. ... This problem now often manifests as false quotes or statements of law attributed to real cases, rather than the more easily recognizable fake cases’).

¹⁴² Henry (n 138).

¹⁴³ See ‘Letter from Judge Wingate to Administrative Office of the U.S. Courts’, Senator Chuck Grassley, 21 October 2025, <<https://www.grassley.senate.gov/imo/media/doc/win->

It might be said that the judge is able to obtain assistance from a clerk, tipstaff or associate, which is possible, but depending on what the assistant is asked to do, the judge needs to be able to supervise the assistant, necessitating education of both.

LLMs are trained on massive datasets, but these datasets may contain inaccuracies or biases. The underlying algorithms are often inscrutable or ‘black boxes’. An LLM uses patterns from its training set to create new text. The text that is generated is limited or influenced by the quality of the training data and is susceptible to reproducing and amplifying errors or biases in that training data. The data often heavily features Western, English-language, and male-centric perspectives. Biases may also come from the programmers who train the AI.¹⁴⁴ Biases commonly manifest as gender, racial, or cultural stereotypes.¹⁴⁵ As a result the model may ‘produce predictions, recommendations, or outputs that are not fairly distributed among individuals or groups’.¹⁴⁶ For judicial reasoning this could mean that the way in which lay and expert witnesses and their testimony are described, including credibility and candour, and evaluated could be influenced by GenAI.

The lack of transparency as to how an LLM generates responses to prompts makes it difficult for judges to explain their reasoning when relying on GenAI.¹⁴⁷ The judge does not know how the LLM arrived at its output, i.e., what factors it considered or disregarded.¹⁴⁸ When opacity is combined with bias the judge is in the dark as to whether there have been ‘influences’ that may impact the objectivity or accuracy of the outputs. The judge cannot verify the integrity of the process.¹⁴⁹

B *Effects on Judges*

Using GenAI can remove at least some of the task of composition from the writer. This could occur in multiple ways: generating a first draft;

gate_to_grassley_re_judiciary_use_of_ai.pdf> (‘the mistakes were due to a failure to confirm the accuracy of certain information rather than errors in core legal reasoning or the ultimate judgment on the merits’).

¹⁴⁴ Iria Giuffrida, Fredric Lederer and Nicolas Vermerys, ‘A legal perspective on the trials and tribulations of AI: How artificial intelligence, the internet of things, smart contracts, and other technologies will affect the law’ (2018) 68(3) *Case Western Reserve Law Review* 747, 754–55, 762.

¹⁴⁵ UNESCO, ‘Challenging systematic prejudices: an investigation into bias against women and girls in large language models’ (2024) <<https://unesdoc.unesco.org/ark:/48223/pf0000388971>>; see also Geoffrey A Fowler and Kevin Schaul, ‘See ChatGPT’s hidden bias about your state or city’, *The Washington Post*, (online, 12 February 2026) <<https://www.washingtonpost.com/technology/interactive/2026/see-chatgpts-hidden-bias-about-your-state-or-city/>>.

¹⁴⁶ Dahl et al (n 139) 65.

¹⁴⁷ Datzov calls this ‘a black box within a black box’: (n 135) 50.

¹⁴⁸ Giovana Peluso Lopes, ‘Bias in Adjudication and the Promise of AI: Challenges to Procedural Fairness’ (2025) 7(1) *Law, Technology and Humans* 47, 59–60.

¹⁴⁹ Bell et al (n 35) 17; Simon Chesterman, ‘Through a Glass, Darkly: Artificial Intelligence and the Problem of Opacity’ (2021) 69(2) *American Journal of Comparative Law* 271, 272 (‘Opacity is the antithesis of legal decisions’).

creating sentence/s or paragraph/s and incorporating them; refining, editing or altering already-written material. Subsection A has discussed the ways that this might lead to errors or biasing effects. It also leads to further questions: will increasing reliance on GenAI come with risks to quality, or risks to judges' own cognitive capacities?

Justice Kitto, as noted in Part III, and in sentiments echoed by many others who have opined on the topic of judgment writing, considered that the value of writing, re-writing and re-drafting lay in its disciplining effect, referring to 'all the travail of making the necessary preparations for the task, knuckling down to the sheer toil of it'.¹⁵⁰ There is resonance here with comments made by the Chief Justice of NSW, who referred to lawyers' use of GenAI as 'laziness',¹⁵¹ as this disciplining effect (or effortful 'slow thinking') is avoided. In a study of judicial attitudes towards AI, Solovey, Flanagan and Chen found that UK judges were concerned by the idea of AI enabling 'shortcuts' which would detract from the discipline needed to perform judicial work correctly.¹⁵²

For Kitto J, reaching a decision at speed could never take the place of 'thoroughness in consideration and the utmost care in the formulation of reasons.'¹⁵³ More recently, Justice Gageler tempered this idea with consideration of the costs and benefits of taking longer to deliver judgments that have a higher probability of being correct.¹⁵⁴ Kitto J was also scathing about a lack of precision, which he considered the greatest sin.¹⁵⁵ In many ways the need for precision directly contrasts with the way that LLMs work, in terms of selecting synonyms based on probabilities, and where 'temperature' may be dialled up or down.¹⁵⁶ Thus, the risk of using GenAI in this way is both that it may contribute to a degradation of thinking/reasoning, including the risk of prejudices, incorrect assumptions or misunderstandings of the evidence not being sufficiently 'worked through'; and that consequently, the actual reasons produced will be inferior to those authored solely by the judge. There are also, then, longer term problems that may arise if judges' own reasoning and critical thinking capacities deteriorate.¹⁵⁷ For example, using GenAI to summarise a document could never be a substitute for the

¹⁵⁰ Kitto (n 94) 70; see also Gageler (116) and Gordon (132).

¹⁵¹ 'AI Rules to Guard Against "Laziness" in Legal Profession, Top Judge Says', *Lawyerly* (online, 2 December 2024) <<https://www.lawyerly.com.au/ai-rules-to-guard-against-laziness-among-lawyers-nsw-top-judge-says>>.

¹⁵² Erin Solovey, Brian Flanagan, and Daniel Chen, 'Interacting with AI at Work: Perceptions and Opportunities from the UK Judiciary', *CHIWORK* '25 (Amsterdam, The Netherlands, June 2025) <<https://doi.org/10.1145/3729176.3729192>> [4.4.6].

¹⁵³ Kitto (n 94) 70–71.

¹⁵⁴ Gageler (n 116).

¹⁵⁵ *Ibid.*

¹⁵⁶ See Lyria Bennett Moses, 'Stochastic Judges: The Limits of Large Language Models' (2024) 98 *Australian Law Journal* 640, 640; Felicity Bell and Justine Rogers, 'Becoming, Doing, Being: GenAI and the Promise of Professional Identity in Law' (2025) 7(3) *Law, Technology and Humans* 62, 65.

¹⁵⁷ Lee et al (n 12).

judge reading the document, both because an AI-generated summary could contain errors and omissions, and due to the judge missing out on the understanding and knowledge gained from the process of reading.

A clear danger is that absent the ‘disciplining’ effect of writing oneself, reasoning is tainted and biases are not overcome. Liu and Li conducted an experiment with 139 judges from courts around China, hypothesising that the use of GenAI to supplement or substitute judicial writing of reasons could negatively affect decision quality.¹⁵⁸ They anticipated that a variant of confirmation bias would occur, predicting that using an LLM to prepare a judgment draft would ‘reinforce the judges’ prior beliefs’ and cause them to disregard contradictory information.¹⁵⁹ In short, Liu and Li found that where judges were assisted by AI, they gave longer sentences (to a statistically significant degree) to a hypothetical defendant when presented with a vignette containing a potentially biasing factor; as opposed to a control vignette.¹⁶⁰ Liu and Li point out that further research is required to better support these findings, which are far from definitive. However, they identify what they term a potential ‘echoes of bias’ problem.¹⁶¹ The LLM was adept at selecting information and delivering well-written reasons according with a judge’s initial view, reducing the likelihood that judges would correct those biases through the writing process.¹⁶² This accords with the judicial discussions of judgment-writing, and the research, set out in Part III.B.

Nevertheless, it is important to consider the type and extent of use of GenAI, as discussed below at section D. It is important to note, also, that different legal systems see the role of the judge differently. If the judge is seen as a civil servant or administrator, use and concerns about AI may differ.

A final risk is how a judge’s own abilities and confidence in those capacities might change with AI use. A study of knowledge workers using GenAI concluded that it could improve efficiency, but also ‘potentially lead to long-term overreliance on the tool and diminished skill for independent problem-solving’.¹⁶³ While this might seem unlikely to occur for judges who already have many years of experience typically as lawyers, advocates and judicial officers, there are longer-term questions about how legal professionals, including future judges, will acquire their expertise.¹⁶⁴

¹⁵⁸ Liu and Li (n 5) 245.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid* 250–51.

¹⁶¹ *Ibid*; citing Liu (n 115).

¹⁶² *Ibid.*

¹⁶³ Lee et al (n 12).

¹⁶⁴ Bell and Rogers (n 156).

C *Effects on Public Confidence and the Rule of Law*

The risks to judges from using GenAI to draft reasons which then contain an error of some kind have been described as ‘sky-high’.¹⁶⁵ However, there are significant risks even if no errors are made. One risk involves public perceptions and public confidence in the judiciary; another, related risk is to institutional integrity and public confidence in the rule of law.

As former Chief Justice of New South Wales, TF Bathurst, observed extra-judicially: ‘Armed with only the power of judgment, the judiciary requires the legitimacy gained from public trust to function effectively’.¹⁶⁶ Judicial legitimacy is important because citizens who trust the judiciary are more likely to engage with the legal system to address their legal issues and to respect and co-operate with its processes, including complying with court orders that go against their personal interests.¹⁶⁷ Judicial legitimacy comes from judges ‘acting in accordance with the judicial process’,¹⁶⁸ including open justice/transparency, procedural fairness and impartiality.¹⁶⁹ Those aspects of judicial process must also be seen to exist by the public.¹⁷⁰ The rule of law refers to the characteristics of official legal institutions, such as courts, and incorporates certain virtues, such as equality and fairness, aimed at preventing the arbitrary exercise of power.¹⁷¹ These virtues then have practical consequences such as the peaceful acceptance of court decisions, and compliance with court orders, even if the outcome is subject to disagreement or even resentment.¹⁷² Members of society follow the law because the law is administered so as to apply equally to everyone and its adjudicative procedures are fair. Judicial legitimacy and the rule of law are in a reflexive relationship where each supports the other. If a judicial officer uses GenAI to create portions, or a first draft, of their reasons for decision, this raises a fundamental question as to whether they have actually exercised their judicial function. It is for this reason that Justice Melissa Perry has written, extra-judicially, that a decision-maker using AI to

¹⁶⁵ O’Donnell (n 3).

¹⁶⁶ T F Bathurst, ‘Trust in the Judiciary’ (Speech, 2021 Opening of Law Term Address, 3 February 2021) <https://supremecourt.nsw.gov.au/documents/Publications/Speeches/2021-Speeches/Bathurst_20210203.pdf>.

¹⁶⁷ Ibid; M Gleeson, ‘Public Confidence in the Judiciary’ (Speech, Judicial Conference of Australia, Launceston, 27 April 2002) <https://www.hcourt.gov.au/sites/default/files/assets/publications/speeches/former-justices/gleesoncj/cj_jca.htm>.

¹⁶⁸ *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, 107 (Gaudron J).

¹⁶⁹ Michael Legg, ‘The COVID-19 Pandemic, the Courts and Online Hearings: Maintaining Open Justice, Procedural Fairness and Impartiality’ (2021) 49 (2) *Federal Law Review* 161, 181–82.

¹⁷⁰ *JKC Australia LNG Pty Ltd v CH2M Hill Companies Ltd* [2020] WASCA 38, [15].

¹⁷¹ Tom Bingham, *The Rule of Law* (Penguin Books, 2010) 5, 55–59, 90–109; Martin Krygier, ‘What’s the Point of the Rule of Law?’ (2019) 67 *Buffalo Law Review* 743, 746, 760; Martin Krygier, ‘Pressures Old and New’ in Gregory Shaffer and Wayne Sandholtz (eds), *The Rule of Law Under Pressure* (Cambridge University Press, 2025) 473.

¹⁷² Gleeson (n 167).

draft their reasons would call into question whether a decision had lawfully been made.¹⁷³ A failure to use one's own words to draft the reasons for decision might cast doubt on whether the decision-maker had, in fact, performed the act of decision-making itself.¹⁷⁴ Justice Perry continued:

... [such use] may well raise serious questions as to whether the tribunal member had fulfilled their statutory obligation to provide reasons or indeed, whether the tribunal had lawfully undertaken its statutory decision-making task, even if the administrative decision-maker were to give evidence that they had adopted the reasons generated by the machine.¹⁷⁵

Similarly, Abbasi has discussed the importance of institutional legitimacy in this context, saying that 'the delegation' of the judicial function to AI 'would imperil the very foundations upon which the legitimacy of law depends.'¹⁷⁶ Relatedly, if a judge delegates to AI, the question is raised as to whether their independence and impartiality has been compromised as they have allowed AI (and possibly its providers) to influence the reasoning process and the decision that flows from those reasons.¹⁷⁷

D Risk Mitigation

The risks described above – of error, biased outcomes, deskilling, undermining public confidence, and potentially threatening the rule of law – might suggest that judges simply should not use GenAI tools in any context related to judgment writing. Undoubtedly, many judges will choose this avenue. However, while it would be desirable for judges not to use GenAI, this may be unrealistic, as a growing number of examples attest. Attention must then turn to what constitutes permissible versus impermissible modes and degrees of use and how risks might be mitigated.

As noted in Part II, there are a range of ways that judges might use generative AI tools or systems in the process of writing reasons for judgment, including preparatory or ancillary work, creating a first draft, creating a structure, and editing or improving a draft through feedback. Errors occurring through any type of use are problematic, and assessment is required as to whether undertaking the necessary verification

¹⁷³ Melissa Perry, 'What do judicial officers need to know about the risks of AI?' (2025) 2(3) *Judicial Quarterly Review* 55, 60.

¹⁷⁴ This is almost the antithesis of Volokh's argument, which is that capacity to persuade is all that matters, and authorship is irrelevant: Volokh (n 9).

¹⁷⁵ Perry (n 173) 60.

¹⁷⁶ Abbasi (n 38) 10.

¹⁷⁷ Mīgle Laukyte, 'Judicial Independence – The Impact of AI on Courts' in Monika Zalnieriute and Agne Limante (eds), *The Cambridge Handbook of AI and Technologies in Courts* (Cambridge University Press, 2026) 244–45; Felicity Bell and Michael Legg, 'Judicial Impartiality: AI in Courts' in Monika Zalnieriute and Agne Limante (eds), *The Cambridge Handbook of AI and Technologies in Courts* (Cambridge University Press, 2026) 258.

makes it less worthwhile to use GenAI in the first place.¹⁷⁸ Generally, however, the closer a task is to the core judicial work of making decisions – and the discussion at Part III shows that writing reasons for decision is closely connected to the making of the decision itself – the less appropriate it is to use GenAI for that task.

The extent of use is as important as the type of use to which GenAI is put. Some gauge of how superior courts might react to this issue can be found in cases where judges have ‘cut and pasted’, usually from counsel’s submissions. The Court of Appeal of England and Wales considered this issue in *IG Markets Ltd v Crinion*,¹⁷⁹ where the bulk of the judgment was taken verbatim from one counsel’s closing submissions, with very little material added by the judge. The Court of Appeal found that ‘appearances matter’ and continued: ‘For the judge to rely as heavily as he did on [counsel’s] written submissions did indeed risk giving the impression that he had not performed his task of considering both parties’ cases independently and even-handedly.’¹⁸⁰ Very similar concerns have been raised in Australian cases. In a decision of the ACT Court of Appeal, the court explained:

A fundamental concern that is raised when there is extensive copying of a party’s submissions in a judge’s reasons for decision is with the integrity of the judicial process. Such a practice raises the spectre that the judge has not independently considered the evidence or reached their own independent conclusions of fact or law.¹⁸¹

However, courts have emphasised that whether or not the judicial process has been impugned is always a matter of degree. In *Li v Attorney General for New South Wales*, Justice Brereton indicated that incorporating submissions made by the parties into reasons for judgment, even without attribution, was not necessarily impermissible,¹⁸² but with the qualifier: ‘so long as the reasons sufficiently reveal that the decision-maker gave independent consideration to the relevant issues’.¹⁸³ In *IG Markets*, the court said: ‘The more extensive the reliance on material supplied by only one party, the greater the risk that the judge will in fact fail to do justice to the other party’s case – and in any event, that will appear to have been the case’.¹⁸⁴ The copy-and-pasting that has resulted in successful appeals, such as *Atanaskovic Hartnell Corporate Services Pty Limited v Kelly*,¹⁸⁵ has been extensive, has drawn only on one side’s submissions and failed to address those made by the other side, and has included incorporation of one side’s view of matters that were

¹⁷⁸ Judges have drawn attention to this issue: Cyphert et al (n 47) 5.

¹⁷⁹ [2013] EWCA Civ 587 (*IG Markets*).

¹⁸⁰ Ibid [16].

¹⁸¹ *Porter v The Queen* [2022] ACTCA 9 [33].

¹⁸² [2019] NSWCA 95; 99 NSWLR 630 [122].

¹⁸³ Ibid [132].

¹⁸⁴ *IG Markets* (n 179) [16].

¹⁸⁵ [2024] FCAFC 137 (31 October 2024).

in contention. In cases like this, the superior court has determined that the judge's reasoning, fact-finding and basis for evidential decisions have become tainted.

One difference between 'cutting and pasting' and GenAI use is that in the former case, the plagiarised material is readily identifiable, meaning that a reader or another court can gauge the extent of borrowing that has taken place. In contrast, while there might be certain indicators that GenAI had been used, such as fictitious cases or other errors, or inappropriate language, style or tone,¹⁸⁶ its detection is not straightforward. Even if a clear indicator is present, there may be no way to tell how extensive the use of GenAI has been. However, even suspicion may be enough to induce doubt about the integrity of the judicial process. If a judge has not written a judgment themselves because their use of GenAI has been so extensive, the judge would be abdicating an essential and foundational aspect of their role. Paraphrasing *IG Markets*, the more extensive the reliance on GenAI, the greater the risk that the judge will in fact fail to do justice to the parties.

As discussed above, verification of material generated by AI is one form of risk management strategy that is widely promulgated in guidance for judges; another is accountability. Transparency is also often held up as a possible safeguard: the idea that the risks of judges using AI can be mitigated by full explanations of that use.¹⁸⁷ Giving reasons is, as explained, already an exercise in transparency. Justice Kitto referred to the giving of reasons as providing reassuring transparency to the public, both in terms of knowing the law and understanding the work of the courts, in protecting against judges misusing their power, incentivising them to high performance, but also as being protective of judges themselves, who could point to their judgment as proof of fulfilling their role. 'Full publicity', Kitto J said, 'provides on the one hand, a powerful protection against any tendency to judicial autocracy and against any erroneous suspicion of judicial wrongdoing and, on the other hand, an effective stimulant to judicial high performance'.¹⁸⁸

As noted, transparency and procedural fairness are two values or principles appearing in multiple sets of guidance for judges about using AI. Some judges have adopted this approach, through being explicit about when they have used a GenAI tool, even to the point of reproducing their own prompts. The UNESCO Guidelines state that: 'When text produced by the chatbot is included in a judicial decision, the entire interaction leading to the final result – both the user's prompts and the

¹⁸⁶ See the examples in Office of the Victorian Information Commissioner, *Investigation into the Use of ChatGPT by a Child Protection Worker* (Web Page) <<https://ovic.vic.gov.au/regulatory-action/investigation-into-the-use-of-chatgpt-by-a-child-protection-worker/>>.

¹⁸⁷ Hendrickx, 'Rethinking the Judicial Duty to State Reasons' (n 134).

¹⁸⁸ Kitto (n 94) 70.

chatbot's answers – should be documented.¹⁸⁹ While this could well be useful information to retain, including for the judge's own protection, it could also be questioned whether at some point, the need to include information about how GenAI was used, along with the process of verifying it, would render the actual time savings of using GenAI nugatory.¹⁹⁰ On the other hand, it might be that if a judge clarified that GenAI was used only for adjacent tasks, editing a final draft, or to produce a short summary, this would alleviate concerns which might otherwise arise.

V Conclusion

This article has investigated a narrow but pressing question: should judges use GenAI when writing their reasons for judgment? As we explained, there are multiple dimensions to this problem, related firstly to the reasons – both institutional and individual – for judges to give reasons in a common law system; and secondly to the variable ways in which GenAI might be used. LLMs and generative AI applications built on them have proved confounding to regulate due to the wide scope of potential usage. In addition, there is considerable user choice as to the extent of engagement. In Part II, we considered the uses to which GenAI might be put in relation to judgment writing, and the guidance that has issued from various jurisdictions and bodies to date. What appears from that guidance, collectively, is that a principled approach is helpful due to its flexibility. However, it remains challenging to set the parameters of acceptable use in part because the holistic impact on the judgment, and the practice of judgment-writing itself – i.e., the effect on *all* judgments,¹⁹¹ and all judges, must be considered.

Reasons for judgment fulfil multiple purposes. They allow a litigant, and anyone else, to understand why the outcome of a case was so; they demonstrate open justice and procedural fairness; accountability and integrity of process; and in turn, enable public confidence in the judiciary and justice system. At the same time, as we discussed in Part III, the process of writing reasons for judgment is also important and valuable for other, more internal reasons – writing is connected to critical, analytical thinking, enabling judges to work through facts, law and potential biasing effects to produce judgments of better quality.

The exercise of judicial power requires that the determination of matters and the accompanying reasoning remain exclusively those of the judge. Judicial reasoning constitutes the essence of adjudication and must reflect the independent intellectual engagement and deliberative judgment of the decision-maker. The drafting of reasons by the judge is

¹⁸⁹ UNESCO Guidelines (n 35) 29, [3.3.7].

¹⁹⁰ Cyphert et al (n 47) 5.

¹⁹¹ Bennett Moses (n 156).

not merely a formal requirement but a substantive safeguard. Arguably, as we have set out, the process of articulating reasons leads both to better decision-making and to better decision-makers. In this way, individual reasoning and writing, and institutional legitimacy, are intertwined.

In Part IV, we considered the risks of GenAI in judgment writing in three main areas: risks of decisions being infected by error or bias; risks of judges' decision-making and reasoning processes deteriorating; and the risk of negative effects on public confidence in the judiciary and judges failing to uphold the institutional integrity of their office.

The different ways that GenAI might be used, and the extent of use, are salient factors when considering these corresponding risks. As we set out, instances of use must be aggregated and the effect on the authorship of the judgment as a whole considered, similarly to the 'cutting and pasting' cases. For this assessment, the principled approaches promulgated in different jurisdictions and described in Part II and the Appendix, are helpful.

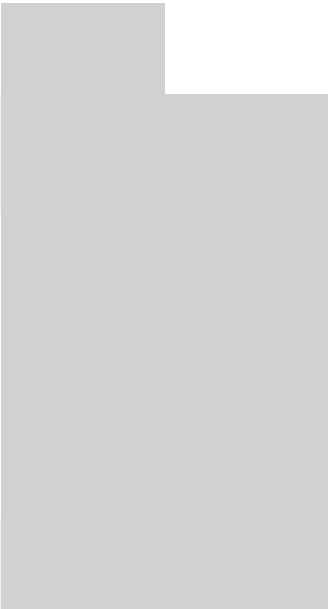
For law-adjacent tasks, GenAI use is less of an issue. However, the more that AI is brought into the core work of judgment writing, the more problematic it is. AI should not be employed in the performance of core judicial functions, including the assessment of evidence, legal analysis, or the drafting of reasons for decision. However, the extent of acceptable use must be continually reconsidered. While we may never reach a point where extensive use of GenAI to create judgments would be acceptable, it is vital to keep assessing and querying its use in judicial decision-making.

Appendix

Table 1: Summary of four sets of guiding principles for judicial use of generative AI

General theme	National Centre for US State Courts, Principles and Practices for Using AI Responsibly and Effectively in State Courts	United Nations Educational, Scientific and Cultural Organization (UNESCO) ¹⁹²	Australasian Institute for Judicial Administration, Guide to AI Decision-Making and the Courts	Victorian Law Reform Commission, Artificial Intelligence in Victoria’s Courts and Tribunals: Report
Impartiality		Non-discrimination (1.1)	Impartiality and equality before the law (4.3)	Impartiality and fairness (1)
Accountability		Accountability and contestability (1.12)	Judicial accountability and independence (4.2)	Accountability and independence (2)
Transparency	Transparency and community support (4)	Transparent use (3.3.7)	Open justice (4.1)	Transparency and open justice (3)
Procedural fairness	Fairness and bias prevention (5)	Procedural fairness (1.1)	Procedural fairness (4.4)	Contestability and procedural fairness (4)
Access to justice			Access to justice (4.5)	Access to justice (6)
Protection of information	Confidentiality and privacy (3)	Protect personal and confidential data (3.3.1)		Privacy and data security (5)
Efficiency			Efficiency (4.6)	Efficiency and effectiveness (7)
Human oversight	Human oversight and responsibility (1)	Responsibility (3.3.9); Awareness of		Human oversight and monitoring (8)

¹⁹² Note that the UNESCO Guidelines (n 35) contain many additional principles which are not all enumerated here.

<i>Verification</i>		LLMs' limitations and risks (3.3.5)	
	Accuracy and verification (2)	Verify outputs before using them (3.3.6)	
<i>Competence</i>	Competence and training (6)	AI awareness, AI literacy and capacity building (3.3.1); Unreliability as search engines and for legal analysis (3.3.3.)	
<i>Integrity</i>	Inadvertent plagiarism (7)	Integrity (3.3.8)	