

Can I use AI in my Australian family law matter?

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Artificial intelligence, or AI, is becoming part of everyday life. Many people now use AI tools to draft emails, summarise information, answer questions and help with research.

If you are trying to understand the family law process, preparing for mediation or representing yourself in the Federal Circuit and Family Court of Australia, AI can appear to be a quick and accessible source of information.

However, while AI can be useful, it is important to understand what it can and cannot do. AI may help you become more organised and better informed, but it should not be treated as a replacement for legal advice.

How can AI help in a family law matter?

Family law can be complicated, particularly when you are already dealing with the emotional and practical consequences of separation.

You may be trying to understand parenting arrangements, work out what information you need to provide about your finances or respond to documents you have received from the other party.

For example, you could use AI to:

- explain unfamiliar legal terms in plain English;
- help you create a timeline/chronology of important events;

- tone check a message you intend to send to your ex-partner to ensure it is clear and polite;
- prepare a list of questions to ask your lawyer;
- help to create a ‘schedule’ or routine for parenting arrangements that align with the children’s and parent’s commitments;
- help organise information for your first appointment with a lawyer;
- help analyse a bank statement so you can determine how much is being spent on certain expenses/is being received from a specific source over a period of time; or
- help you prepare a list of outstanding issues you need to discuss at mediation/your next court event.

If you are using AI generated content to provide instructions to your lawyer (i.e. drafting a background to your matter or to help explain your position), it is really important that you proofread and edit down the content before blindly sending it to your lawyer.

You should never allow AI to invent, embellish or fill gaps in your instructions or evidence. Ask yourself:

- Is this accurate?
- Is this what I actually mean?
- Have any important facts been omitted?
- Does this unnecessarily increase conflict?
- Would I be comfortable explaining this document to a lawyer or the Court?

AI content can often be overly lengthy and deviate from the point you are actually trying to make. Using AI to draft excessively long and ‘winding’ instructions to your lawyer may actually increase your costs, as your lawyer is then required to read it. If the information is incorrect, or AI has misunderstood, it will take more time (and incur further costs) for the mistake to be uncovered, clarified and rectified.

When used properly and with responsible oversight, AI can be a cost-effective and helpful tool that helps reduce legal costs. However, it is important that you ensure that the information you provide it, and that it provides you, is actually correct and aligns with your views/instructions to avoid a headache down the line.

AI is not a substitute for an experienced family lawyer

One of the most important things to remember is that AI cannot provide the same level of assistance as a qualified family lawyer.

Family law matters are highly dependent on the individual circumstances of each family. Despite what AI might suggest, there is rarely a simple answer to circumstance-dependant questions such as:

- “Who will get the house?”
- “What percentage of the asset pool should I get?”

- “Will I get 50/50 time with my children?”
- “How much child support will I have to pay?”
- “Will the Court make my former partner sell the property?”

The answer will depend on a range of factors, including the specific facts of your matter, the evidence available and the law.

AI does not sit down with you, ask detailed follow-up questions or fully understand the history of your relationship and family. AI may provide a general answer based on the information you have entered, but an important fact may have been left out or forgotten, which may significantly skew the outcome.

This is important to keep in mind if you are using AI to help provide instructions to your lawyer. Oftentimes, and depending on the circumstances, it is usually quicker, cheaper, and easier to simply have a phone call with your lawyer or send a short email to provide your instructions, rather than rely on an AI generated summary which will not generally provide the level of detail needed to properly represent your interests.

Can AI give incorrect legal information?

Yes. It often does and there are multiple cases of both self-represented litigants and lawyers relying on incorrect legal information, which can and has had significant and negative consequences for the relevant party.

AI can provide information that sounds convincing or references correct sounding legal principles, but is either plainly incorrect or misses an important nuance in the legislation or case it is referencing, which changes how it would be interpreted by the Court.

It may misunderstand your question, oversimplify the law or provide information that is incomplete or outdated. In some circumstances, AI tools have referred to legal cases, legislation or quotations that do not exist.

You should never just copy and paste AI-generated information without carefully checking that the information is accurate. The Court expects parties to take responsibility for the documents and information they provide, and it is not good enough to just completely rely on the information provided by AI.

Does the Federal Circuit and Family Court permit the use of AI in family law matters?

Yes - as long as such use is responsible, and utilised in line with the Court’s Practice Direction on the Use of Artificial Intelligence.

If you elect to use AI to assist you with your family law matter, the Court expects you to do so in accordance with the Practice Direction and the following responsibilities:

1. Taking responsibility for the accuracy and authenticity of information.

All Court users (not just lawyers) have a fundamental duty not to mislead the Court, or the other parties/lawyers involved in the proceedings.

It is not good enough to just completely rely on the information provided by AI without taking steps to verify its authenticity and accuracy. The Practice Direction sets out clear steps Court users must comply with in order to do this.

2. Being accountable for the use of AI

Court users are responsible for the content of documents filed by them and relied upon in a proceeding.

While Court users are not required to officially ‘disclose’ their use of AI in the proceedings, the Court expects users to be able to explain, if asked:

- Whether AI was used;
- What tool was used;
- How the output was checked and supervised; and
- How the principles within the Practice Direction have been observed.

If Court users are not able to do the above, they are not sufficiently accountable for their use of AI, and as such should not utilise it.

3. Understanding the technology that is being used - its benefits, limits and risks.

As set out above, when used properly and responsibly, AI can assist parties to be more efficient and help to reduce costs. However, there are still significant limitations and AI is far from a ‘risk-free’ tool.

Court users are required to educate themselves about the benefits, limits and risks of using AI and ensure that its use is appropriate in the circumstances.

What information can I enter into an AI tool?

Family law matters often involve highly sensitive personal information. This can include information about your children, your finances, your relationship and allegations made during the course of the matter.

It is an indictable offence to communicate to the public an account of family law proceedings which identifies a party, witness or person related to or associated with the party or matter, including a child.

Before entering information into an AI platform, you should think carefully about what information is necessary to provide. You also need to check to determine whether the AI tool (and the ‘tier’ or ‘version’ of the tool that is being used) is a ‘closed’ or ‘open’ tool, review its privacy settings, information retention policies and their general terms and conditions of use. It is important to understand how the AI tool you are using is collecting, storing, and using/sharing the information you put into it.

Some information/documents are not able to be provided or uploaded to an AI tool pursuant to legislation, and order of the Court, or other duty. In some cases, entering information/uploading documents to an AI tool could amount to a breach of suppression orders or statutory prohibitions on publication, or disclose private, confidential or sensitive information that may cause serious harm. It is your responsibility, if you are using AI, to ensure that you are not breaching any of your confidentiality obligations.

Ultimately, Court users must be satisfied that the AI system they intend to use has appropriate safeguards in place, supported by its terms of service, that protect the security of the information and restrict its future use and disclosure. If you are not sure, you should refrain from utilising the tool until you can confirm.

The bottom line

AI can be a useful tool for people in family law matters. It may help you understand general information, organise your documents, prepare questions and communicate more clearly.

However, it is important to remember that AI does not know your full circumstances and may provide information that is incorrect or incomplete.

All Court users are held to a high standard of accountability and responsibility if using AI tools, due to the sensitive and important nature of family law matters. Court users must read and comply with the Court's Practice Direction to ensure that their use of AI is appropriate before beginning to use AI.

Get help from a family lawyer

At Smith Family Law, we understand that separation can be confusing and overwhelming. There is a lot of conflicting information online. Obtaining clear and practical advice tailored to your specific circumstances can help you understand your options and make informed decisions – and this is oftentimes better achieved by speaking with an experienced lawyer, instead of deferring to AI which can sometimes raise more questions than it does provide correct answers.

This is why we provide your first family law appointment free of charge, so that you have the opportunity to tell us about your situation and share with us any concerns you may have to help you make an informed decision about your next steps.

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