

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

(DIVISION 2)

JNE24 v Minister for Immigration and Citizenship [2025] FedCFamC2G 1314

File number(s): [PEG 425 of 2024](#)

Judgment of: [JUDGE GERRARD](#)

Date of judgment: 15 August 2025

Catchwords: **PRACTICE AND PROCEDURE** – Artificial Intelligence – conduct of legal practitioners before the Court – citation of cases which do not exist – citations generated by an artificial intelligence program – duties to the Court – practitioner referred to Legal Practice Board of Western Australia – personal costs order made against legal practitioner – application of s 486E and s 486F of [Migration Act 1958](#) (Cth).

Legislation: [Migration Act 1958](#) (Cth) ss 486E, 486F
[Federal Circuit and Family Court of Australia \(Division 2\) \(General Federal Law\) Rules 2021](#) (Cth) r 13.01(2)(b)
[Legal Profession Uniform Law Application Act 2022](#) (WA) s 30

Cases cited: [Ayinde v London Borough of Haringey \[2025\] EWHC 1383 \(Admin\)](#)
[DAB16 v Minister for Home Affairs \(No 2\) \[2021\] FCA 120](#)
[Dayal \(2024\) 386 FLR 359](#)
[Kaur v RMIT \[2024\] VSCA 264](#)
[Mitry Lawyers v Barnden \[2014\] FCA 918](#)
[Murray on behalf of the Wamba Wemba Native Title Claim Group v State of Victoria \[2025\] FCA 731](#)
[Valu v Minister for Immigration and Multicultural Affairs \(No 2\) \[2025\] FedCFamC2G 95; \(2025\) 386 FLR 365](#)

Division: Division 2 General Federal Law

Number of paragraphs: 43

Date of last submission/s: 28 July 2025

Place: Adelaide

Lawyer for the Applicant: The applicant was represented by a lawyer whose name has been anonymised

Counsel for the First Respondent: Madisen Scott

Solicitor for the First Respondent: Australian Government Solicitor

Solicitor for the Second Respondent: Submitting appearance, save as to costs

ORDERS

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FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN: JNE24

Applicant

AND: MINISTER FOR IMMIGRATION AND CITIZENSHIP

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

ORDER MADE BY: JUDGE GERRARD

DATE OF ORDER: 15 AUGUST 2025

THE COURT ORDERS THAT:

1. The Principal Registrar of the Court, or his delegate, refer this matter to the Legal Practice Board of Western Australia (**LPBWA**) for consideration of the conduct of the applicant's lawyer providing copies of the following:

- (a) A copy of this judgment;
- (b) The affidavit of the applicant's lawyer filed on 26 June 2025;
- (c) The applicant's legal representatives' submissions filed on 26 June 2025 as to whether the applicant's lawyer ought to be referred to the LPBWA;
- (d) The first respondent's submissions filed on 9 July 2025 as to whether the applicant's lawyer ought to be referred to the LPBWA.

2. The applicant's lawyer personally pay the first respondent's costs fixed in the amount of \$8,371.30.

Note: The form of the order is subject to the entry in the Court's records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 17.05(2)(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 17.05 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth).

REASONS FOR JUDGMENT

JUDGE GERRARD:

1. This judgment concerns conduct by an applicant's lawyer which is becoming increasingly prevalent in this and other courts. It involves the filing of submissions with the Court that contained citations of authorities that do not exist. It demonstrates the inherent dangers associated with practitioners solely relying on the use of artificial intelligence (**AI**) in the preparation of court documents and the way in which that interacts with a practitioner's duty to the Court.

BACKGROUND

2. The applicant, by way of his legal representatives, commenced proceedings in this Court on 1 November 2024. That application seeks judicial review of a decision of the Administrative Appeals Tribunal (**the Tribunal**) dated 9 October 2024.

3. On 23 January 2025, a Registrar of the Court made programming orders for the matter to be listed for a final hearing on a date to be advised, and for the parties to file a Court Book and submissions prior to that hearing.

4. On 7 May 2025, the parties were notified by email that this matter had been set down for a final hearing on 20 June 2025.

5. On 22 May 2025, the applicant filed an amended application, further affidavit and written submissions in accordance with the programming orders.

6. On 5 June 2025, the applicant's lawyer emailed the Court attaching amended written submissions which sought to correct a number of citation errors identified by the first respondent (**the Minister**). The email included a chain of

correspondence between the applicant's lawyer and the Minister's solicitors in which the Minister's solicitors referred to four case citations in the applicant's submissions which the Minister's solicitors said could not be identified or did not appear to correlate to the relevant principle relied upon by the applicant. That correspondence appeared to have been sent to the Court unilaterally without indicating that consent had been sought from the Minister's solicitors. Given the gravity of the central issue in this matter, the Court makes no finding in respect of the inappropriateness of that unilateral correspondence save to remind parties of the *Guide to Communicating with the Courts* which practitioners are expected to be familiar with.

7. In light of that correspondence, the Court listed the matter for a directions hearing on 12 June 2025.

The first directions hearing

8. At the directions hearing on 12 June 2025 (**the first directions hearing**), the Court asked the applicant's lawyer to explain the circumstances by which fictitious cases came to be included in his submissions, and whether those false citations were the result of AI-generated research. The applicant's lawyer replied that he had researched the cases through the internet, as well as books and articles, and that he must have made a mistake in applying them to his submissions.

9. The Court indicated that it was not satisfied with that explanation. Following the sensible and helpful approach of Judge Skaros in *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95; (2025) 386 FLR 365 (**Valu (No 2)**), the Court directed the applicant's lawyer to file and serve, within two weeks, an affidavit addressing how the submissions filed on 22 May 2025 were generated, including a full explanation as to why the submissions contained references to **non-existent** authorities, along with written submissions as to why they should not be referred to the Legal Practice Board of Western Australia (**LPBWA**). The LPBWA is an independent statutory body established under s 30 of the *Legal Profession Uniform Law Application Act 2022* (WA) and may investigate complaints, including those which allege unsatisfactory professional conduct or professional misconduct by a legal practitioner.

10. The Minister's solicitors were granted a further two weeks to file and serve any written submissions as to whether or not the applicant's lawyer should be referred to the LPBWA. The matter remained listed for final hearing as planned on 20 June 2025.

11. On 19 June 2025, the day immediately prior to the listed hearing date for this matter, the applicant sought to file a Notice of Discontinuance. In accordance with r 13.01(2)(b) of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth) (**the Rules**), the applicant required leave of the Court to discontinue, being less than 14 days before the final hearing. The Court had concerns in respect of the applicant seeking to discontinue at such a late stage in the proceedings, particularly given the issues raised at the first directions hearing regarding the competency of the applicant's representation. As such, the final hearing scheduled for 20 June 2025 was vacated and the parties were requested to attend a directions hearing in its place.

The second directions hearing

12. At the directions hearing on 20 June 2025 (**the second directions hearing**), the applicant's lawyer indicated that the applicant had instructed them to discontinue the proceedings given what had transpired at the first directions hearing. The applicant's lawyer told the Court that they had explained to the applicant the issues arising from the submissions, and the applicant then indicated he had no confidence to proceed further and gave instructions to discontinue.

13. The Court was not at that time satisfied that it would be in the interests of justice to grant leave to discontinue in circumstances where it was not yet satisfied with the explanation of what had transpired between the applicant and his legal representatives. In addition to the orders made at the first directions hearing on 12 June 2025, the applicant's legal representatives were directed to file a further affidavit addressing their client's instructions in relation to filing the Notice of Discontinuance.

14. On 26 June 2025, pursuant to the orders of 12 June 2025 and 20 June 2025, the applicant's lawyer filed an affidavit which advised that he had relied upon Claude AI "*as a research tool to identify potentially relevant authorities and to improve my legal arguments and position*". The applicant's lawyer said that he then used another

AI tool, Microsoft Copilot, to validate the submissions. The applicant's lawyer said that he "*developed an overconfidence in relying on AI Tools and failed to adequately verify the generated results*". He further attested that "*I had an incorrect assumption that content generated by AI Tools would be inherently reliable which led me to neglect independently verifying all citations through established legal databases*". The affidavit also contained information about the applicant's lawyer's personal circumstances, as well as measures said to have been undertaken to prevent recurrence of such an issue. The affidavit also contained an unreserved apology to the Court and the Minister's solicitors for the erroneous submissions.

15. On 26 June 2025, pursuant to the orders of 12 June 2025, the applicant's legal representatives filed written submissions addressing why the applicant's lawyer should not be referred to the LPBWA. On 9 July 2025, the Minister's solicitors filed written submissions addressing the use of AI technology in Court proceedings, as well as whether the applicant's lawyer should be referred to the LPBWA.

The third directions hearing

16. On 11 July 2025, the matter was listed for a further directions hearing (**the third directions hearing**) on 21 July 2025. The purpose of the third directions hearing was for the Court to be satisfied that the applicant understood the implications of discontinuing the proceedings. To that end, the applicant's legal representatives were directed to ensure that the applicant personally participate in the directions hearing.

17. On 21 July 2025, the applicant attended at his solicitors' offices for the purpose of participating in the directions hearing and appeared before the Court. The applicant's legal representatives were also independently represented by counsel.

18. With the assistance of an interpreter, the applicant addressed the Court's concerns. The applicant told the Court that, following the first directions hearing, he had asked his legal representatives about the likelihood of success and that he was advised it was "*a low percentage*". The applicant explained that he decided to discontinue the proceedings at this point.

19. The Court accepted the applicant's explanation and granted leave for the applicant to discontinue. Parties were granted a further week to file any submissions and/or material in relation to costs.

Artificial intelligence in legal proceedings

20. AI is increasingly being used as a research tool in litigation. Ultimately, it is likely to prove to be an invaluable tool for both lawyers and self-represented litigants. There is nothing inherently impermissible about using generative AI programs to assist in research. However, not only is it not an appropriate substitute for legal research, it comes with considerable risks which, if not mitigated, have the capacity to lead to actions which could be construed as a contempt of court (as considered in the UK case of *Ayinde v London Borough of Haringey* [2025] EWHC 1383 (Admin) at [66]- [69] (*Ayinde*)).

21. The Court does not adopt a Luddite approach to the use of generative AI tools. The arena of migration decisions in this country is byzantine, complex and vast. The Court readily understands why any tool which might assist in navigating through this labyrinth may be attractive. As demonstrated by this, and other recent cases, that attraction is presently a dangerous mirage.

22. The risks associated with a cavalier reliance on AI were helpfully explained by the UK High Court in *Ayinde* (at [6]-[8]) in the following way:

In the context of legal research, the risks of using artificial intelligence are now well known. Freely available generative artificial intelligence tools, trained on a large language model such as ChatGPT are not capable of conducting reliable legal research. Such tools can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may make confident assertions that are simply untrue. They may cite sources that do not exist. They may purport to quote passages from a genuine source that do not appear in that source.

Those who use artificial intelligence to conduct legal research notwithstanding these risks have a professional duty therefore to check the accuracy of such research by reference to authoritative sources, before using it in the course of their professional work (to advise clients or before a court, for example). [...]

This duty rests on lawyers who use artificial intelligence to conduct research themselves or rely on the work of others who have done so. [...]

23. Similarly, in *Murray on behalf of the Wamba Wemba Native Title Claim Group v State of Victoria* [2025] FCA 731 (**Wamba Wemba**), Murphy J observed (at [12]):

Whilst the use of AI in the legal profession is growing, practitioners must be aware of its limitations. It is critical that legal practitioners use proper safeguards to verify the accuracy of the work produced. Any use of AI must be consistent with the overriding duty of legal practitioners as officers of the Court and their fundamental obligation to uphold, promote and facilitate the administration of justice.

24. What is common amongst the recent cases is the propensity of what has been referred to as AI hallucination (*Wamba Wemba* at [8]). There are now a concerning number of reported matters where reliance upon AI has directly led to the citation of fictitious cases in support of a legal principle. The dangers of such an approach are reasonably apparent but are worth stating. First, if discovered, there is the potential for a good case to be undermined by rank incompetence. Second, if undiscovered, there is the potential that the Court may be embarrassed and the administration of justice risks being compromised. Relatedly, the repetition of such cases in reported cases in turn feeds the cycle, and the possibility of a tranche of cases relying upon a falsehood ensues. Further, the prevalence of this practice significantly wastes the time and resources of opposing parties and the Court. Finally, there is damage to the reputation of the profession when the clients of practitioners can genuinely feel aggrieved that they have paid for professional legal representation but received only the benefit of an amateurish and perfunctory online search.

25. To be clear, it is not the initial reliance on AI that constitutes the vice in such matters. It is the placing before the Court of false authorities or evidence that constitutes improper conduct and a breach of a legal practitioner's duty to the Court.

26. In this matter, the applicant has cited four cases in written submissions said to be in support of various propositions. Those cases either do not exist or do not stand as authority for the proposition they are said to support. The Court will not repeat or reproduce those cases, adopting the sensible approach taken by Walker JA in *Kaur v RMIT* [2024] VSCA 264 where the Court declined to reproduce citations “lest they contribute to the problem of LLM AI inventing case citations”.

Should there be a referral to the regulatory body?

27. The Court considers that if the applicant's lawyer has engaged in improper conduct, then it may be appropriate for the Principal Registrar of this Court to make a referral to the appropriate regulatory body.

28. In considering whether to make such a referral, the Court is guided by the sensible and measured approach taken in other decisions of this Court. In particular, the Court has adopted the approach taken by Judge Skaros in *Valu (No 2)* and Judge A Humphreys in *Dayal* (2024) 386 FLR 359 (**Dayal**).

29. In *Valu (No 2)*, Judge Skaros found that filing an application and submissions which contained, inter alia, fictitious citations was conduct which fell short of the legal representatives' duties to both their client and the Court (at [18]). The Court agrees that such conduct is clearly a serious breach of both duties. In this matter, the applicant was entitled to expect that, having engaged a legal representative, they would advance their application competently and diligently. Filing submissions with the Court which relied upon hallucinated authorities is some distance below the minimum level of professional conduct owed to their client. The Court also expects that legal

representatives will be mindful of their obligation to not mislead the Court. In this case, that obligation was not fulfilled.

30. In considering whether the applicant's legal representative should be referred to the relevant independent complaints body (in that matter, the NSW Legal Services Commissioner), Judge Skaros had regard to a number of matters including:

- (a) The sincere apology and genuine regret of the legal representative;
- (b) Her Honour's acceptance that the conduct would not be repeated;
- (c) The undertaking of the legal representative to further his knowledge and understanding of the risks of using generative AI;
- (d) As soon as the legal representative became aware of the fictitious citations, he took steps to ameliorate the error;
- (e) The inconvenience to the Minister and the Court, and the disruption to the hearing;
- (f) The strong public interest in referring the conduct to the regulatory authority given the increased use of generative AI tools by legal practitioners.

31. These are rational and appropriate matters to have regard to. Of course, that should not be construed as the construction of a universal checklist. Nevertheless, in these proceedings the Court finds that it is appropriate to have regard to similar matters.

32. In considering these matters, Judge Skaros found that the applicant's legal representative should be referred to the regulatory body. However, Judge Skaros also anonymised the name of the legal representative, noting that it was a matter for the regulatory authority to consider the matter further. Judge A Humphreys had previously adopted a similar approach in *Dayal*.

33. In this matter, the Court has considered the affidavit of the applicant's lawyer and the apology contained therein. The Court accepts the apology as sincere and further accepts that the lawyer is genuinely (and, in the Court's view, appropriately) embarrassed. The Court has also had regard to the steps the lawyer has indicated they will take in future, as well as the personal circumstances of that lawyer adverted to in his affidavit.

34. The Court is, however, concerned by the lawyer's somewhat simplistic statement that he understands he should have verified the accuracy of the citations. Whilst that is obviously important, the Court is concerned that the lawyer does not fully comprehend what was required of him. It is not sufficient to simply check that the cases cited were not fictitious. What is expected from legal practitioners as part of their duty to the Court and to their client is that those cases (if they do exist) are reviewed to ensure they are authority for the principle the lawyer wishes to rely upon, have not been subsequently overturned or distinguished by a higher court, and are considered in respect of how and why those principles are relevant to the factual matrix of the case in which they intend to advance that proposition. Legal principles are not simply slogans which can be affixed to submissions without context or analysis.

35. Having regard to all of the circumstances in this matter, the Court finds that it is appropriate to refer the applicant's lawyer to the appropriate regulatory body, in this case, the LPBWA. However, having regard to his candour, embarrassment and apology, the Court will adopt the same approach taken in *Valu (No 2)* and *Dayal* and refrain from naming the legal practitioner.

Costs

36. In this matter, the Court finds that the lawyer's conduct constituted improper conduct which caused costs to be thrown away. Furthermore, the proceedings have now been abandoned by the applicant and this is, at least in part, as a consequence of the lawyer's conduct. In the circumstances, the Court is satisfied that it is appropriate for a personal costs order to be made against the applicant's lawyer, albeit the Court will not make that order on an indemnity basis as occurred in *Wamba Wemba*.

37. However, the Court is also of the view that the applicant should not be responsible for the legal fees associated with this improper conduct. The Court raised this with the parties at the directions hearing held on 21 July 2025 and indicated it was considering making orders either pursuant to ss 486E and 486F of the *Migration Act 1958* (Cth), or otherwise.

38. The Minister filed submissions on 28 July 2025 and, as might be expected by a model litigant, took no position as to the appropriateness of any such order but drew the Court's attention to authorities which had guided the making of such orders. In particular, the Court was referred to *DAB16 v Minister for Home Affairs (No 2)* [2021] FCA 120 at [47]- [50] where Charlesworth J made the following observations in respect of the elements which must be met for an order to be made pursuant to s 486E. Those elements are that:

- . The representative must be shown to have encouraged the appellant to commence or continue the litigation;
- . The litigation must be shown to have no reasonable prospect of success (noting that this does not require a conclusion to be drawn that the proceedings are hopeless or bound to fail); and
- . Either the representative did not give proper consideration to the prospect of success in the litigation, or, that the purpose of commencing or continuing the litigation is unrelated to the objectives which the Court process is designed to achieve.

39. In this matter, the Court is not prepared to make a finding that the litigation had no reasonable prospects of success. Quite clearly, by the time of the hearing, a view had been found that there were insufficient prospects of success but appropriate steps were then taken to discontinue the litigation.

40. The Court's power to make an order in respect of the applicant's lawyer is not limited to s 486F. The Court may also order costs pursuant to any power in the *Federal Circuit and Family Court of Australia Act 2021* (Cth) and the Rules. In this respect, the Minister drew the Court's attention to the discussion of the relevant principles set out by Wigney J in *Mitry Lawyers v Barnden* [2014] FCA 918 (*Mitry Lawyers*). Those principles were summarised by his Honour as follows (at [42]):

1. Instituting or maintaining a proceeding on behalf of a client which has no, or substantially no, prospect of success will not, without more, invoke the jurisdiction to make a costs order against a lawyer.
2. Something which involves "unreasonable conduct" is required.
3. What constitutes unreasonable conduct will depend on the circumstances of the particular case.
4. The element of acting unreasonably involves some deliberate or conscious decision taken by reference to circumstances unrelated to the prospects of success, with either a recognition that there is no chance of success, or an intention to use the proceeding for an ulterior purpose, or to abuse the processes of the court, or with a disregard of any proper consideration of the prospects of success.
5. The circumstances must involve or result in a serious dereliction of duty owed to the court, or serious misconduct in promoting the course of, and the proper administration of, justice.
6. An ulterior purpose or an abuse of process cannot be assumed simply because the case is hopeless.
7. The reason that the mere pursuit of an unmeritorious case is not so sufficient to invoke the jurisdiction to make a costs order against a lawyer is that a party is entitled to have a practitioner act for him or her in an unmeritorious case. The court is concerned to avoid the risks of a practice developing whereby lawyers endeavour to browbeat their opponents into abandoning clients, or particular issues or arguments, for fear of personal costs orders being made against them.

41. In written submissions filed on 28 July 2025, the applicant's representatives stated as follows:

The Applicant's legal representative has repaid to the Applicant, in full, costs already paid by the Applicant in relation to the commencement and continuation of the migration litigation.

42. In light of the confirmation that the applicant has been fully reimbursed by his legal representative, it is unnecessary to make any orders in that respect. Nevertheless, if not for the advice from the applicant's legal representatives that the applicant has been fully reimbursed, the Court is of the view that the applicant's lawyer's

conduct was unreasonable and involved the kind of dereliction of his duty to the Court adverted to by Wigney J in *Mitry Lawyers*.

43. The amount of costs sought by the Minister is the amount identified in Schedule 2, [Part 2](#), Division 1, Item 3 of the Rules. The Court accepts that this is lower than the fees actually incurred by the Minister. In light of the amount of work undertaken by the Minister's legal representatives in this matter, the Court is of the view that the amount of costs sought by the Minister is reasonable, appropriate and proportionate.

I certify that the preceding forty-three (43) numbered paragraphs are a true copy of the Reasons for Judgment Judge Gerrard.

Associate:

Dated: 15 August 2025