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Federal Circuit and Family Court of Australia - Division 2 General Federal Law

Pasuengos v Minister for Immigration and Citizenship (No 2) [2026] FedCFamC2G 96 (3 February 2026)

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FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

Pasuengos v Minister for Immigration and Citizenship (No 2) [2026] FedCFamC2G 96

File number(s): [ADG 154 of 2023](#)

Judgment of: [JUDGE GERRARD](#)

Date of judgment: 3 February 2026

Catchwords: **PRACTICE AND PROCEDURE** – **Artificial** Intelligence (AI) – conduct of legal practitioners before the Court – citation of cases which do not exist – case citations generated by AI hallucination – duties to the Court – practitioner referred to Legal Profession Conduct Commissioner (SA)

Cases cited: *Ayinde v London Borough of Haringey* [2025] EWHC 1383 (Admin)
Dayal (2024) 386 FLR 359
Director of Public Prosecutions v GR [2025] VSC 490
Handa & Mallick [2024] FedCFamC2F 957

JNE24 v Minister for Immigration and Citizenship [2025]

[FedCFamC2G 1314](#)

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

Pasuengos v Minister for immigration and Citizenship [2025] [FedCFamC2G 2129](#)

Re Walker [2025] VSC 714

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: 45

Date of last submission/s: 15 July 2025

Date of hearing: 22 July 2025

Place: Adelaide

Counsel for the Applicant: Sean Kikkert

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

Counsel for the First Respondent: Maximilian Plitsch

Solicitor for the First Australian Government Solicitor
Respondent:

Second Respondent: Submitting appearance, save as to costs

ORDERS

ADG 154 of 2023

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN: MELANOR CABRERA PASUENGOS

Applicant

AND: MINISTER FOR IMMIGRATION AND CITIZENSHIP

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

ORDER MADE BY: JUDGE GERRARD

DATE OF ORDER: 3 FEBRUARY 2026

THE COURT ORDERS THAT:

1. The Principal Registrar of the Court, or his delegate, refer this matter to the Legal Profession Conduct Commissioner (SA) (**LPCC**) for consideration of the conduct of the applicant's solicitors, providing copies of the following:

- (a) A copy of this judgment;
- (b) The affidavit of the applicant's junior solicitor sworn and filed on 24 June 2025;

(c) The affidavit of the applicant's principal solicitor affirmed and filed on 17 July 2025;

(d) The applicant's submissions filed on 24 June 2025 as to the use of AI-generated cases and whether the applicant's solicitors ought to be referred to the LPCC;

(e) The first respondent's submissions filed on 15 July 2025 as to whether the applicant's solicitors ought to be referred to the LPCC.

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 24.04(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (Cth)), or to record a variation to the order pursuant to r 24.04 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (Cth).

REASONS FOR JUDGMENT

JUDGE GERRARD:

INTRODUCTION

1. The applicant sought judicial review of a decision of the then Administrative Appeals Tribunal (**the Tribunal**). That judicial review application was unsuccessful and is the subject of *Pasuengos v Minister for Immigration and Citizenship* [2025] FedCFamC2G 2129 (*Pasuengos (No 1)*) which was delivered on 22 December 2025.

2. This judgment concerns the conduct by the applicant's legal representative in filing submissions with the Court that contained citations of authorities which do not exist but were, in fact, *hallucinated* authorities following an ill-conceived reliance upon the results of an **artificial** intelligence (**AI**) search. As observed in *Pasuengos (No 1)* at [31], the Court did not embark upon a consideration of the issues which arose in respect of the legal representative's conduct until after it had considered and reached a judgment in respect of the substantive application. The Court did so in order to ensure the consideration of the applicant's judicial review application would not be clouded by such issues.

BACKGROUND

3. As observed above, the applicant, by way of her legal representative, commenced proceedings in this Court on 14 June 2023, seeking judicial review of a decision of the

Tribunal dated 11 May 2023.

4. On 8 May 2025, the applicant's legal representative filed an outline of written submissions in accordance with earlier programming orders made by a Registrar of this Court.

5. On 22 May 2025, the first respondent (**the Minister**) filed a responsive outline of submissions which, inter alia, drew to the Court's attention that a number of authorities referred to in the applicant's outline of submissions do not exist.

6. The matter was due to come before the Court for final hearing on 26 May 2025. The Court requested that the applicant's representative provide copies of those authorities cited in their submissions prior to the hearing.

7. The applicant's legal representative briefed Mr Kikkert of counsel who appeared before the Court on 26 May 2025. As emphasised by the Court in *Pasuengos (No 1)* at [32], any criticism of the conduct in these proceedings is not directed towards Mr Kikkert. Mr Kikkert accepted the brief under very difficult circumstances and the Court acknowledges his diligence and professionalism in progressing this matter once engaged.

8. Mr Kikkert acknowledged that the applicant could not provide copies of the requested authorities because they do not exist. He admitted on behalf of the applicant's representative that the case law research had been the product of a Google search and the AI summary generated by that Google search. The AI summary produced incorrect case citations which had not been checked by the applicant's legal representative. Accordingly, the applicant no longer sought to rely on the erroneous citations in their submissions.

9. In those circumstances, the Court indicated that the hearing would not be proceeding on that day. The Court then followed the approach taken in *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95; (2025) 386 FLR 365 (**Valu (No 2)**) and directed the applicant's representative to file and serve, within four weeks, an affidavit addressing how the submissions filed on 8 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 Profession Conduct Commissioner (SA) (**LPCC**). The LPCC is an independent office established under [Part 6](#) Division 2 of the *Legal Practitioners Act 1981* (SA) and may investigate complaints, including those which allege unsatisfactory professional conduct or professional misconduct by a legal practitioner.

10. The applicant was also directed to file and serve an amended application with proper particulars of each ground, along with written submissions addressing each ground, within four weeks. The Minister's solicitors were granted a further two weeks to file and serve any additional written submissions relevant to the substantive proceedings, along with any written submissions as to whether or not the applicant's representative should be referred to the LPCC. The matter was re-listed for final hearing on 22 July 2025.

FOLLOWING THE FIRST HEARING

11. Mr Kikkert continued to appear as counsel on behalf of the applicant. He was involved in preparing the amended application, further submissions and argued the matter at the final hearing.

12. On 24 June 2025, the applicant filed an amended application and written submissions pursuant to the orders of 26 May 2025, including submissions addressing the use of AI-generated cases. A junior solicitor with a restricted practising certificate in the employ of the applicant's representative also filed an affidavit deposing that the non-existent citations were the result of *"research [conducted] using publicly available online resources, including the Google search engine"* and that she *"did not cross-check those against authoritative legal databases such as AustLII, LexisNexis, or Westlaw before inclusion in the submission"*. The junior solicitor attested that they would *"ensure that all future submissions are thoroughly checked against verified legal sources to prevent the recurrence of this issue"*.

13. In written submissions, the junior solicitor accepted responsibility for the content of those earlier submissions and acknowledged that it was her responsibility to verify the citations which appeared to be *"superficially credible"*. The solicitor insisted that she had not intended to mislead the Court or the other party and that the error instead arose from *"a misunderstanding of the limitations of such tools, particularly their ability to generate text that appears authentic rather than any dishonest or improper conduct"*. Upon learning of the error, the junior solicitor submits she took prompt steps to rectify the issue and to ensure that it would not happen again, including establishing internal procedures to verify authorities, ceasing reliance on generative AI tools for referencing, and attending mandatory continuing professional development on the use of AI technology.

14. The solicitor submitted that she had no history of prior professional misconduct or disciplinary proceedings, and that she had cooperated with the Court by making full and frank admissions with respect to an error which was confined to a limited part of the submissions and did not affect the material outcome of the matter or mislead the Court in substance. In those circumstances, it was submitted that the conduct of the applicant's representative or junior solicitor did not warrant referral to the LPCC.

15. On 15 July 2025, the Minister filed written submissions addressing both the amended application and the question of whether the applicant's representatives should be referred to the LPCC. The Minister submitted that the conduct of the applicant's representatives should be referred to the LPCC on the basis that:

- . The misuse of AI in legal proceedings is a matter of public interest and increasing concern and that the relevant authorities should be kept aware as cases of misuse arise.

- . It could be argued that the applicant's representatives' conduct breached their professional duties under the *South Australian Legal Practitioners Conduct Rules* to not recklessly mislead the Court, to act in the best interests of their client, and to not engage in conduct that might diminish public confidence in the administration of justice or bring the legal profession into disrepute.

- . Notwithstanding the affidavit and submissions filed on 24 June 2025, or the junior solicitor's admission and apology, the LPCC is the appropriate body to make any further investigation into the conduct of the applicant's representatives and to consider any disciplinary action.

16. On 17 July 2025, the applicant's principal solicitor filed an affidavit, indicating that she was responsible for supervising the junior solicitor and acknowledging that her review of the submissions failed to include independently verifying the legal authorities contained therein. The principal solicitor stated that *"[t]he concept of AI-generated citations did not ever cross [her] mind"* as her practice is *"rooted in traditional research methods"*. As with the junior

solicitor, the principal solicitor accepted responsibility for the error in the earlier submissions and offered a sincere and unreserved apology to the Court and to the parties, reiterating that it was not her intention to deceive the Court or waste its resources. The principal solicitor acknowledged that her firm is unfamiliar with emerging AI technology and that they would be reviewing internal protocols and supervision procedures to prevent any such reoccurrence.

THE COURT'S APPROACH TO THE USE OF AI BY LEGAL PRACTITIONERS

17. There is an increasing number of judgments in this and other courts where a legal practitioner's use of AI has led to criticism. This Court, in particular, has been required to address this in *Dayal* (2024) 386 FLR 359 (**Dayal**), *Valu (No 2)*, *JNE24 v Minister for Immigration and Citizenship* [2025] FedCFamC2G 1314 (**JNE24**) and *Handa & Mallick* [2024] FedCFamC2F 957. In *Re Walker* [2025] VSC 714 (**Re Walker**) at [80], Moore J warned of the “*emerging ubiquity of AI in society and the significant number of judgments in recent times in which legal practitioners have been criticised or disciplined for their inappropriate use of AI*”. As this Court expressed in *JNE24*, there is nothing inherently impermissible about using generative AI programs to assist in legal research. However, it is not a proper substitute for legal research and it must be used having a legal practitioner's duty to the Court firmly in mind.

18. The risks associated with a reckless reliance on AI were explained by the UK High Court in *Ayinde v London Borough of Haringey* [2025] EWHC 1383 (Admin) at [66]- [69] (**Ayinde**) at [6]-[8] and in *Murray on behalf of the Wamba Wemba Native Title Claim Group v State of Victoria* [2025] FCA 731 at [12]. Those paragraphs are set out in *JNE24* at [22]-[23]. Such recklessness can result in actions which could lead to a finding of contempt of court (*Ayinde*), a public reprimand (*Re Walker*) or referral to the appropriate legal professional body (*Dayal*, *Valu (No 2)* and *JNE24*). There are also costs implications which may arise.

19. In *JNE24*, this Court set out the dangers inherent with the inclusion of non-existent or *hallucinated* cases in submissions as follows:

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.

20. As explained in *JNE24*, it is not the utilisation of AI by a practitioner which is problematic, but rather “*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".

21. In this matter, the applicant cited three cases at paragraph [27] of their original written submissions said to be in support of various propositions. Those cases do not exist and therefore do not stand as authority for the propositions 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*".

REFERRAL TO THE LEGAL PROFESSION CONDUCT COMMISSIONER

22. 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.

23. In considering whether to make such a referral, the Court will follow the same approach it did in *JNE24*, noting that that decision was guided by the approach taken by Judge Skaros in *Valu (No 2)* and Judge A Humphreys in *Dayal*.

24. 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]). Similar, in *JNE24*, the Court found that such conduct is a serious breach of both duties. In that matter, the Court observed (at [29]):

[T]he 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.

25. Those observations are apposite to this matter.

26. In *Valu (No 2)* and *JNE24*, the Court had regard to the following matters in considering whether the applicant's legal representative should be referred to the relevant independent complaints body:

- (a) The sincere apology and genuine regret of the legal representative;
- (b) An acceptance that the conduct would not be repeated;
- (c) The undertaking of the legal representative to further their knowledge and understanding of the risks of using generative AI;
- (d) The steps taken 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.

27. As observed in *JNE24*, the above should not be construed as a checklist. Nevertheless, the Court finds that it is appropriate to have regard to similar matters in these proceedings.

28. A similar course has been charted by this Court in *Dayal, Valu (No 2)* and *JNE24*. In each of those matters, the Court found that the conduct of the applicant's legal representative warranted referral to the regulatory body. However, in each of those matters the Court also anonymised the name of the legal representative, noting that it was a matter for the regulatory authority to consider the matter further.

29. The Court notes that, in *Re Walker*, the Supreme Court of Victoria did not refer the practitioner to the Victorian Legal Services Commissioner for investigation on the basis that the nature and circumstances of the legal practitioner's conduct in that matter was sufficiently clear to enable the Court to determine whether their conduct warranted sanction. In that matter, the legal practitioner, who was named, was issued with a reprimand for their conduct noting that, in the Court's view, "*a reprimand in itself is a serious sanction for a professional person*" (at [82]).

30. In this matter, the Court has considered the affidavits of the applicant's junior lawyer and principal solicitor and the apologies contained therein. The Court accepts the apologies as sincere and genuine. The Court has also had regard to the conduct of the applicant's representatives since the error came to light, including their cooperation with the Court, and the steps they have taken/indicated they will take to mitigate any such recurrence in the future.

31. In *JNE24*, the Court expressed concern with the lawyer's apparently simplistic understanding that they now understood that they were required to verify the accuracy of the citations to ensure that they exist. The Court said in that matter:

The Court is, however, concerned by the somewhat simplistic statements from the applicant's lawyers that they understand they should have verified the accuracy of the citations. Whilst that is obviously important, the Court is concerned that the lawyers do not fully comprehend what was required of them. 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 lawyers wish 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.

32. Similarly, in *Re Walker*, Moore J stated that “[a] practitioner does not discharge [their] obligation by merely ensuring the accuracy of the citation of authorities generated by AI without also confirming their relevance” (at [78]). The apparent lack of awareness of the requisite level of diligence remains of concern in this matter.

33. In this matter, the Court is conscious that the impugned conduct involves two practitioners. It was the junior solicitor who was tasked with researching the law and drafting the submissions. It was their conduct which directly led to the hallucinated cases being placed before the Court. However, it was the principal solicitor who had ultimate responsibility for those submissions and who had failed to verify the cases.

34. The Court has sympathy for the position of both practitioners. For the reasons set out in *JNE24* at [21], the Court understands why a junior practitioner may be attracted to the use of a tool such as AI to cut through what might at first be thought of as an un-navigable volume of case law. The Court also accepts as genuine the principal solicitor’s statement that AI has never factored into their practice and hence they did not think to consider that the cases may be hallucinated. However, both explanations do not deal with the central vice in this matter. As emphasised in *JNE24*, it is the placing of false authorities before the Court that is the conduct which warrants sanction. The failure is not the verification of cases. It is a failure to review the cases that your research (whether AI or more traditional) has uncovered, for relevance, currency and applicability. It is a failure to ensure that your conduct does not mislead the Court.

35. In *Ayinde*, it was observed that (at [8]):

[A] duty rests on lawyers who use artificial intelligence to conduct research themselves or rely on the work of others who have done so. This is no different from the responsibility of a lawyer who relies on the work of a trainee solicitor or a pupil barrister for example, or on information obtained from an internet search.

36. This observation makes the issue plain. Wherever research, legal or otherwise, may take you as a lawyer, there is a professional responsibility to ensure that you are confident that what you rely upon in submissions indeed supports your submission. In this respect, the Court accepts the observations of the Victorian Supreme Court in *Director of Public Prosecutions v GR* [2025] VSC 490 (at [79]-[80]):

The ability of the court to rely upon the accuracy of submissions made by counsel is fundamental to the due administration of justice. Self-evidently, as was immediately and unequivocally acknowledged by counsel in this case, any use of artificial intelligence without careful and attentive oversight of counsel would seriously undermine the court’s processes and its ability to deliver justice in a timely and cost-effective manner.

Regrettable as it is to single out counsel and their instructing solicitors in this case for what has occurred, in light of the matters

set out above it is important to record that counsel must take full and ultimate responsibility for any submissions made to the court. To this end, it is not acceptable for artificial intelligence to be used unless the product of that use is independently and thoroughly verified. The same may be said for solicitors responsible for producing or filing court documents.

37. The above passage from *Ayinde* is equally illustrative of the duty of diligence which falls upon those who supervise junior practitioners or who are otherwise ultimately responsible for the carriage of a matter.

38. Having regard to all of the circumstances in this matter, the Court finds that it is appropriate to refer both solicitors to the appropriate regulatory body, in this case, the LPCC. However, having regard to all of the circumstances in this matter, including their respective experience, their genuine apologies and candour, the Court will adopt the same approach taken in *Dayal, Valu (No 2)* and *JNE24* and refrain from naming the legal practitioners.

COSTS

39. When judgment was handed down in *Pasuengos (No 1)*, the Court raised with the parties whether or not a personal costs order should be made in respect of the applicant's legal representative. Orders were made for further submissions to be filed by the parties addressing that issue.

40. The Court considered this issue in *JNE24* at [40]-[42], noting that the Court has power to make an order for costs pursuant to any power in the *Federal Circuit and Family Court of Australia Act 2021* (Cth) and the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (Cth). The relevant principles for making a personal costs order against a legal representative are considered in *Mitry Lawyers v Barnden* [2014] FCA 918 (*Mitry Lawyers*) at [42] and require unreasonable conduct involving serious misconduct or a serious dereliction of duty owed to the Court.

41. In *JNE24*, this Court found that it was unnecessary to make a personal costs order against the applicant's representative as they had confirmed that the applicant had already been fully reimbursed in respect of his legal fees in that matter. Nevertheless, the Court found that the applicant's lawyer in that matter had engaged in the kind of unreasonable conduct and serious dereliction of duty referred to in *Mitry Lawyers*.

42. In this matter, the Court did not receive submissions from the parties but rather consent orders agreeing orders in respect of costs. Those proposed consent orders included the following notation:

The parties agreed to the making of orders in these terms following the applicant's representative [redacted] approaching the first respondent's representatives and offering to undertake to the Court to pay personally that part of the first respondent's costs specified in order 1, which represents his costs thrown away as a result of the

adjournment of the final hearing originally listed on 26 May 2025,
namely the sum of \$3,125.

43. This matter is distinguishable from *JNE24* in one material respect. In *JNE24*, the applicant ultimately accepted that there were no reasonable prospects of prosecuting his application and he elected to discontinue his proceedings. In that sense, the costs of pursuing proceedings were entirely attributable to the advice, actions and encouragement of his legal representative.

44. In this matter, however, the applicant elected to continue to press her application, albeit via an amended application. Whilst ultimately unsuccessful, that amended application was not devoid of prospects and was prosecuted skilfully by Mr Kikkert. Accordingly, the Court accepts that the applicant is liable to pay the costs that follow the event. The one exception is that the Court accepts that the applicant should not be liable for any costs associated with the hearing thrown away by virtue of the legal representative's conduct.

45. The costs order agreed by the parties is a sensible reflection of this. Therefore, no further order is required.

I certify that the preceding forty-five (45) numbered paragraphs are a true copy of the Reasons for Judgment of Judge Gerrard.

Associate:

Dated: 3 February 2026