

Artificial Intelligence in Victoria's Courts and Tribunals

Report



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A note on the cover design

The cover design typographically depicts the tense balance between the use of artificial intelligence and the maintenance of integrity within systems of law.

Our office is located on the land of the Traditional Custodians, the people of the Kulin Nation. We acknowledge their history, culture and Elders both past and present.

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Report

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Preface

The use of artificial intelligence (AI) in courts and tribunals is at an early stage but will advance rapidly. Since we started this review in May 2024, we have already seen significant developments in AI technology and increased use in courts and tribunals. This raises potential opportunities and risks for courts and tribunals, as well as people interacting with the justice system.

Often our projects involve recommending law reform for existing legal issues. In contrast, this inquiry was forward-looking and required us to anticipate how AI will be used in courts and tribunals and identify emerging issues. The rapidly changing technology, evolving regulatory landscape and breadth of issues added to the challenge of this inquiry.

The use of AI in courts and tribunals has raised a broad range of complex issues. We have made recommendations in this report based on our current knowledge and understanding of AI and its use in courts and tribunals. The recommendations primarily focus on principles and guidelines to help preserve public trust and guide the safe use of AI in Victoria's courts and the Victorian Civil and Administrative Tribunal (VCAT).

We also identify emerging issues that may require law reform over time. The extent of future reform will become clearer as AI evolves, issues crystallise and the capacity for the existing legal system to respond is assessed. The broader regulatory environment will also shape future legislative responses.

We were pleased with the high level of engagement during our extensive consultation process. We are grateful for contributions from across courts and VCAT, the Coronial Council, prosecutorial bodies, lawyers, academics, peak organisations such as the Law Institute of Victoria and the Victorian Bar Association, community legal centres and the many others who contributed to this inquiry. We also thank the Victorian Legal Services Board and Commissioner for including a focus on AI in the 2025 Victorian Lawyer Census and making the findings available to us.

Due to the technical nature of the report, we were assisted by a range of experts. We are grateful for the contributions and expertise of our Expert Group members from the ARC Centre of Excellence for Automated Decision-Making and Society, advice from Emeritus Professor Tania Sourdin, as well as insights from Professor Jeannie Paterson.

This report is the product of many people. We thank team leader Kathryn Terry and researchers Emily Clark, Dr Jen Tsen Kwok, Rachel Liebhaber and Dr Florence Seow for their diligent work. We also thank Commissioners Kathleen Foley SC, Professor Bernadette McSherry, Dan Nicholson and former Commissioners Liana Buchanan, Gemma Varley PSM and Dr Vivian Waller for their constructive contribution and feedback. Our work was greatly

assisted by their invaluable experience and collegiate approach to this inquiry.

We also thank CEO Merrin Mason PSM for her steady counsel and administration of the project, Victoria Kyriakopoulos and Natalie Young for their excellent communications and editorial assistance, and the administrative team Monika George, Jeniffer Joyner, Srichi Sundaram and Emma Zanaty for their support.



The Hon. Anthony North KC
Chair
Victorian Law Reform Commission



The Hon. Jennifer Coate AO
Acting Chair (31 January 2024 – 31 March 2025)
Victorian Law Reform Commission

Terms of reference

Referral to the Victorian Law Reform Commission pursuant to section 5(1)(a) of the *Victorian Law Reform Commission Act 2000* (Vic).

Opportunities and risks of artificial intelligence in Victoria's courts and tribunals

Artificial intelligence (AI) tools are rapidly evolving, with their application increasing across society. There is potential for the use of AI in Victoria's courts and tribunals to improve user experiences and generate efficiencies. The use of AI tools carries both risks and opportunities for fairness, accountability, transparency and privacy as well as improvements to accessibility.

The Victorian Law Reform Commission (the Commission) is asked to make recommendations on legislative reform opportunities and principles to guide the safe use of AI in Victoria's courts and tribunals.

In developing its recommendations, the Commission should consider:

- opportunities to build on existing legislation, regulations and common law in supporting the use of AI within Victoria's courts and tribunals;
- the benefits and risks of using AI in Victoria's courts and tribunals, including risks relating to accountability, privacy, transparency, and the accuracy and security of court records;
- the need to maintain public trust in courts and tribunals, and ensure integrity and fairness in the court system;
- the rapid development of AI technologies and how this may influence the extent to which such technologies should be adopted and regulated, and;
- applications of AI and how it is regulated in comparable jurisdictions and contexts (including work being done to develop a framework for regulating AI at the federal level in Australia) and potential learnings for Victoria.

The Commission is asked to provide principles or guidelines that can be used in the future to assess the suitability of new AI applications in Victoria's courts and tribunals.

The Commission is to deliver its report to the Attorney-General by 31 October 2025.

Glossary

Term	Definition
Access to justice	Access to justice is about ensuring 'people have an understanding of their rights under the law and an ability to pursue their case and receive the support they need when engaging with the law and the justice system'. ¹
Algorithm	A set of instructions that guide a computer in performing specific tasks or solving problems. ²
Artificial intelligence (AI)	A 'machine-based system that, for explicit or implicit objectives, infers from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment'. ³
AI agent	An AI agent 'is an intelligent software system designed to perceive its environment, reason about it, make decisions, and take actions to achieve specific objectives <i>autonomously</i> '. ⁴
AI evidence	'Evidence is material presented to a court to prove or disprove a fact. It includes what witnesses say as well as documents and other objects'. ⁵ For this report, 'AI evidence' is evidence that is generated, processed or analysed by AI. This can include text, video or audio evidence.
AI lifecycle	'The AI system lifecycle is a structured process that occurs in stages, ensuring the holistic coverage of the AI system from discovery to retirement. The AI lifecycle stages include: <ul style="list-style-type: none">• Discover: Design, data, train and evaluate.• Operate: Integrate, deploy and monitor.• Retire: Decommission'.⁶

1 County Court of Victoria, *Access to Justice and Dispute Resolution* (Fact Sheet, 2018) 1.

2 'Voluntary AI Safety Standard: Terms and Definitions', *Department of Industry, Science and Resources* (Web Page, 5 September 2024) <<https://www.industry.gov.au/publications/voluntary-ai-safety-standard/terms-and-definitions>>.

3 Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council on Artificial Intelligence*, OECD/LEGAL/0449, 3 May 2024, 7 <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>>.

4 OWASP Gen AI Security Project, *Agentic AI - Threats and Mitigations: OWASP Top 10 for LLM Apps & Gen AI Agentic Security Initiative* (White Paper, Version 1.0, February 2025) 4 <<https://genai.owasp.org/resource/agentic-ai-threats-and-mitigations/>>.

5 'Glossary of Legal Terms', *Supreme Court of Victoria* (Web Page, March 2020) <<http://www.supremecourt.vic.gov.au/about-the-court/how-the-court-works/glossary>>.

6 Digital Transformation Agency (Cth), *Australian Government's AI Technical Standard* (Version 1, July 2025) 13 <<https://www.digital.gov.au/policy/ai/AI-technical-standard>>.

Term	Definition
AI model	'The output of an algorithm that has been applied to a dataset. In simple terms, an AI model is used to make predictions or decisions and an algorithm is the logic by which that AI model operates.' ⁷
AI system	An AI 'system is a broader concept than a model ... An AI system comprises various components, including, in addition to the model or models, elements such as interfaces, sensors, conventional software, etc.' ⁸
AI tool	For this report, an 'AI tool' refers to any software program, product or service that uses AI as the central technology, and which a user can directly interact with or have access to.
AI use case	For this report, an 'AI use case' refers to the use of an AI tool or system that is designed, developed, deployed or procured to support official work of Victoria's courts or VCAT. This may either be standalone, or part of a wider solution.
Automated decision-making	The 'application of <i>automated systems</i> in any part of the decision-making process ... Automated systems range from traditional non-technological rules-based systems to specialised technological systems which use automated tools to predict and deliberate ... Although ADM [automated decision-making] may in some instances use AI technologies, in other cases it will not'. ⁹
Black box	'Where the data inputted is known, and the decisions made from that data are known, but the way in which the data was used to make the decisions is not understood by humans'. ¹⁰
Chatbot	A 'computer program that interacts with humans through natural language conversations. Some chatbots use LLMs [large language models] to generate content according to user inputs'. ¹¹
Closed AI	For this report, 'closed AI' is defined in contrast to public AI. Closed AI tools are generally not openly accessible to the public and information used in closed AI tools remain within a controlled environment. When an AI tool is 'closed' there are controls to reduce risks related to privacy, or confidentiality settings that protect information from being made publicly available or used to train the AI tool.
Computer vision	The capability to 'acquire, process and interpret data representing images or video'. ¹²

7 IBM, *What Is an AI Model?* (Web Page, 13 September 2023) <<https://www.ibm.com/think/topics/ai-model>>.
8 David Fernández-Llorca et al. 'An Interdisciplinary Account of the Terminological Choices by EU Policymakers Ahead of the Final Agreement on the AI Act: AI System, General Purpose AI System, Foundation Model, and Generative AI' [2024] *Artificial Intelligence and Law*, 7–8 <<https://doi.org/10.1007/s10506-024-09412-y>>.
9 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia: Discussion Paper* (Discussion Paper, June 2023) 5–6. The definition of 'Automated Decision Making (ADM)' is based on the definition in Commonwealth Ombudsman, *Automated Decision-Making: Better Practice Guide* (Report, 4 March 2020).
10 Toby Walsh et al, *Closer to the Machine: Technical, Social, and Legal Aspects of AI* (Report, Office of the Victorian Information Commissioner (OVIC), August 2019) 3.
11 Fan Yang, Jake Goldenfein and Kathy Nickels, *GenAI Concepts: Technical, Operational and Regulatory Terms and Concepts for Generative Artificial Intelligence (GenAI)* (Report, ARC Centre of Excellence for Automated Decision-Making and Society (ADM+S), and the Office of the Victorian Information Commissioner (OVIC), 2024) 6 <<https://doi.org/10.60836/PSMC-RV23>>.
12 Standards Australia Limited, 'AS ISO/IEC 22989:2023 Information Technology - Artificial Intelligence - Artificial Intelligence Concepts and Terminology' 16 [3.7.1] <<https://www.standards.org.au/standards-catalogue/standard-details?designation-as-iso-iec-22989-2023>>.

Term	Definition
Deepfake	A 'digital photo, video or sound file of a real person that has been edited [or generated using AI] to create an extremely realistic but false depiction of them doing or saying something that they did not actually do or say'. ¹³ It can also involve false depictions of an object or environment.
Digital divide	'The social and economic gap between those who have access to, and ability to use, computer technology and those who do not'. ¹⁴
Embedded AI	For this report, we use the phrase 'embedded AI' to refer to AI applications that are integrated in existing software or technology products.
Expert system	'An AI system that encapsulates knowledge provided by a human expert in a specific domain to infer solutions to problems ... An expert system consists of a knowledge base, an inference engine and a user interface. The knowledge base stores knowledge of a specific domain'. ¹⁵
Explainable AI (also known as XAI)	A 'set of processes and methods that allows human users to comprehend and trust the results and output created by machine learning algorithms'. ¹⁶
Fine-tuning	In the context of AI, fine-tuning refers to 'refining a pre-trained model to enhance its accuracy and efficiency, particularly for a specific task or dataset'. ¹⁷
General Purpose AI	An AI system 'that addresses a broad range of tasks and uses, both intended and unintended by developers'. ¹⁸
Generative AI (GenAI)	AI 'systems that create content as text, images, music, audio and videos based on a user's prompts'. ¹⁹
Hallucination	'AI models making up facts to fit a prompt's intent. When a LLM [large language model] processes a prompt, it searches for statistically appropriate words, not necessarily the most accurate answer. An AI system does not 'understand' anything, it only recognises the most statistically likely answer. That means an answer might sound convincing but have no basis in fact'. ²⁰

13 'Deepfake Trends and Challenges - Position Statement', *eSafety Commissioner* (Web Page, 1 September 2024) <<https://www.esafety.gov.au/industry/tech-trends-and-challenges/deepfakes>>.

14 *Macquarie Dictionary Online* (Web Page, 2025) (online at 25 Sept 2025) <<https://www.macquariedictionary-com-au.eu1.proxy.openathens.net/about/>> 'digital divide'.

15 Standards Australia Limited, 'AS ISO/IEC 22989:2023 Information Technology - Artificial Intelligence - Artificial Intelligence Concepts and Terminology' 46 [8.5.2] <<https://www.standards.org.au/standards-catalogue/standard-details?designation=as-iso-iec-22989-2023>>.

16 'What Is Explainable AI (XAI)?', *IBM Think* (Web Page, 29 March 2023) <<https://www.ibm.com/think/topics/explainable-ai>>.

17 Neural Ninja, 'The Art of Fine-Tuning AI Models: A Beginner's Guide', *Let's Data Science* (Web Page, 29 January 2024) <<https://letsdatascience.com/the-art-of-fine-tuning-ai-models/>>.

18 'Voluntary AI Safety Standard: Terms and Definitions', *Department of Industry, Science and Resources* (Web Page, 5 September 2024) <<https://www.industry.gov.au/publications/voluntary-ai-safety-standard/terms-and-definitions>>.

19 Fan Yang, Jake Goldenfein and Kathy Nickels, *GenAI Concepts: Technical, Operational and Regulatory Terms and Concepts for Generative Artificial Intelligence (GenAI)* (Report, ARC Centre of Excellence for Automated Decision-Making and Society (ADM+S), and the Office of the Victorian Information Commissioner (OVIC), 2024) 2 <<https://doi.org/10.60836/PSMC-RV23>>.

20 *Ibid* 28.

Term	Definition
Large language model	Data transformation systems that are 'trained with large numbers of parameters, which are numerical values that developers adjust to shape the inputs and outputs of an AI model. When a user inputs a prompt, the model generates text content in response.' ²¹ They can 'generate text based on the patterns and relationships (probabilities) it has learned from massive datasets ... by predicting the next term or word, in a sentence, given the words that came before it'. ²²
Machine learning	'A set of techniques for creating algorithms so that computational systems can learn from data.' ²³
Natural language processing	A 'type of AI used to analyse, understand and generate human language. For legal documents, NLP [natural language processing] analyses legal documents, contracts, and other legal texts to identify key provisions, clauses and risks'. ²⁴
Neural network	A 'machine learning program, or model, that makes decisions in a manner similar to the human brain, by using processes that mimic the way biological neurons work together to identify phenomena, weigh options and arrive at conclusions'. ²⁵
Online dispute resolution	'Involves the use of information and communications technology to help parties resolve disputes. Within a court and tribunal system, ODR [online dispute resolution] is a digital platform that allows people to progress through dispute resolution for low-value disputes, from the commencement of a claim to final determination, entirely online.' ²⁶
Open domain (vs closed domain)	'A closed domain system, also known as domain-specific, focuses on a particular set of topics and has limited responses based on the business problem ... On the other hand, an open domain system is expected to understand any topic and return relevant responses.' ²⁷
Open source (vs closed source)	Open source has 'publicly accessible source code and underlying architecture, allowing developers, deployers, researchers and enterprises to use, modify and distribute them freely or subject to limited restrictions'. Whereas closed source has 'proprietary underlying source code and architecture. They are accessible only under specific terms defined by their developers'. ²⁸

21 Ibid 5.
22 LexisNexis Australia, *Practical Guidance AU - Cybersecurity, Data Protection & Privacy* (at 15 July 2025) 'AI terms and phrases for legal professionals'; See also IBM, *What Are Large Language Models (LLMs)?* (Web Page, 2 November 2023) <<https://www.ibm.com/think/topics/large-language-models>>.
23 See also Standards Australia Limited, 'AS ISO/IEC 23053 - Framework for Artificial Intelligence (AI) Systems Using Machine Learning (ML)' [6.3] <<https://www.iso.org/standard/74438.html>>; Fan Yang, Jake Goldenfein and Kathy Nickels, *GenAI Concepts: Technical, Operational and Regulatory Terms and Concepts for Generative Artificial Intelligence (GenAI)* (Report, ARC Centre of Excellence for Automated Decision-Making and Society (ADM+S), and the Office of the Victorian Information Commissioner (OVIC), 2024) 4 <<https://doi.org/10.60836/PSMC-RV23>>.
24 LexisNexis Australia, *Practical Guidance AU - Cybersecurity, Data Protection & Privacy* (at 15 July 2025) 'AI terms and phrases for legal professionals'; See also IBM, *What Is NLP (Natural Language Processing)?* (Web Page, 11 August 2024) <<https://www.ibm.com/think/topics/natural-language-processing>>.
25 Fangfang Lee, 'What Is a Neural Network?', *IBM Think* (Web Page, 6 October 2021) <<https://www.ibm.com/topics/neural-networks>>.
26 Peter Cashman and Eliza Ginnivan, 'Digital Justice: Online Resolution of Minor Civil Disputes and the Use of Digital Technology in Complex Litigation and Class Actions' (2019) 19 *Macquarie Law Journal* 39, 41 <https://www.mq.edu.au/_data/assets/pdf_file/0012/866289/Digital-Justice.pdf>.
27 Team Sybl, 'Conversation Understanding: Open Domain vs. Closed Domain', *Sybl Ai Blog* (Web Page, 10 December 2020) <<https://sybl.ai/developers/blog/conversation-understanding-open-domain-vs-closed-domain/>>.
28 Fan Yang, Jake Goldenfein and Kathy Nickels, *GenAI Concepts: Technical, Operational and Regulatory Terms and Concepts for Generative Artificial Intelligence (GenAI)* (Report, ARC Centre of Excellence for Automated Decision-Making and Society (ADM+S), and the Office of the Victorian Information Commissioner (OVIC), 2024) 9 <<https://doi.org/10.60836/PSMC-RV23>>.

Term	Definition
Prompt	'A prompt is an instruction, query, or command that a user enters into a GenAI interface to request a response from the system.' ²⁹
Public AI	For this report, the term 'public AI' refers to AI tools that are openly accessible to the public, typically via the internet.
Retrieval Augmented Generation	Enhances large language models by 'retrieving relevant document chunks from external knowledge base through semantic similarity calculation. By referencing external knowledge, RAG [retrieval augmented generation] effectively reduces the problem of generating factually incorrect content.' ³⁰
Scheming	Scheming is where an AI tool or agent 'covertly pursues misaligned goals, hiding its true capabilities and objectives.' ³¹
Self-represented litigant	'Anyone who is attempting to resolve any component of a legal problem for which they do not have legal counsel, whether or not the matter actually goes before a court or tribunal.' ³²
Specialised AI	For this report, we use 'specialised AI' to refer to AI tools developed for a specific, fixed and identifiable purpose, including legal research or translation. Its properties are defined in opposition to General Purpose AI tools, which can be adapted by users to serve a range of purposes.
Technology assisted review	A 'process for prioritizing or coding a collection of documents using a computerized system that harnesses human judgements of one or more subject matter expert(s) on a smaller set of documents and then extrapolates those judgements to the remaining document collection.' ³³

29 Ibid 2.

30 Yunfan Gao et al, 'Retrieval-Augmented Generation for Large Language Models: A Survey' (2024) arXiv:2312.10997v5 [cs.CL]:1-21, 1 <<https://arxiv.org/abs/2312.10997>>.

31 Alexander Meinke et al, 'Frontier Models Are Capable of In-Context Scheming' (2025) arXiv:2412.04984v2 [cs.AI]:1-72, 1 <<http://arxiv.org/abs/2412.04984>>.

32 Elizabeth Richardson, Tania Sourdin and Nerida Wallace, *Self-Represented Litigants: Gathering Useful Information, Final Report - June 2012* (Report, Australian Centre for Justice Innovation, Monash University, October 2012) 4 [1.15] <<https://research.monash.edu/en/publications/self-represented-litigants-gathering-useful-information-final-rep>>.

33 Felicity Bell et al, *AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* (Report, Australasian Institute of Judicial Administration, December 2023) 19 n 32 citing Maura R Grossman and Gordon V Cormack, 'The Grossman-Cormack Glossary of Technology-Assisted Review' (2013) 7(1) *Federal Courts Law Review* 1, 32.

Executive summary


- 1 This report makes recommendations on principles and guidelines to support the safe use of artificial intelligence (AI) in Victoria's courts and tribunals, so that:
 - public trust in courts and tribunals is not undermined
 - fairness, integrity and accountability of the court system is maintained.
- 2 The development of AI and its use by courts, tribunals and lawyers is changing rapidly. The increasing use of AI in courts and tribunals raises opportunities and risks.
- 3 Responses to AI will need to be monitored and revised to respond to developments in technology, new AI uses, and the evolving regulatory context.

How is AI used in courts and tribunals?

- 4 AI will change how the justice system and legal services operate, as well as how people interact with courts and tribunals. This report considers potential use of AI in courts and tribunals by:
 - judicial officers, tribunal members and court staff
 - court users, including lawyers, self-represented litigants and witnesses (lay and expert).
- 5 This report outlines current and emerging uses of AI in courts and tribunals. AI use will vary across stages of proceedings, from pre-hearing, through to hearings and post-hearing.
- 6 AI is already used widely by lawyers. A recent census by the Victorian Legal Services Board and Commissioner found that 36.7 per cent of lawyers are using AI in legal practice.
- 7 The use of AI in Victoria's courts and the Victorian Civil and Administrative Tribunal (VCAT) is at an early stage but is developing, with some initial pilots underway.

The use of AI in courts and tribunals must balance opportunities and risks

- 8 The accelerated development of AI has the potential to improve how courts and tribunals operate. But if AI is to be used safely in our justice system, there is an urgent need to increase awareness and understanding of the associated risks.
- 9 AI can help improve and increase provision of court services to support efficient, timely and cost-effective administration of justice. AI also has potential to innovate existing court and tribunal processes.
- 10 AI offers significant opportunities for greater access to justice, although care must be taken not to exacerbate existing barriers or inequalities.

- 
- 11 There are many risks that require careful consideration, in particular:
- AI systems can provide biased or inaccurate outputs.
 - It difficult to understand how AI tools work because the technology is complex and often involves proprietary interests.
 - The use of AI raises significant privacy and data security concerns.
- 12 Risk will vary depending on who is using AI, how it is used and how well it is implemented and resourced. These risks need to be understood by courts and court users if AI is to be used safely in courts and tribunals.

External regulation will impact AI use in Victoria's courts and tribunals

- 13 International and national regulation of AI is still developing. The experience of other jurisdictions can inform regulatory approaches for courts and tribunals.
- 14 Regulatory responses by the Australian Government could also influence approaches for Victoria's courts and VCAT.
- 15 National regulation is important for setting consistent principles and standards for development and use of AI, which will have flow-on impacts for safe use of AI in courts and tribunals.

Does the law need to change to enable safe use of AI?

- 16 There are a broad range of existing laws relevant to the safe use of AI in courts and tribunals. We focused on:
- court rules and procedures
 - human rights law
 - privacy law
 - evidence law
 - administrative law
 - Legal Profession Uniform Law.
- 17 We heard that it is too early to consider legislative reform for courts and tribunals, given the technology and use in courts is still evolving. As a result, the feedback we received did not identify many examples of gaps where legislative reform may be required. However, there are emerging areas that might require legislative reform over time.
- 18 Court rules and procedures will need to adapt as new uses of AI are introduced. Changes to rules and procedures will be specific to the type and use of AI. At this stage, anticipated changes can be managed within existing rule-making power.
- 19 The use of AI raises human rights considerations. To protect human rights, courts should adopt human rights impact assessments where possible as part of governance processes.
- 20 The use of AI raises significant privacy and information security risks. Victoria's courts and VCAT should publicly state how they seek to act consistently with Victoria's Information Privacy Principles to manage AI risks.
- 21 Evidence that is generated or processed by AI will become increasingly prevalent in courts and tribunals. This raises issues about accuracy, reliability and transparency of evidence.

- 22 The *Evidence Act 2008* (Vic) was considered flexible enough to manage the use of AI at this point. However, the suitability of evidence laws should be monitored, as future reform may be needed to address risks such as deepfakes or assess the reliability of AI evidence.
- 23 Further monitoring of administrative law is also required to ensure equal access to judicial review, regardless of whether a decision was made by a person or a machine.

Principles to guide safe use of AI

- 24 A principles-based approach to AI regulation was supported by many stakeholders because it can be applied flexibly to manage risks.
- 25 The Commission recommends eight principles to guide safe use of AI by courts and tribunals. These principles provide a foundation for public trust in the use of AI in courts and tribunals:
- 1) impartiality and fairness
 - 2) accountability and independence
 - 3) transparency and open justice
 - 4) contestability and procedural fairness
 - 5) privacy and data security
 - 6) access to justice
 - 7) efficiency and effectiveness
 - 8) human oversight and monitoring.

Guidelines to support safe use of AI

- 26 To be effective, principles should be embedded in court guidelines that are educative and help to apply the principles in practice.
- 27 There is an opportunity to update and expand existing guidelines to court users to clarify obligations and provide principles-based guidance about risks and limitations of using AI for:
- submissions
 - affidavits, character references and witness statements
 - expert reports.
- 28 Guidelines for judicial officers and tribunal members should be developed and be publicly available to promote public trust.
- 29 Judicial guidelines could include principles-based guidance and educative information about AI.
- 30 While AI provides opportunities to support judicial officers, the use of AI for judicial decision-making should be prohibited.

Promoting coordinated and consistent approaches to AI

- 31 There should be a coordinated and consistent approach to guidelines for court users across Victorian court jurisdictions. This will provide greater clarity and fairness and reduce complexity for court users.
- 32 It will also be important to work towards national consistency on responses to AI.

- 33 Victoria's courts and VCAT operate independently of each other, with discrete legislative powers and their own internal governance. While recognising this independence, there is an opportunity to improve coordination of decision making about how AI is used and implemented by courts and VCAT.
- 34 Courts Council should actively coordinate responses to AI and opportunities for consistency across courts where possible.

Clarifying roles and responsibilities for AI decisions

- 35 Implementing AI in courts and tribunals requires effective governance to support its safe use and public trust.
- 36 A coordinated and consistent approach between courts will enable more strategic consideration of risks and opportunities, shared learnings, more effective investment in AI and greater certainty for court users.
- 37 A cross-jurisdictional multidisciplinary technology and innovation committee could improve coordination and enable appropriate expertise and judicial representation in decision making on AI uses. The committee could report to Courts Council.
- 38 Courts could establish lead judicial technology and innovation roles to support AI development and innovation, as well as represent jurisdictional perspectives on a multidisciplinary committee.
- 39 Development of an AI policy for Court Services Victoria, and courts and VCAT, would provide clarity about roles and responsibilities for decisions about AI in courts and VCAT. Key elements could include:
- information security and data privacy processes
 - principled guidance for use of AI by staff
 - disclosure and consultation processes.

Engaging the community about AI use in courts and VCAT

- 40 To promote public trust, AI tools used by courts and VCAT should be publicly disclosed in an AI inventory. This should occur at an organisational level.
- 41 Consultation with people likely to be affected by AI tools is also important for public trust. Consultation should occur prior to implementation and to inform ongoing improvements to AI tools.
- 42 Courts and VCAT should exercise caution when considering use of AI for administrative decision making. People whose rights are significantly affected by a decision made or materially influenced by AI should be notified and there should be human oversight of these decisions.

Assessing the suitability of new AI uses in courts and VCAT

- 43 Courts and VCAT should be guided by an AI assurance framework to consider the risks and suitability of new AI applications in Victoria's courts and tribunals.
- 44 Court Services Victoria should develop a court-specific assurance framework based on the pilot *VPS Assurance Framework*. This could align with the Commission's principles.

Supporting safe use of AI through greater awareness and education

- 45 Many of our recommendations can only be effective if supported by ongoing education and training by courts and professional bodies.
- 46 Education for judicial officers and tribunal members should continue to be developed, with training at induction, when new AI tools are implemented and ongoing.
- 47 The use of AI does not fundamentally alter obligations under the Legal Profession Uniform Law. But lawyers need training and guidance to better understand how the risks of AI intersect with existing professional obligations, as well as greater awareness of court-issued guidelines.
- 48 The Law Council of Australia should update the *Commentary to the Australian Solicitors Conduct Rules* in relation to AI, to provide practical advice about AI risks and professional obligations.
- 49 Public education is also necessary to promote understanding of court and tribunal issued guidelines and support safe and proper use of AI in these settings.

Recommendations

Chapter 4: Australian and global AI regulation

1. The Victorian Government should collaborate with the Australian Government and other states and territories to develop a consistent and agreed national approach to AI regulation. While national AI regulation is important for safety and consistency, care must be given to ensure any national reform maintains judicial independence.

Chapter 5: Is legislative reform necessary for safe use of AI in courts and tribunals?

2. Victoria's courts and VCAT should publicly state how their privacy and AI policies seek to be consistent with the Victorian Information Privacy Principles.
3. A court-led expert working group should monitor the suitability of the *Evidence Act 2008* (Vic) to address emerging AI-related evidence issues, and report annually to the Chief Justice of Victoria.

Chapter 6: Principles to guide the safe use of AI in courts and tribunals

4. The Commission's principles should be adopted and applied where relevant by Victoria's courts and VCAT when making decisions about the use of AI. The individual principles should be employed to achieve the overarching objective of maintaining public trust.

Chapter 7: Court user guidelines to support safe use of AI

Consistency of court user guidelines

5. The Supreme Court's *Guidelines for Litigants: Responsible Use of Artificial Intelligence*, as varied by recommendations 7 to 11, should be adopted by Victoria's courts and VCAT.
6. The Chief Justice of Victoria should consider working with his counterparts through the Council of Chief Justices to seek to achieve consistency nationally on the response to AI throughout Australia's courts and tribunals.

Scope of court user guidelines

7. The Supreme Court's guidelines should be updated to:
 - a. define AI, GenAI, public AI and closed AI
 - b. apply to civil and criminal matters
 - c. apply to all court users including lawyers, litigants (whether represented or not) and witnesses (lay and expert)
 - d. contain the Commission's principles.
8. The Supreme Court's guidelines should state that court users can use GenAI in the preparation of submissions but to ensure accuracy court users should:
 - a. fact check and proofread GenAI content
 - b. edit and adapt GenAI content to suit the situation
 - c. verify references
 - d. use sources known to be accurate
 - e. not use GenAI to verify subsections a to d above.
9. A person making a witness statement, character reference or similar statement must verify its accuracy and that it represents their view.
10. The *Expert Witness Code of Conduct* applicable in civil trials should be updated to align with the Practice Note *Expert Evidence in Criminal Trials* in relation to the use of AI by experts.
11. The Supreme Court guidelines should refer to obligations for the use of AI by expert witnesses contained in the:
 - a. Practice Note *Expert Evidence in Criminal Trials* and
 - b. *Expert Witness Code of Conduct* (once updated as per recommendation 10).

Chapter 8: Judicial officer guidelines to support safe use of AI

Consistency of judicial officer guidelines

12. The Chief Justice of Victoria, in consultation with Victorian Heads of Jurisdiction, should consider developing public guidelines for all judicial officers in Victoria to support public trust in the administration of justice and inform the safe use and understanding of AI. Based on these, the President of VCAT should release guidelines for tribunal members.

Scope of judicial officer guidelines

13. Guidelines for judicial officers should prohibit the use of AI for judicial decision-making.
14. Guidelines for judicial officers should clarify that the prohibition on AI use for judicial decision-making is not intended to encompass supportive uses of AI.
15. Guidelines for judicial officers should encourage judicial support staff to discuss their use of AI tools with their supervising judicial officer.

Chapter 9: Governance to support AI innovation

Governance bodies, roles and responsibilities

16. A technology and innovation committee should be established by the Courts Council to support ongoing governance of AI across Victoria's courts and VCAT.
17. Coordination and consistency in AI governance should be promoted by the Courts Council across Victoria's courts and VCAT.
18. A technology and innovation judicial officer or VCAT member should be appointed by the head of each of Victoria's court jurisdictions and VCAT to support AI development and innovation.

Scope of an AI policy

19. An AI policy for Court Services Victoria staff and court and tribunal staff should include the Commission's principles on the safe and acceptable use of AI.
20. Court Services Victoria should coordinate an AI inventory, reasonably identifying AI tools designed, developed, deployed or procured by Court Services Victoria, Victoria's courts and VCAT which should be published and updated annually.
21. Victoria's courts and VCAT should consult with people likely affected by AI tools based on the AI assurance framework (set out in recommendation 23). Consultation should occur before implementing AI tools and throughout the AI lifecycle.
22. Victoria's courts and VCAT should:
 - a. notify people whose rights are significantly affected by a decision made or materially influenced by AI. Notification should include clear and understandable information on how the decision was made.
 - b. ensure there is human oversight of decisions made or materially influenced by AI. The extent of oversight will depend on the context.

AI assurance framework

23. Court Services Victoria should develop an AI Assurance Framework aligned with the Commission's principles to manage the ethics and risks associated with AI use cases for Victoria's courts and VCAT, based on the pilot *VPS AI Assurance Framework*.

Chapter 10: Promoting awareness and education

Education for judicial officers and staff

24. AI education and training for judicial officers and VCAT members should continue to be developed and expanded by the Judicial College of Victoria.
25. Induction and ongoing AI training for judicial officers, VCAT members and support staff should be provided by Victoria's courts and VCAT.
26. Court Services Victoria should continue to develop induction and ongoing training for staff, including when new AI tools are implemented.

Education for lawyers

27. Guidance for Victorian lawyers on AI use and its intersection with professional obligations should continue to be developed and updated by the Victorian Legal Services Board and Commissioner.
28. The Law Institute of Victoria and the Victorian Bar should continue to provide education to members about AI and legal practice. The educational program should be formalised and expanded to meet ongoing challenges.
29. The Law Council of Australia should update the *Commentary to the Australian Solicitors Conduct Rules* in relation to AI.

Education for courts users and the public

30. Victoria's courts and VCAT should:
 - a. ensure people within court registries can assist court users with the use of court-based AI systems
 - b. develop AI-related public awareness resources for people from diverse backgrounds.

CHAPTER
01

Introduction: Artificial Intelligence in Victoria's Courts and Tribunals

- 2** **Our terms of reference**
- 2** **The Commission's aims**
- 2** **Our approach**

1. Introduction: Artificial Intelligence in Victoria's Courts and Tribunals

Our terms of reference

- 1.1 The Victorian Law Reform Commission (the Commission) was asked to make recommendations on legislative reform opportunities and principles to guide the safe use of artificial intelligence (AI) in Victoria's courts and tribunals.
- 1.2 We were asked to provide principles or guidelines that can be used to assess the suitability of future uses of AI in Victoria's courts and tribunals.
- 1.3 We were guided by the terms of reference (see page viii) given to us by the former Attorney-General, the Hon. Jaclyn Symes MP, on 8 May 2024.

The Commission's aims

- 1.4 The Commission's aim is to maintain and further develop a fair, just, inclusive and accessible legal system for all Victorians.
- 1.5 Our main task is to examine existing laws, prepare reports and make recommendations to serve the needs of the Victorian community.

Our approach

Our leadership

- 1.6 The Hon. Jennifer Coate AO was the Commission's Acting Chair from the beginning of this inquiry in May 2024, until the Hon. Anthony North KC resumed the role of Chair from April 2025.
- 1.7 The Acting Chair established a Division to guide and make decisions about the inquiry. All Commissioners were Division members. Their names are listed on the inside front cover.

What we published

- 1.8 On 16 October 2024 we published a consultation paper to seek views on the use of AI in Victoria's courts and tribunals and how to ensure safe and effective use of AI. We invited submissions by 12 December 2024.

Submissions and consultations

- 1.9 We received 29 submissions (see Appendix A) and published the public submissions on our website. We held 49 consultations with 52 individuals and organisations (see Appendix B).

- 1.10 We engaged with a wide range of stakeholders across courts and the legal profession. This involved Victorian courts, the Victorian Civil and Administrative Tribunal (VCAT), Court Services Victoria (CSV),¹ the Federal Circuit and Family Court, the Coronial Council, prosecutorial bodies, lawyers, academics and peak organisations that provide education and support to lawyers and judicial officers. We also engaged with government organisations, such as the Office of the Victorian Information Commissioner and the Public Record Office Victoria.
- 1.11 We consulted with human rights organisations and specialist access to justice services, such as the Victorian Equal Opportunity and Human Rights Commission. We held a workshop with 15 community legal centres, facilitated by the Federation of Community Legal Centres. We also consulted technology-focused organisations such as Cenitex and Microsoft.
- 1.12 The Victorian Legal Services Board and Commissioner made available findings collected from their 2025 Lawyer Census, which included a focus on AI usage within legal practice in Victoria.² The survey sample involved 1,887 Victorian practising certificate holders.

Scope of this report

- 1.13 Our terms of reference refer to the use of AI in Victoria's courts and tribunals. While the definition of 'tribunal' is potentially broad, we confined our scope to Victoria's courts and VCAT. This is consistent with the composition of the Courts Council, which is the governing body of CSV. The Courts Council consists of the heads of the Supreme Court, County Court, Magistrates' Court, Children's Court, Coroners Court and VCAT.³ We note that principles and guidelines recommended in this report may also be relevant to other tribunal bodies in Victoria.

Our report to the Attorney-General

- 1.14 Our report is due to the Attorney-General by 31 October 2025. Within 14 sitting days of receiving our report, the Attorney-General must table it before the Victorian Parliament. It will then be published on our website and in print.

A note on language

- 1.15 Unless otherwise noted, references in this report to the Supreme Court and the Court of Appeal, the County Court, the Magistrates' Court, the Children's Court and the Coroners Court refer to the Victorian courts, and references to the High Court refer to the High Court of Australia. References to the Federal Court refer to the Federal Court of Australia. References to the Federal Circuit and Family Court refer to the Federal Circuit and Family Court of Australia.
- 1.16 The term 'judicial officer' is used to refer to a judge, an associate judge or a judicial registrar of the Supreme or County court, a magistrate or judicial registrar of the Magistrates' or Children's court, a coroner or a judicial registrar of the Coroners Court. Discussion relating to 'judicial officers' is also relevant to VCAT members. In the recommendations we refer to VCAT members separately.

1 CSV was established in 2014 as an independent statutory body corporate to provide administrative services and facilities to support the performance of judicial, quasi-judicial and administrative functions of Victoria's courts and tribunals, the Judicial College and the Judicial Commission. The CSV establishes a governance model that is directed by the judiciary, reinforcing the principle of judicial independence. Court Services Victoria, *Delivering Excellence in Court and Tribunal Administration, Annual Report 2023-24* (Report, October 2024) 6.90.

2 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025).

3 *Court Services Victoria Act 2014* (Vic) s 12. Courts Council also includes a non-judicial member.

Common terms used in this report

1.17 This report uses some technical terms. Definitions of technical terms used in this report are provided in the Glossary on page ix. Below are some common AI terms and concepts that we refer to throughout this report.

Artificial intelligence

1.18 While there is no universally agreed definition of AI, this report adopts the Organisation for Economic Co-operation and Development's (OECD) definition:

a machine-based system that, for explicit or implicit objectives, infers from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.⁴

1.19 The OECD definition was updated in 2023 and will continue to be updated from time to time. We adopt the definition for the following reasons:

- It allows policy makers to consider the impact of either individual or societal harms caused by a wide range of computational systems. This includes AI capabilities embedded in technology and software ranging from YouTube to ChatGPT.
- It includes knowledge-based and machine learning approaches.⁵ This means the definition includes older AI systems that require human intervention to learn, based on knowledge provided by experts.⁶
- It is adopted by the Australian and Victorian governments.⁷

1.20 We discuss in Chapter 3 that feedback from consultations and submissions noted some limitations with the OECD definition. Representatives of the Victorian Bar Association described the OECD definition as 'too complex and manifold for general use'.⁸ For this reason, we nominate additional terms that outline how different types of AI require different regulation by Victoria's courts and VCAT.

1.21 In this report 'AI' is often used in a general way, but it is important to note that AI is an umbrella term that refers to many types of technologies with different capabilities, uses and risks. Examples of different AI tools are discussed in Chapter 2.

AI lifecycle

1.22 The Australian Government describes the AI lifecycle as a structured process that occurs in three stages:

- a) Discover: design, data, train and evaluate
- b) Operate: integrate, deploy and monitor
- c) Retire: decommission.⁹

4 Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council on Artificial Intelligence* OECD/LEGAL/0449, 3 May 2024, <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>>.

5 Organisation for Economic Co-operation and Development (OECD), *Explanatory Memorandum on the Updated OECD Definition of an AI System* (OECD Artificial Intelligence Papers No 8, 5 March 2024) 6, 8 <doi.org/10.1787/623da898-en>.

6 Ibid 7.

7 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia: Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings* (Proposals Paper, September 2024) 8, 53; Department of Premier and Cabinet (Vic), *Administrative Guideline - The Safe and Responsible Use of Generative AI in the Victorian Public Sector* (No 2024/07, Issue 1.0, November 2024) 7 <<https://www.vic.gov.au/sites/default/files/2024-11/Generative-AI-Guideline-%281%29.pdf>>.

8 Consultation 5 (Victorian Bar Association).

9 Digital Transformation Agency (Cth), *Australian Government's AI Technical Standard* (Version 1, July 2025) 13 <<https://www.digital.gov.au/policy/ai/AI-technical-standard>>.

- 1.23 The term AI lifecycle is important as regulatory responses to AI often highlight that governance and accountability mechanisms are needed across the entire AI lifecycle.¹⁰ Different risks and opportunities can occur at different points of the AI lifecycle.¹¹
- 1.24 The development of AI is distinct from other software development because of the importance of data and of models that rely on data for training and evaluation.¹²

Machine learning

- 1.25 Machine learning is a property of all Generative AI (GenAI) systems. It is defined as a 'set of techniques for creating algorithms so that computational systems can learn from data'.¹³ As stated in our consultation paper, these types of AI can improve their performance by 'learning' over time based on experience and feedback to previous responses.¹⁴ These can be defined in contrast to expert AI systems that use pre-defined rules ('if-then rules') and a knowledge base to infer conclusions.¹⁵ Google Translate is an example of a software product using machine learning that is not a GenAI tool. Another example is algorithms embedded in YouTube and other social media platforms that recommend content based upon previous viewing preferences.¹⁶

Generative AI

- 1.26 Generative AI or GenAI is a subset of machine learning referring to 'software systems that create content as text, images, music, audio and videos based on a user's prompts'.¹⁷ GenAI systems 'infer' a response or output to a user prompt, using statistical predictions based on large amounts of data. Popular AI tools such as ChatGPT, Claude, Gemini and others are commonly known as GenAI tools. GenAI is also a characteristic of software that allows people to edit, compose and rewrite text, such as Grammarly.¹⁸
- 1.27 Agentic AI systems are often characterised as an advancement of GenAI systems.¹⁹ They pursue high-level goals by perceiving their environment, acting or executing tasks autonomously or semi-autonomously and over extended periods of time.²⁰ AI companies are incorporating AI agents or agentic capabilities into products they currently offer. Some common applications involve AI agents coding software or providing customer service.
- 1.28 Many existing court guidelines focus on risks of GenAI. In our report we consider how risk varies across different types of AI. This involves distinguishing between public and closed AI tools (see Chapter 3).

10 See Department of Industry, Science and Resources (Cth), National Artificial Intelligence Centre, and CSIRO, *Voluntary AI Safety Standard* (Report, August 2024) 13, 29 <<https://www.industry.gov.au/sites/default/files/2024-09/voluntary-ai-safety-standard.pdf>>; Digital Transformation Agency (Cth), *Australian Government's AI Technical Standard* (Version 1, July 2025) 13, 14–16, 28–30 <<https://www.digital.gov.au/policy/ai/AI-technical-standard>>; National Security Agency's Artificial Intelligence Security Centre (AISC) (US) et al, *AI Data Security: Best Practices for Securing Data Used to Train & Operate AI Systems - Joint Cybersecurity Information* (Cybersecurity Information Sheet (CSI) No U/OO/157249-25, PP-25-2301, 23 May 2025) 3–5.

11 In relation to data security risks across the AI lifecycle, see National Security Agency's Artificial Intelligence Security Centre (AISC) (US) et al, *AI Data Security: Best Practices for Securing Data Used to Train & Operate AI Systems - Joint Cybersecurity Information* (Cybersecurity Information Sheet (CSI) No U/OO/157249-25, PP-25-2301, 23 May 2025) 3–5.

12 Organisation for Economic Co-operation and Development (OECD), *Scoping the OECD AI Principles: Deliberations of the Expert Group on Artificial Intelligence at the OECD (AIGO)* (OECD Digital Economy Papers No 291, November 2019) 13 <<https://doi.org/10.1787/d62f618a-en>>.

13 Fan Yang, Jake Goldenfein and Kathy Nickels, *GenAI Concepts: Technical, Operational and Regulatory Terms and Concepts for Generative Artificial Intelligence (GenAI)* (Report, ARC Centre of Excellence for Automated Decision-Making and Society (ADM+S), and the Office of the Victorian Information Commissioner (OVIC), 2024) 4 <<https://doi.org/10.60836/PSMC-RV23>>.

14 Victorian Law Reform Commission, *Artificial Intelligence in Victoria's Courts and Tribunals: Consultation Paper* (Report, Victorian Law Reform Commission, October 2024) 9.

15 Organisation for Economic Co-operation and Development (OECD), *Explanatory Memorandum on the Updated OECD Definition of an AI System* (OECD Artificial Intelligence Papers No 8, 5 March 2024) 6, 8 <doi.org/10.1787/623da898-en>.

16 Paul Covington, Jay Adams and Emre Sargin, 'Deep Neural Networks for YouTube Recommendations' in *Proceedings of the 10th ACM Conference on Recommender Systems* (Conference Paper, 15 September 2016) 191, 191–2 <<https://research.google/pubs/deep-neural-networks-for-youtube-recommendations/>>.

17 Fan Yang, Jake Goldenfein and Kathy Nickels, 'GenAI Concepts', *ADM+S Centre and OVIC* (Web Page, 2024) <<https://www.admscentre.org.au/genai-concepts/>>.

18 'Introducing Generative AI Assistance', *Grammarly Support* (Web Page, 2025) <<https://support.grammarly.com/hc/en-us/articles/14528857014285-Introducing-generative-AI-assistance>>.

19 For example, OWASP Gen AI Security Project, *Agentic AI - Threats and Mitigations: OWASP Top 10 for LLM Apps & Gen AI Agentic Security Initiative* (White Paper, Version 1.0, February 2025) 3 <<https://genai.owasp.org/resource/agentic-ai-threats-and-mitigations/>>.

20 Deven R Desai and Mark Riedl, *Responsible AI Agents* (Georgia Tech Scheller College of Business Research Paper No 5147666 (preprint), 20 February 2025) 7–9 <<https://papers.ssrn.com/abstract=5147666>>; Stuart Russell and Peter Norvig, *Artificial Intelligence: A Modern Approach* (Pearson, 4th ed, 2022) 54–6.

General Purpose AI

- 1.29 A General Purpose AI or GPAI system can be defined as:
- an advanced AI system capable of effectively performing a range of distinct tasks. Its degree of autonomy and ability is determined by several key characteristics, including the capacity to adapt or perform well on new tasks that arise at a future time, the demonstration of competence in domains for which it was not intentionally and specifically trained, the ability to learn from limited data, and the proactive acknowledgment of its own limitations in order to enhance its performance.²¹
- 1.30 A key characteristic of General Purpose AI systems is the ability to perform a wide range of tasks across many domains of knowledge. This includes tasks for which a system has not been specifically trained. For instance, ChatGPT has been described as a General Purpose AI. Some regulatory responses classify General Purpose AI as high risk and place specific obligations on developers to ensure the technology is safe.²²

Expert systems

- 1.31 Expert systems are computer programs that use pre-defined rules ('if-then' rules) and a knowledge base to infer conclusions. Expert systems were an early example of AI and do not learn or adapt without human intervention.²³ Expert systems are knowledge-based and fall within the OECD definition of AI.²⁴

21 Isaac Triguero et al. 'General Purpose Artificial Intelligence Systems (GPAIS): Properties, Definition, Taxonomy, Societal Implications and Responsible Governance' (2024) 103 *Information Fusion* 102135, 7 <<https://www.sciencedirect.com/science/article/abs/pii/S1566253523004517?via%3Dihub>>.

22 For example, *Regulation (EU) 2024/1689 (Artificial Intelligence Act)* [2024] OJ L 2024/1689, arts 53, 54, 55.

23 Richard E Susskind, 'Expert Systems in Law: A Jurisprudential Approach to Artificial Intelligence and Legal Reasoning' (1986) 49(2) *The Modern Law Review* 168 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-2230.1986.tb01683.x>>.

24 Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council on Artificial Intelligence* OECD/LEGAL/0449, 3 May 2024, 7 <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>>.

CHAPTER
02

Current and emerging uses of AI in courts and tribunals

<u>8</u>	Overview
<u>8</u>	AI in Victoria's courts and VCAT
<u>12</u>	Pre-hearing stage
<u>24</u>	Hearing stage
<u>30</u>	Post-hearing stage
<u>35</u>	Coroners Court of Victoria AI Pilot

2. Current and emerging uses of AI in courts and tribunals

Overview

- This chapter discusses current and anticipated uses of AI in Victoria's courts and the Victorian Civil and Administrative Tribunal (VCAT).
- The use of AI in Victoria's courts and VCAT is at an early stage of development but is increasing.
- AI is being used in Victoria's courts and VCAT in different ways by different groups. This chapter discusses current uses, pilots and opportunities for future uses of AI at different stages of court proceedings. In Chapter 3 we discuss the risks and benefits of AI which can be used to consider possible uses for courts and tribunals.
- Our work has been shaped by what we know about how AI is being used in society and by courts and tribunals in other jurisdictions. The experiences of other jurisdictions are useful to identify future opportunities for Victoria's courts and VCAT.
- In addition, this chapter discusses how the Coroners Court has piloted AI approaches.

AI in Victoria's courts and VCAT

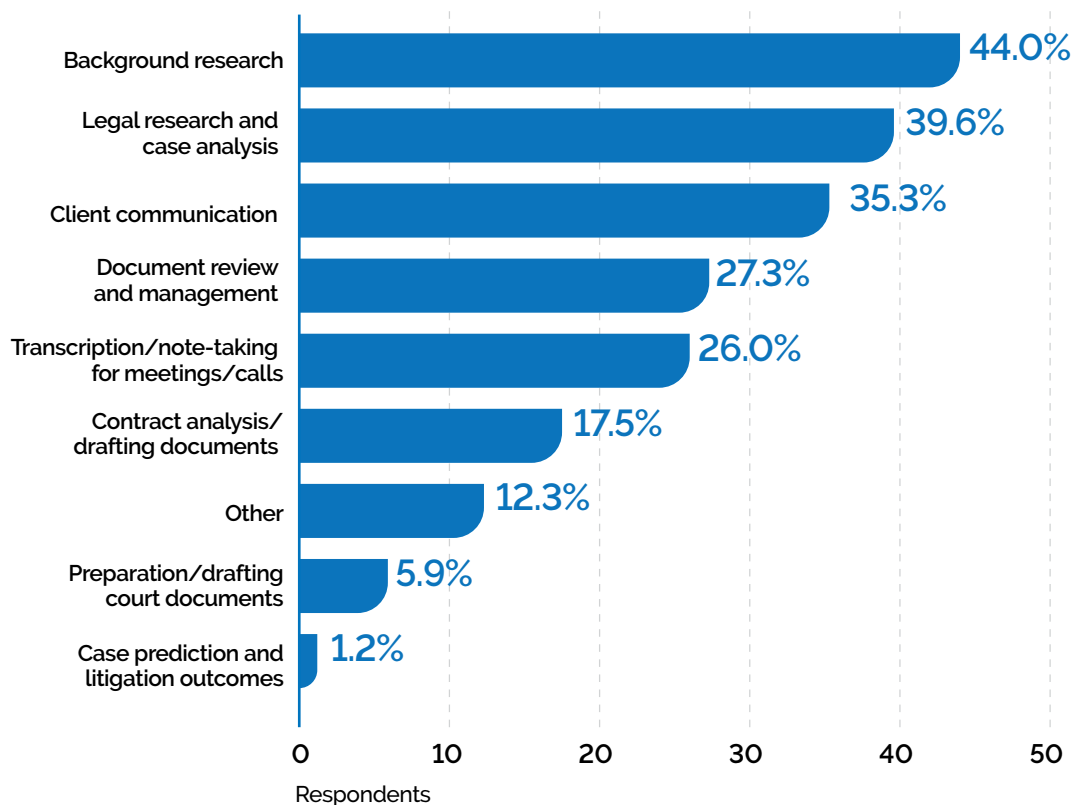
- 2.1 There are significant opportunities to use AI across Victoria's courts and VCAT. The use of AI in Victoria's courts and VCAT is currently at an early stage and very limited. However, AI technology is rapidly developing and its application in courts and tribunals will evolve as the technology advances.
- 2.2 Different AI tools can be applied at different court and tribunal stages and by different people. AI might be used in administrative processes, to support court staff and their work. AI might also be used by litigants or lawyers to conduct research or prepare documents for courts and tribunals. Other uses of AI in the courtroom include translation and transcription. AI could also support judicial officers by producing chronologies or to summarise large bodies of text.
- 2.3 The use of AI is generally at a preliminary stage, particularly for courts. AI is not being used for judicial decision-making in Victoria. However, its use across the legal sector is increasing.

2.4 The 2025 Victorian Legal Services Board and Commissioner (VLSB+C) Lawyer Census provided valuable insights on the use of AI.¹ It found that over a third (36.7 per cent) of Victorian lawyers surveyed are using AI in their practice.² Actual use is likely higher as some lawyers may be unaware that they are using AI. This is because AI is increasingly being embedded into common tools such as Google Search.³ Relevantly, the census found that:

- among users, over half reported using AI regularly—weekly (35.1 per cent) or daily (25.2 per cent)
- public AI tools (like Claude) are used more frequently than specialised legal specific tools (like Lexis+ AI)
- AI is used in ways that may interact with Victoria's courts and VCAT, such as in legal research and drafting court documents.⁴

2.5 Some of the key findings from the VLSB+C Lawyer Census relating to AI usage are illustrated in Figures 1 and 2.

Figure 1: How are Victorian lawyers using AI?⁵



1 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025). The data in the census is based on responses from 1,887 Victorian practising certificate holders.

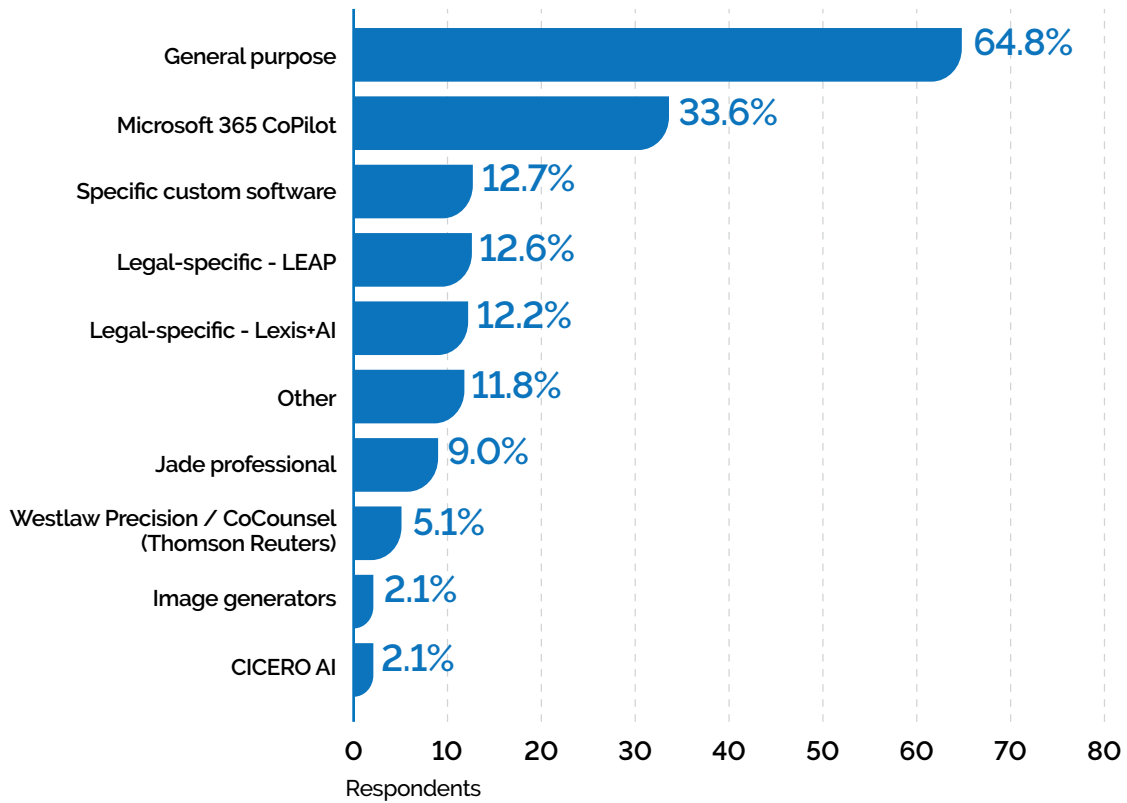
2 Ibid 1.

3 Google, 'AI in Search', *AI in Search* (Web Page) <<https://search.google/ai-in-search/>>.

4 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 1-2.

5 Figure is based on data from *ibid*. Responses in 'Other' described a wide range AI applications. These included writing and editing (proofreading, summarising information), administrative and operational tasks (calendaring, time recording, generating statutory declarations, formatting, preparing policies, plans and templates) marketing and business development (creating social media and website content) and conceptual and strategic support (generating ideas for cross-examination, brainstorming, developing training presentations).

Figure 2: AI products Victorian lawyers are using⁶



- 2.6 In our consultation paper, we identified a range of AI tools used or developed for use in courts and tribunals internationally. Since then, the European Commission for the Efficiency of Justice has identified a trend of increasing use and distribution of AI tools for a range of justice purposes.⁷ Internationally, 160 AI tools have been identified as being used in courts and tribunals.⁸
- 2.7 A report by the International Bar Association demonstrates the many ways AI is being used for legal services across 35 international jurisdictions.⁹ AI has been used by lawyers around the world for knowledge management, research, legal advice, contract analysis, predicting decision outcomes, transcription and translation.¹⁰
- 2.8 From our consultations we heard that AI is being used or considered by Victoria's courts and VCAT, government departments and agencies, private law firms, community organisations and individuals. In this chapter we discuss what we heard about current and potential uses of AI in Victoria's courts and tribunals. Different types and uses of AI will raise different risks and opportunities, which we discuss next in Chapter 3.

6 Figure is based on data from *ibid.* Respondents who selected 'Other' used general-purpose tools (including Grammarly, Fireflies, Synthesia, Calendly and Microsoft Teams' auto-transcription feature) and legal-specific tools (such as Archie.AI via SmokeBall, LawPath AI, Relativity, Nuix, Joselegal and Harvey AI).

7 European Commission for the Efficiency of Justice (CEPEJ), Artificial Intelligence Advisory Board (AIAB), *1st AIAB Report on the Use of Artificial Intelligence (AI) in the Judiciary Based on the Information Contained in the Resource Centre on Cyberjustice and AI* (CEPEJ-AIAB (2024) 4 Rev 5, 28 February 2025) 11.

8 European Commission for the Efficiency of Justice (CEPEJ), 'Resource Centre Cyberjustice and Artificial Intelligence', *Resource Centre on Cyberjustice and AI* (Web Page, 6 June 2025) <<https://public.tableau.com/app/profile/cepej/viz/ResourceCentreCyberjusticeandAI/AITOOLSINITIATIVESREPORT>>.

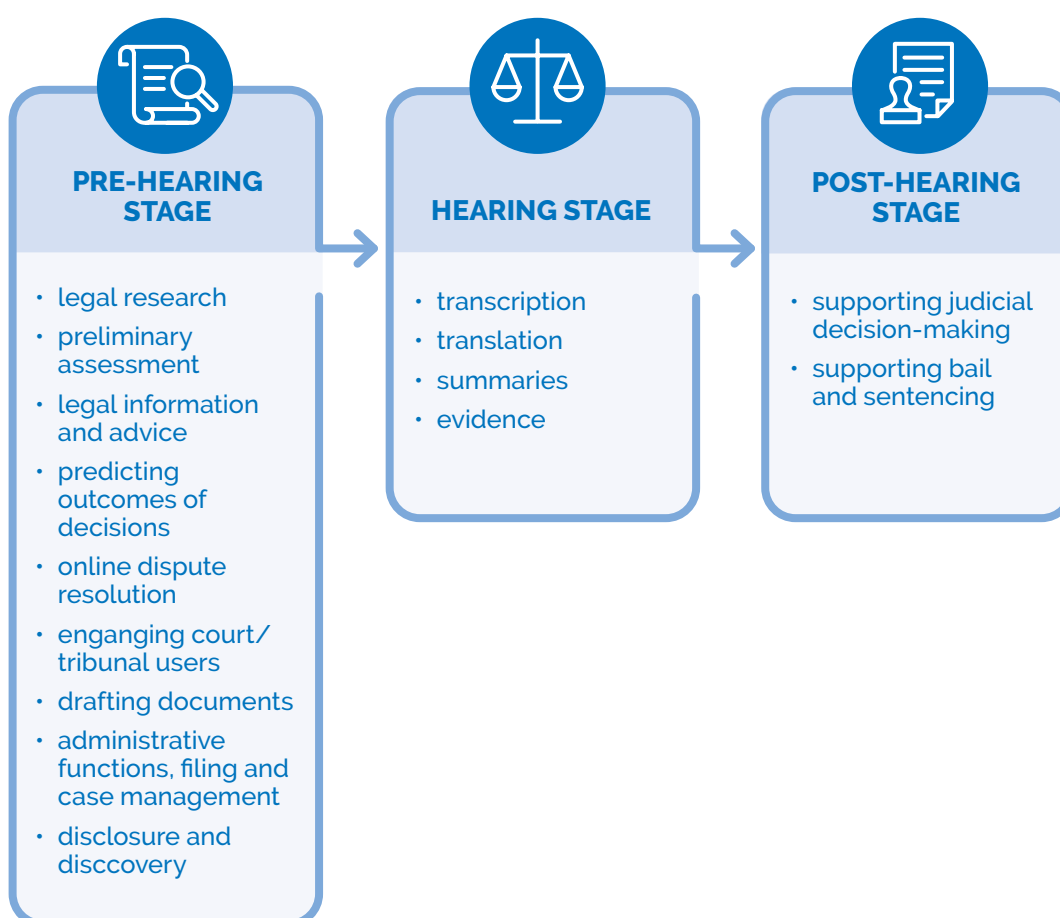
9 International Bar Association Alternative and New Law Business Structures Committee, Artificial Intelligence Working Group, *Guidelines and Regulations to Provide Insights on Public Policies to Ensure Artificial Intelligence's Beneficial Use as a Professional Tool* (Report, International Bar Association, 18 September 2024).

10 *Ibid.*

Potential range of AI use in Victoria's courts and VCAT

- 2.9 To explain the different ways AI may be used in Victoria's courts and VCAT, we have separated this chapter into three hearing stages: pre-hearing, hearing and post-hearing. This is outlined in Figure 3. This structure is for illustrative purposes—not all legal matters will follow this pathway. For example, most civil matters settle before a court or tribunal hearing and matters may move back and forth between stages or jurisdictions.
- 2.10 AI will interact with the justice system in many ways. Examples of how AI is being piloted in the Coroners Court is also considered in this chapter to explain how AI may be used outside adversarial court processes.

Figure 3: Potential use of AI based on hearing stage



Pre-hearing stage

Legal information, preliminary assessment and advice

- 2.11 Before coming to a court or tribunal, people will often seek legal advice and information. Many will resolve a dispute before commencing a court action. Legal advice can assist people to understand their legal obligations or rights, prepare for negotiation or mediation or identify legal issues for dispute. People can also seek advice on the likely success or outcome of their matter.¹¹
- 2.12 Increasingly, people may use AI to conduct legal research or to seek legal information or advice. Similarly, lawyers may use AI to conduct their own research or to assist in the intake of new clients. A developing area is the use of AI to provide legal advice through virtual platforms and interactive chatbots that have incorporated natural language processing technology.¹²

Legal research

- 2.13 We consulted with a range of Victorian lawyers. For example, we spoke to members of the Law Institute of Victoria, the Victorian Bar Association, the Federation of Community Legal Centres, Victoria Legal Aid, the Office of Public Prosecutions (OPP) and Law Firms Australia. From these discussions it was apparent that there is widespread use of AI for legal research to identify and summarise case law and legislation.
- 2.14 We heard that AI is used for legal research by lawyers across private firms of all sizes, individual practitioners and community lawyers. This includes a mixture of General Purpose AI tools and specialised AI tools designed for specific legal purposes.¹³
- 2.15 The VLSB+C census indicates that the most common application of AI tools by Victorian lawyers is for legal research and case analysis.¹⁴ The census found that of lawyers using AI:
- 44 per cent were using AI for background research (for example on relevant non-legal issues)
 - 39.6 per cent were using AI for legal research and case analysis.¹⁵
- 2.16 We heard that AI is increasingly being incorporated as an advanced functionality into existing legal research platforms, such as LexisNexis' Lexis+ AI and Thompson Reuters' CoCounsel.¹⁶
- 2.17 However, the VLSB+C census found that there are higher rates of lawyers using General Purpose AI tools like ChatGPT and Claude, in comparison to specialised legal tools like LexisNexis+ AI.¹⁷
- 2.18 Victoria's courts and tribunals are considering the use of AI for legal research. The Law Library of Victoria is trialling LexisNexis' and Westlaw's AI products to evaluate their potential future use for Victoria's courts and tribunal staff and the judiciary.¹⁸

11 Felicity Bell et al, *AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* (Report, Australasian Institute of Judicial Administration, December 2023) 25.

12 Solicitors Regulation Authority (UK), *SRA Approves First AI-Driven Law Firm* (News Release, 6 May 2025) <<https://www.sra.org.uk/sra/news/press/garfield-ai-authorized/>>.

13 Consultations 11 (Law Institute of Victoria), 33 (Law Firms Australia).

14 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 4.

15 Ibid.

16 'CoCounsel: AI Drafting and Analysis Tool', *Thomson Reuters - Australia* (Web Page) <<https://www.thomsonreuters.com.au/en-au/products/cocounsel.html>>; 'Lexis+ AI', *LexisNexis* (Web Page) <<https://www.lexisnexis.com.au/en/products-and-services/lexis-plus-ai>>.

17 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 3.

18 Submission 26 (Supreme Court of Victoria).

- 2.19 We heard that there may be opportunities for AI to support and enhance publicly available legal databases. For example, the Supreme Court noted that the Australian Legal Information Institute (AustLII) already uses AI in natural language search and citation analysis in its 'Note Up' function.¹⁹ Chief Justice Bell recently commented that:

With proper support from government and the profession, Austlii's pathbreaking democratising work in facilitating access to justice may be enhanced by the curation and responsible use of artificial intelligence in the years ahead.²⁰

- 2.20 Internationally, AI has been used to support public access to legal databases. For example, in Singapore Pair Search is a public tool that uses a large language model to enable users to access, search and analyse government records, legislation and Singapore Supreme Court cases.²¹

Preliminary assessment

- 2.21 AI can be used to support the preliminary assessment of legal claims. We heard how AI was being used to improve the delivery of services by Justice Connect, an organisation that connects pro bono contributions of lawyers to those seeking legal assistance.²² Justice Connect has implemented AI technology by building a:

language processor to help overcome barriers between people seeking legal help and legal help providers in Australia. Our AI Project was developed based on research that when people search for legal help online, they often struggle to correctly articulate their legal problem.²³

- 2.22 This project demonstrates how natural language processing tools can be used to make it easier to connect people with legal help.²⁴ AI can assist in reducing administrative intake processes, which could allow lawyers to 'focus on more complex legal matters and in relationship with clients'.²⁵

- 2.23 The Federation of Community Legal Centres and Justice Connect identified that in future, AI tools could 'provide preliminary legal assessments, equipping legal professionals with better insights to offer more informed guidance to clients'.²⁶ It was highlighted that access to justice benefits may result from the development of legal assistance tools:

AI-powered chatbots and self-help tools improve public access to the justice system by offering guidance and support to individuals navigating court processes, making legal assistance more accessible to many of those who need it.²⁷

19 Ibid 2; AustLII provides free access to Australasian legal materials. Australian Legal Information Institute, 'Who We Are & What We Do', *AustLII* (Web Page) <<https://www.austlii.edu.au/about.html>>; Further in the consultation paper we discussed that Austlii's Datalex platform provides software tools for users to develop rules as code applications. See Felicity Bell et al, *AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* (Report, Australasian Institute of Judicial Administration, December 2023) 9.

20 Chief Justice Bell, 'Change at the Bar and the Great Challenge of Gen AI' (Speech, Address to the Australian Bar Association, Sydney, 29 August 2025) 14 <<https://inbrief.nswbar.asn.au/posts/13dbc1d59f076b32283b003eb800f0de/attachment/BellCJ-ABA-20250829.pdf>>.

21 'Introduction to Pair Search', *Pair Search* (Web Page, 8 August 2024) <<https://search-pair.guides.gov.sg>>; 'Events: AI-Powered Search Engine for Singapore's Hansard Reports', *Parliament of Singapore* (Web Page, 13 August 2024) <<https://www.parliament.gov.sg/newsroom/events/Details/ai-powered-search-engine-for-singapore-s-hansard-reports>>.

22 'About Us', *Justice Connect* (Web Page) <<https://justiceconnect.org.au/about/>>.

23 Submission 27 (Federation of Community Legal Centres and Justice Connect).

24 Ibid.

25 Ibid.

26 Submission 27 (Federation of Community Legal Centres and Justice Connect).

27 Ibid.

Legal information and advice

- 2.24 We heard limited examples where AI is used to give preliminary legal information to people seeking legal assistance in Victoria.
- 2.25 Some private law firms have incorporated AI tools in the form of interactive chatbots on their websites. The criminal law firm Doogue + George has developed an AI chatbot which enables people to ask general legal questions. The tool contains a disclaimer that it is not giving legal advice but it can provide general legal information.²⁸ For example, a person could ask what penalty may apply to a drink driving offence.²⁹ The response provided is generic information that does not consider the individual circumstances of the person.
- 2.26 Tools offering generic legal information were seen to offer efficiency benefits. We heard that such tools could remove 'the 20 minutes spent explaining generic information in a client interview and allows the lawyer to focus on the particulars of their issue'.³⁰
- 2.27 In New South Wales, the National Justice Project has developed Hear Me Out, an AI-powered chatbot that provides recommendations to people by identifying the appropriate complaint body and preparing and lodging complaints.³¹ Hear Me Out is available directly to the public as well as to legal aid organisations and other non-legal community services. It uses a large language model to provide accessible plain English advice on where and how to file complaints.³² The National Justice Project plans to expand the tool to operate in other jurisdictions.³³
- 2.28 Internationally, there are examples of AI tools directly providing legal advice to potential court users. In England and Wales, the Solicitors Regulation Authority recently approved Garfield Law, which is described as 'the first purely AI-based firm' to provide regulated legal services.³⁴ Garfield states that users will be able to directly upload documents to its platform. The AI system can then create 'letters before action, draft the Claim Form and Particulars of Claim, to apply for default judgment, handle settlement negotiation and prepare for trial'.³⁵
- 2.29 Internationally, there are reports that self-represented litigants are increasingly turning to public GenAI tools like ChatGPT and Google Gemini for 'situation-specific legal guidance' and help with court documents.³⁶
- 2.30 If, in future, AI tools are used in Victoria to provide legal advice this will likely raise issues of unlawful and unqualified legal practice. An entity providing unqualified legal practice is an offence in Victoria.³⁷ Lawyers must hold a valid practicing certificate to be licenced to engage in legal practice. AI tools cannot hold a practicing certificate.³⁸ In future, the first issue for consideration will be whether an AI tool purporting to give legal advice is allowed to operate in Victoria. And, if so, what recourse there will be for a person who relies on that legal advice if it turns out to be wrong.³⁹ We discuss this further in Chapter 5.

28 'Ask Our Criminal Law AI Chatbot', *Doogue + George Defence Lawyers* (Web Page, 2025) <<https://www.criminal-lawyers.com.au/criminal-law-ai-chatbot>>.

29 Ibid.

30 Consultation 11 (Law Institute of Victoria).

31 Consultation 31 (Victorian Equal Opportunity & Human Rights Commission).

32 Dean Moutopoulos et al, *AI-Powered Platforms for Access to Justice: The Case of Hear Me Out* (UNSW Law Research No 25-13, 28 February 2025) 4 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5213638>.

33 Ibid 10.

34 Solicitors Regulation Authority (UK), *SRA Approves First AI-Driven Law Firm* (News Release, 6 May 2025) <<https://www.sra.org.uk/sra/news/press/garfield-ai-authorized/>>.

35 'Garfield AI Becomes First SRA Authorised Legal AI - Unlocking Justice for Businesses Owed Billions', *Garfield AI* (Web Page, 5 May 2025) <<https://www.garfield.law/press/launch>>.

36 AI Policy Consortium for Law & Courts, *Modernizing Unauthorized Practice of Law Regulations to Embrace AI-Driven Solutions and Improve Access to Justice* (White Paper, National Center for State Courts and Thomson Reuters Institute, August 2025) 8-9 <https://www.ncsc.org/sites/default/files/media/document/AI_UPL_WhitePaper.pdf>.

37 *Legal Profession Uniform Law Application Act 2014* sch 1 pt 2.1 s 10.

38 Note in *MillerKing, LLC v DoNotPay, Inc* (SD Ill, 3:23-CV-863-NJR, 17 Nov 2023). The law firm MillerKing LLC challenged the online subscription service DoNotPay Inc, which offers a 'robot lawyer' to consumers for legal services, on the basis that DoNotPay's robot lawyer was not actually licensed to practice law. The United States District Court dismissed the case, due in part to a lack of standing.

39 Mia Bonardi and L Karl Branting, 'Certifying Legal Assistants for Unrepresented Litigants: A Global Survey of Access to Civil Justice, Unauthorised Practice of Law' (2025) 26(1) *The Columbia Science & Technology Law Review* 34, 46-7.

Predicting outcomes of decisions

- 2.31 Predictive analytics tools that rely on machine learning algorithms can be used to make predictions about the likely outcome of cases. As discussed in our consultation paper, predictive analytics can be applied to predict potential case outcomes and can also be applied to predict specific outcomes related to a particular judge. This is commonly referred to as 'judicial analytics'. Predictive analytics tools could be used to help potential court users determine whether to proceed with a matter.⁴⁰
- 2.32 In our consultations, using AI to predict outcomes of decisions was not raised as a common use of AI. Similarly, the VLSB+C census found that only 1.2 per cent of AI use by Victorian lawyers was directed at case prediction and litigation outcomes.⁴¹
- 2.33 Predictive analytics are being applied more broadly internationally. For example, in the Netherlands the Dutch Public Prosecution Service is using LexIQ's Case Law Engine to support prosecutors by providing an 'indication of the possible outcomes of a case in court'.⁴²

Online dispute resolution

- 2.34 Online dispute resolution is a broad term that has been increasingly used to describe when dispute resolution takes place online and makes use of information communication technology tools.⁴³
- 2.35 Professor Vicki Waye and others outlined common dispute resolution stages and how technology may interact with each of those stages as follows:
- 1) **Information gathering:** Technology helps the parties gather general information about their legal rights and responsibilities, and how these may be enforced. This information is largely generic and of general application.
 - 2) **Obtaining advice:** Technology helps provide the parties with legal advice that is tailored to their specific situation and provides some guidance as to how they could or should proceed.
 - 3) **Direct negotiation:** Technology helps the parties directly negotiate with each other in an attempt to reach a mutually tolerable settlement of the dispute.
 - 4) **Supported negotiation:** Technology helps support the parties in their negotiation by a third party, who assists the parties to reach a mutually tolerable settlement of the dispute through a range of techniques, including framing, interest identification and articulation of ends.
 - 5) **Adjudication:** Technology helps the parties and the third party (who has assumed control of the determination of the dispute, and delivers a final, binding and authoritative judgment that concludes the dispute) in advancing the adjudication.⁴⁴

40 Pamela Stewart and Anita Stuhmcke, 'Judicial Analytics and Australian Courts: A Call for National Ethical Guidelines' (2020) 45(2) *Alternative Law Journal* 82, 84–5 <<https://journals.sagepub.com/doi/10.1177/1037969X19899674>>.

41 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 4.

42 European Commission for the Efficiency of Justice (CEPEJ), Artificial Intelligence Advisory Board (AIAB), *1st AIAB Report on the Use of Artificial Intelligence (AI) in the Judiciary Based on the Information Contained in the Resource Centre on Cyberjustice and AI* (CEPEJ-AIAB (2024) 4 Rev 5, 28 February 2025) 8.

43 Fahimeh Abedi, John Zeleznikow and Chris Brien, 'Developing Regulatory Standards for the Concept of Security in Online Dispute Resolution Systems' (2019) 35 *Computer Law & Security Review* 105328, 1 <<https://www.sciencedirect.com/science/article/abs/pii/S026736491830390X>>.

44 Figure based on Vicki Waye et al, 'Maximising the Pivot to Online Courts: Digital Transformation, Not Mere Digitisation' (2021) 30(3) *Journal of Judicial Administration* 126, 134.

- 2.36 AI-assisted online dispute resolution has been used in many ways. It can be used to resolve matters before they reach courts by:
- private companies, such as Amazon, e-Bay and PayPal, to resolve e-commerce disputes⁴⁵
 - government departments and agencies to facilitate a range of alternative dispute resolution options to traditional litigation (for example, Amica is an AI-assisted online dispute resolution system supported by the Australian government and legal aid agencies which helps separating couples reach a financial agreement outside of court).⁴⁶
- 2.37 Courts and tribunals can also use AI-assisted online dispute resolution. Internationally, some courts and tribunals have incorporated AI to support online dispute resolution. To date, AI has been used internationally to support parties to participate in online dispute resolution rather than AI being used to resolve disputes or produce final outcomes.
- 2.38 For example, Singapore courts partnered with Harvey to develop a GenAI program for the Small Claims Tribunal to support people in filing and responding to small claims.⁴⁷ The program can support people by answering questions, translating documents and informing them how to proceed with their claim.⁴⁸ The system is focused on supporting tribunal users to engage in small claims processes. In future, it is intended that the system will be able to point parties to settlement options.⁴⁹ However, this functionality is not currently available. It is also hoped the system will soon be able to summarise materials.⁵⁰
- 2.39 Another example is British Columbia's Civil Resolution Tribunal system. It has four phases:
- a) A purpose-built expert system, Solution Explorer, asks parties questions to understand the legal claim, classify and narrow the matters in dispute and provide tailored legal information and appropriate forms.
 - b) An automated negotiation tool is used to support interparty communication and prepare draft agreements.
 - c) A facilitation phase is undertaken with an expert facilitator to help parties reach a consensual agreement.
 - d) If parties are still unable to reach agreement the matter proceeds to adjudication by a Tribunal Member.⁵¹
- 2.40 To date, the Civil Resolution Tribunal system has only used AI in a supportive capacity and not to replace human decision making.⁵²

45 Peter Cashman and Eliza Ginnivan, 'Digital Justice: Online Resolution of Minor Civil Disputes and the Use of Digital Technology in Complex Litigation and Class Actions' (2019) 19 *Macquarie Law Journal* 39, 41 <https://www.mq.edu.au/_data/assets/pdf_file/0012/866289/Digital-Justice.pdf>.

46 'Amica – An Online Dispute Resolution Tool', *Attorney-General's Department (Web Page)* <<https://www.ag.gov.au/families-and-marriage/families/family-law-system/amica-online-dispute-resolution-tool>>.

47 European Commission for the Efficiency of Justice (CEPEJ), Artificial Intelligence Advisory Board (AIAB), *1st AIAB Report on the Use of Artificial Intelligence (AI) in the Judiciary Based on the Information Contained in the Resource Centre on Cyberjustice and AI* (CEPEJ-AIAB (2024) 4 Rev 5, 28 February 2025) 8.

48 Ibid; Selina Lum, 'Small Claims Tribunals Roll out AI-Powered Translation Service for Users', *The Straits Times* (online, 16 April 2025) <<https://www.straitstimes.com/singapore/courts-crime/small-claims-tribunals-roll-out-ai-powered-translation-service-for-users>>.

49 European Commission for the Efficiency of Justice (CEPEJ), Artificial Intelligence Advisory Board (AIAB), *1st AIAB Report on the Use of Artificial Intelligence (AI) in the Judiciary Based on the Information Contained in the Resource Centre on Cyberjustice and AI* (CEPEJ-AIAB (2024) 4 Rev 5, 28 February 2025) 8.

50 Justice Aidan Xu, 'The Use (and Abuse) of AI in Court' (Speech, IT Law Series 2025: Legal and Regulatory Issues with Artificial Intelligence, 30 July 2025) [28] <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-aidan-xu-speech-at-the-it-law-series-2025--legal-and-regulatory-issues-with-artificial-intelligence>>.

51 Shannon Salter, 'Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal' (2017) 34(1) *Windsor Yearbook of Access to Justice* 112, 125 <<https://wyaj.uwindsor.ca/index.php/wyaj/article/view/5008>>; Vicki Waye et al, 'Maximising the Pivot to Online Courts: Digital Transformation, Not Mere Digitisation' (2021) 30(3) *Journal of Judicial Administration* 126, 145.

52 Shannon Salter, 'Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal' (2017) 34(1) *Windsor Yearbook of Access to Justice* 112, 125 <<https://wyaj.uwindsor.ca/index.php/wyaj/article/view/5008>>.

- 2.41 The Department of Justice in Hong Kong's special administrative region has supported the development of the Electronic Business-Related Arbitration and Mediation Platform.⁵³ This system uses AI to enable parties 'to use the platform for mediation, arbitration or deal-making negotiations'.⁵⁴
- 2.42 England and Wales are also implementing a range of digital justice initiatives such as online dispute resolution platforms. Master of the Rolls, the Rt. Hon. Sir Geoffrey Vos, envisions that in future:
- AI will be used at every stage of the digital justice system: in giving ELSA (Early Legal Services and Advice) to diagnose the problem in simple cases, to enable everyone to be fully informed of every stage of the process that is being undertaken, to help people understand and interrogate complex sets of rules and instructions, and also, perhaps, to take simple decisions at different stages of the resolution process.⁵⁵
- 2.43 In July 2025, the UK Ministry of Justice announced that they are developing an AI chatbot to support people to resolve child arrangement disputes. It is planned that this chatbot will provide 'guidance on alternative routes to dispute resolution which could support a reduction in unnecessary court applications'.⁵⁶
- 2.44 We did not identify any AI-assisted online dispute resolution tools being used by Victoria's courts and VCAT. But some stakeholders identified that, in future, AI could be used by Victoria's courts and tribunals to facilitate the resolution of disputes.⁵⁷ We heard that AI-assisted online dispute resolution could potentially be integrated by courts and tribunals to help resolve consumer disputes.⁵⁸ AI-assisted online dispute resolution systems may help people to resolve their disputes 'as early as possible without costly legal representation and lengthy resolution process[es]'.⁵⁹
- 2.45 We heard that AI online dispute resolution may be best suited for straightforward disputes. The VLSB+C stated that AI could potentially be used to resolve 'low-risk straightforward disputes (e.g. in residential tenancies, fencing, consumer law and some employment matters)'.⁶⁰ The lower-cost and timely resolution of issues may be well-suited to small civil claims, where the amount in dispute may not be proportionate to the legal costs.⁶¹ Several stakeholders said AI-assisted online dispute resolution would be more appropriate for lower-level, less complex matters. For example, representatives from the OPP noted that:
- there is more scope for using it in lower courts where the volume of matters is high and some decisions more binary, than using it in the Court of Appeal to review a sentence or whole trial.⁶²

53 'Online Dispute Resolution (ODR) and LawTech', *Department of Justice, The Government of Hong Kong Special Administrative Region* (Web Page, 12 December 2023) <https://www.doj.gov.hk/en/legal_dispute/online_dispute_resolution_and_lawtech.html>.

54 International Bar Association Alternative and New Law Business Structures Committee, Artificial Intelligence Working Group, *Guidelines and Regulations to Provide Insights on Public Policies to Ensure Artificial Intelligence's Beneficial Use as a Professional Tool* (Report, International Bar Association, 18 September 2024) 156.

55 Geoffrey Vos, 'Speech by the Master of the Rolls to the Bar Council of England and Wales' (Speech, 20th Annual Law Reform Lecture, Lincolns Inn, 21 June 2023) [23] <<https://www.judiciary.uk/speech-by-the-master-of-the-rolls-to-the-bar-council-of-england-and-wales/>>.

56 Ministry of Justice (UK), *AI Action Plan for Justice* (Policy Paper, 31 July 2025) [2.4] <<https://www.gov.uk/government/publications/ai-action-plan-for-justice/ai-action-plan-for-justice>>.

57 Submissions 6 (Victorian Legal Services Board and Commissioner), 14 (Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne).

58 Submission 14 (Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne).

59 Ibid.

60 Submission 6 (Victorian Legal Services Board and Commissioner).

61 Submission 14 (Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne).

62 Consultation 6 (Office of Public Prosecutions).

- 2.46 The potential opportunity for AI-assisted online dispute resolution to resolve consumer disputes was explored by the Centre for Artificial Intelligence and Digital Ethics at the University of Melbourne which stated:

ODR can be integrated in some lesser form within existing judicial or extrajudicial consumer dispute resolution avenues, including in courts and tribunals, to help consumers with an initial understanding of their legal problems, to increase awareness of their substantive legal rights and obligations, and to empower them to present their matter in the best possible light and resolve their disputes as early as possible without costly legal representation and lengthy resolution process.⁶³

- 2.47 The benefits and risks of AI-assisted online dispute resolution are discussed in Chapter 3. Considerations for Victoria's courts and VCAT in implementing AI-assisted online dispute resolution is also discussed in Chapter 8.

Starting a criminal or civil matter

Engaging court users

- 2.48 In civil law, a plaintiff (the person bringing a case) can commence civil proceedings by filing a document with the court or tribunal.⁶⁴ These documents may be prepared by lawyers or by litigants themselves. AI may be used to improve the format, spelling or readability of these documents or to provide a draft (whether parts of, or the entire document).
- 2.49 Proceedings for a serious (indictable) criminal offence can commence via a filing hearing, which is the first stage of the committal process. This generally occurs shortly after a criminal charge is laid.⁶⁵ At this hearing, the court sets a timetable 'for the exchange of information between the prosecution and defence'.⁶⁶ At this stage prosecutorial bodies, lawyers and litigants could potentially use AI to analyse briefs of evidence, prepare timelines and supporting material and draft documents for court.
- 2.50 Courts could potentially use AI to engage court users when a proceeding is commenced. The Magistrates' Court is starting to deploy AI to engage court users and provide information about court processes. The Magistrates' Court has implemented an AI-assisted Chatbot Virtual Assistant, accessible on its website, to address common court user enquiries:
- The Chatbot Virtual Assistant provides standard responses to common high-volume and low-risk enquiries, giving court users quick and easy access to need-to-know information, reducing the need for human intervention where appropriate and creating capacity for Service Centre team members to handle more complex enquiries.
- Chatbot uses human-led artificial intelligence (AI) to address common court user enquiries in a completely controlled environment, drawn from the Court's internal Knowledge Management System. Use of the Chatbot is voluntary and users have the option to transfer to a Service Centre court officer at any time.⁶⁷
- 2.51 VCAT does not currently have an AI tool to engage tribunal users but identified this as an area of potential future use. Representatives of VCAT said they were interested in a potential online portal that could streamline the collection of proceeding-related information from applicants. VCAT is also interested in the potential for AI to support an automated call centre.⁶⁸ The Supreme Court noted the potential for automation to produce efficiencies in responding to common enquiries from court users, for example via a chatbot.⁶⁹

63 Submission 14 (Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne).

64 County Court of Victoria, *Factsheet 7: Civil Trial Processes* (Fact Sheet) 1 <<https://www.countycourt.vic.gov.au/files/documents/2018-08/factsheet-7-civil-trial-processes.pdf>>.

65 'Committal Proceedings', *Magistrates Court of Victoria* (Web Page, 3 February 2025) <<https://www.mcv.vic.gov.au/criminal-matters/criminal-offences/committal-proceedings>>.

66 Ibid.

67 Magistrates' Court of Victoria, *Annual Report 2023-2024* (Report, 28 October 2024) 18 <<https://www.mcv.vic.gov.au/news-and-resources/publications/annual-report-2023-2024>>.

68 Consultation 9 (Victorian Civil and Administrative Tribunal).

69 Submission 26 (Supreme Court of Victoria).

- 2.52 A community legal centre representative supported the development of AI chatbots to provide information, noting:

A simple chatbot could help with information about a tribunal, what to do on the day of court, that they would otherwise have to call a lawyer, things they might not have the courage to do. Having a reliable chatbot that could answer that for each jurisdiction would be a valuable service.⁷⁰

- 2.53 AI chatbots are increasingly being used to provide basic legal information and answers to common queries to potential court and tribunal users.⁷¹ For example, Portugal's national courts adopted a large language model AI tool called the *Practical Guide to Justice*.⁷² It can provide people with information about the tools and services within the justice system. It does not create new information but uses natural language processing to interpret user questions and provide responses in ordinary (natural) language. In another example, the UK Ministry of Justice is testing public facing AI applications for call centres to streamline case handling and service delivery.⁷³

Drafting documents

- 2.54 Some lawyers are using GenAI tools to undertake preparatory work. This includes compiling timelines or summarising documents, as well as drafting court documents. A range of GenAI tools are used to support drafting and summarisation. This includes 'off-the-shelf' tools like Perplexity, Smokeball Archie AI, AI Legal Assistant, LexisNexis Lexis+ AI, and Thompson Reuters CoCounsel.⁷⁴
- 2.55 The VLSB+C census suggested that Victorian lawyers are increasingly using AI to prepare a range of documents. Responses indicated lawyers are using AI for contract analysis and drafting of other relevant documents (for example, submissions, formal notices, letters of demand, and in preparation or drafting of court documents).⁷⁵
- 2.56 Representatives of Law Firms Australia noted that large law firms are developing their own AI tools 'to provide drafting assistance, not to draft submissions in full but to suggest themes and help reword or improve language'.⁷⁶ The law firm Allens used Open AI's GPT model to develop their own AI tool 'Airlie' which draws on the firm's data set and knowledge.⁷⁷ Minter Ellison developed an 'Content Generator' which is based on a GPT-4 model and leverages the firm's library of advice and precedents, as well as publicly available legal insights.⁷⁸

70 Consultation 8 (Federation of Community Legal Centres Workshop).

71 For other international examples see Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 8 <<https://docs.un.org/en/A/80/169>>.

72 European Commission for the Efficiency of Justice (CEPEJ), Artificial Intelligence Advisory Board (AIAB), *1st AIAB Report on the Use of Artificial Intelligence (AI) in the Judiciary Based on the Information Contained in the Resource Centre on Cyberjustice and AI* (CEPEJ-AIAB (2024) 4 Rev 5, 28 February 2025) 9.

73 Ministry of Justice (UK), *AI Action Plan for Justice* (Policy Paper, 31 July 2025) [2.4] <<https://www.gov.uk/government/publications/ai-action-plan-for-justice/ai-action-plan-for-justice>>.

74 Consultation 11 (Law Institute of Victoria); F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 3-4.

75 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 4.

76 Consultation 33 (Law Firms Australia).

77 'Allens Launches Enterprise Version of ChatGPT, Airlie', *Allens* (Web Page, 17 August 2023) <<https://www.allens.com.au/insights-news/news/2023/08/allens-launches-enterprise-version-of-chatgpt-airlie/>>; Michael Legg, 'Fake It 'til You Make It – Not with AI and the Courts: Lawyers' Duties as Protections for the Administration of Justice' (2024) 98(9) *Australian Law Journal* 685, 687.

78 Edmund Tadros, 'MinterEllison Sets Target of 80pc Using AI by March', *Australian Financial Review* (online, 16 December 2024) <<https://www.afr.com/companies/professional-services/minterellison-sets-target-of-80pc-using-ai-by-march-20241207-p5kwwk5>>; Michael Legg, 'Fake It 'til You Make It – Not with AI and the Courts: Lawyers' Duties as Protections for the Administration of Justice' (2024) 98(9) *Australian Law Journal* 685, 687.

- 2.57 An increasing number of cases in Australian courts and tribunals have involved the use of AI.⁷⁹ In Victoria, courts have identified hallucinated cases or legislation and inaccurate summaries or references to cases or legislation. This is due to unverified AI use in submissions, including submissions prepared by self-represented litigants⁸⁰ and by lawyers.⁸¹
- 2.58 There is also an increasing number of cases in Australian federal,⁸² and state and territory courts and tribunals,⁸³ where self-represented litigants and lawyers have used AI to produce documents containing fake or inaccurate content.
- 2.59 Internationally, incorrect or hallucinated cases have been detected in materials filed with courts, with examples reported in Canada, England and Wales and the United States.⁸⁴
- 2.60 The Law Library of Victoria is planning to pilot a specialised legal GenAI tool.⁸⁵ It is envisioned that this tool may be made available to Victorian lawyers to help them 'create a timeline of events and identify necessary and any missing documents'.⁸⁶ The Law Library of Victoria intends that by making a specialised legal GenAI tool available it:
- will have efficiency gains for smaller firms and sole practitioners in the slog work. It might also be used to identify changes in contracts, analyse the severity of variance between contracts, then to draft letters.⁸⁷
- 2.61 The Law Library of Victoria is working with the VLSB+C to develop guidance for the use of the tool.⁸⁸
- 2.62 We also heard from the OPP that its lawyers were not currently permitted to use public General Purpose AI tools for professional matters such as drafting legal documents or reviewing evidence related to a criminal case. However, the OPP is interested in 'how legal specific AI tools could be used to assist in preparing draft versions of court documents, which could then be reviewed by OPP solicitors and counsel'.⁸⁹

Administrative functions, filing documents and case management

- 2.63 Once a matter has commenced, a directions hearing can be held. At this stage, a judge can make orders or give directions to the parties with the aim of resolving the issues in dispute as efficiently, quickly and cheaply as possible.⁹⁰ They can identify the real issues in dispute, fix a timetable according to which parties must take certain steps or limit the number of witnesses.⁹¹ There may be opportunities for court staff to use AI in case management functions to assist in filing, scheduling and listing matters.

79 As the number of cases is rapidly expanding, we have sought to provide an illustrative sample. This is not an exhaustive list. Note, in August 2025 Chief Justice Bell identified 24 cases involving AI in Australian courts and tribunals. Chief Justice Bell, 'Change at the Bar and the Great Challenge of Gen AI' (Speech, Address to the Australian Bar Association, Sydney, 29 August 2025) <<https://inbrief.nswbar.asn.au/posts/13dbcd59f076b32283b003eb800f0de/attachment/BellCJ-ABA-20250829.pdf>> 21.

80 *Nikolic & Anor v Nationwide News Pty Ltd & Anor* [2025] VSCA 112, [39]; *Bangholme Investments Pty Ltd v Greater Dandenong CC* [2025] VCAT 290, [14]-[16], [27]; *Page v Long* [2025] VCC 868, [19]-[21]; *Wang v Moutidis* [2025] VCC 1156, [14]-[15]; *Kaur v RMIT* [2024] VSCA 264, [26] n 19.

81 *Director of Public Prosecutions v GR* [2025] VSC 490, [61]-[80].

82 *Luck v Secretary, Services Australia* [2025] FCAFC 26, [14]; *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95; *Murray on behalf of the Wamba Wamba Native Title Claim Group v State of Victoria* [2025] FCA 731; *JML Rose Pty Ltd v Jorgensen (No 3)* [2025] FCA 976, [98]-[105]; *Dayal* [2024] FedCFamC2F 1166.

83 *Chief Executive, Department of Justice v Wise and Wise Real Estate Pty Ltd & Anor* [2025] QCAT 222, [52]-[56]; *May v Costaras* [2025] NSWCA 178, [1]-[17], [49]; *Hanna v Flinders University* [2025] SASC 6, [68]; *Lakaev v McConkey* [2024] TASSC 35, [54]-[58]; *Nash v Director of Public Prosecutions (WA)* [2023] WASC 75, [10]. Note that *Nash* was the first case in Australia where the use of GenAI was exposed according to: Chief Justice Bell, 'Change at the Bar and the Great Challenge of Gen AI' (Speech, Address to the Australian Bar Association, Sydney, 29 August 2025) 21.

84 Some examples include *Hussein v Canada (Immigration, Refugees and Citizenship)* [2025] FC 1060 (CanLII), [34]-[43]; *Ko v Li* [2025] ONSC 2766 (CanLII), [2]-[32]; *Ayinde v London Borough of Haringey* [2025] EWHC 1040, [3]-[16], [66]-[69]; *Mata v Avianca, Inc* 678 F.Supp.3d 443 (2023), [43]; *Loyer v Wayne County Michigan*, (ED Mich, 21-12589, 21 March 2025) slip op 3.

85 Consultation 18 (Law Library of Victoria).

86 *Ibid.*

87 *Ibid.* 3.

88 Submission 26 (Supreme Court of Victoria).

89 Submission 17 (Office of Public Prosecutions).

90 County Court of Victoria, *Factsheet 7: Civil Trial Processes* (Fact Sheet) 1 <<https://www.countycourt.vic.gov.au/files/documents/2018-08/factsheet-7-civil-trial-processes.pdf>>.

91 *Ibid.* 2.

- 2.64 In our consultation paper we discuss that Victoria's courts and VCAT are already using automation for some workflow processes and case management. Victoria's courts have used e-filing systems for electronic submission of documents for over two decades but this process does not use AI.⁹²
- 2.65 We did not hear any evidence that any of Victoria's courts or VCAT have adopted AI to support case management functions. But we did hear that AI might play a role in providing more advanced case management and advice for court and tribunal users in the future.
- 2.66 The County Court stated that while it:
- is not currently exploring AI technology to benefit case management systems or registry functions ... if, in future, the practical and fiscal challenges are overcome and the significant risks with AI technology are mitigated to an acceptable level, the Court may consider the availability of opportunities to enhance the effectiveness and efficiency of case administration.⁹³
- 2.67 In considering future uses of technology, the Supreme Court noted the potential for automation (whether or not involving AI) to produce efficiencies in:
- maintaining court records, including integrity checks
 - document lifecycle management, from creation to archiving or disposal
 - staff meetings, for example note-taking and action item tracking
 - extraction of data for regular data reporting
 - generating reminders or compliance alerts
 - assisting with the efficient allocation of resources like courtrooms
 - populating information into forms.⁹⁴
- 2.68 Other stakeholders also commented on the opportunities for AI to improve case management. Court Services Victoria stated 'AI has the potential to significantly enhance ... case management efficiency'.⁹⁵ The Magistrates' Court saw an opportunity for AI to improve scheduling functions in the future and expressed the view that AI may be able to 'bring a higher level of sophistication to scheduling and rostering and could better maximise judicial resources across the state'.⁹⁶

92 'VCAT Residential Tenancies Hub Login Page', *Victorian Civil and Administrative Tribunal* (Web Page) <<https://online.vcat.vic.gov.au/vol/common/login.jsp>> Notably, VCAT Online began as the first electronic filing system implemented in Australia. See Marco Fabri and Giampiero Lupo, *Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends* (Report, Research Institute on Judicial Systems of the National Research Council of Italy (IRSIG - CNR), 2003) 86; Marco Fabri and Giampiero Lupo, *Some European and Australian E-Justice Services* (Working Paper No 1, Laboratory of Cyberjustice, 19 October 2012) 27-9 <<https://www.cyberjustice.ca/en/publications/some-european-and-australian-e-justice-service/>>.

93 Submission 24 (County Court of Victoria).

94 Submission 26 (Supreme Court of Victoria).

95 Submission 25 (Court Services Victoria).

96 Consultation 15 (Magistrates' Court of Victoria).

2.69 Internationally, courts have used AI to support procedural and administrative functions. In our consultation paper, we discussed the Brazilian VICTOR project, which supports case allocation by using natural language processing to filter appeals.⁹⁷ This tool is expected to reduce the time required for court staff to classify applications for appeal. However, the UN Special Rapporteur on the independence of judges and lawyers has warned that there are risks associated with AI-powered case allocation systems.⁹⁸ As an example, in Poland the use of the Random Allocation of Judges System has faced legal challenge. This is partly because the source code has not been published and there are concerns about the systems vulnerability to error and manipulation.⁹⁹ Particular concerns were raised when in one instance the tool allocated 56 cases to one judge and no cases or just a few cases to other judges.¹⁰⁰

2.70 We also heard that AI could support a range of administrative functions undertaken by lawyers and prosecutorial services. The Federation of Community Legal Centres and Justice Connect told us that AI may support the automation of administrative functions which could reduce the workload of lawyers and prosecutorial services. This may enable more time for advocacy and strategic decision-making.¹⁰¹ For example, representatives of the OPP stated that they are exploring several uses of AI including to support administrative functions such as:

- using tools such as Microsoft CoPilot for general productivity for example to support email, meeting and task management
- embedding AI processes into OPP systems, such as automated workflow, intelligent document processing and creation of email templates within the OPP's case management system
- using AI to integrate, interrogate and report on OPP data and information.¹⁰²

Disclosure and discovery

2.71 Disclosure and discovery are pre-hearing processes in civil matters where parties to a proceeding disclose and make available relevant documents to other parties.¹⁰³ In Victorian criminal matters, there is a comparable process which involves reviewing the brief of evidence that has been prepared by Victoria Police.

Electronic review and discovery

2.72 In our consultation paper we referred to technology-assisted review, a process that uses computer software to electronically classify documents. We discussed how it has been used to undertake large-scale document discovery (such as e-Discovery) in civil law for the past 10 to 15 years.¹⁰⁴

97 Fausto Martin De Sanctis, 'Artificial Intelligence and Innovation in Brazilian Justice' (2021) 59(1) *International Annals of Criminology* 1, 2-3 <https://www.cambridge.org/core/product/identifier/S0003445221000040/type/journal_article>; Pedro Henrique Luz de Araujo et al, 'VICTOR: A Dataset for Brazilian Legal Documents Classification' in Nicoletta Calzolari et al (eds), *Proceedings of the Twelfth Language Resources and Evaluation Conference* (Conference Paper, LREC 2020, 11-16 May 2020) 1449, 1450 <<https://aclanthology.org/2020.lrec-1.181>> VICTOR was named after the Brazilian jurist, academic and Minister of the Supreme Court Victor Nunes Leal. Appeals heard by the Brazilian Supreme Court must meet the jurisdictional requirements set out through Constitutional Amendment 45/04. Commonly in Brazilian jurisprudence, this is referred to as a 'topic of general repercussion'.

98 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 12 <<https://docs.un.org/en/A/80/169>>.

99 Ibid.

100 Ibid 12 [39] n 48 citing Poland, District Court of Warsaw, Case C-159/25 (Rowicz), February 2025.

101 Submission 27 (Federation of Community Legal Centres and Justice Connect).

102 Provided as supplementary information (August 2025) to Consultation 6 (Office of Public Prosecutions).

103 County Court of Victoria, *Factsheet 7: Civil Trial Processes* (Fact Sheet) 2 <<https://www.countycourt.vic.gov.au/files/documents/2018-08/factsheet-7-civil-trial-processes.pdf>>.

104 International Bar Association Alternative and New Law Business Structures Committee, Artificial Intelligence Working Group, *Guidelines and Regulations to Provide Insights on Public Policies to Ensure Artificial Intelligence's Beneficial Use as a Professional Tool* (Report, International Bar Association, 18 September 2024) 32.

- 2.73 The Law Institute of Victoria indicated that lawyers are using 'AI-powered tools for document review—that is, to analyse large sets of case documents, identifying key pieces of evidence and other relevant information'.¹⁰⁵
- 2.74 The VLSB+C census found that of Victorian lawyers using AI, 27.3 per cent are using it for technology assisted review and e-Discovery.¹⁰⁶
- 2.75 We heard some criminal law firms are using AI for digital discovery and to process the increasingly large amounts of digital evidence they are receiving.¹⁰⁷
- 2.76 The criminal law firm Doogue + George has been using an AI-powered platform to analyse vast amounts of digital evidence. The platform uses:
- predictive text to analyse and make connections between vast amounts of text, including emails, text messages, other documents and records, as well as phone transcripts that have been converted into searchable Word files.¹⁰⁸
- 2.77 The OPP identified that a future use of AI may be to analyse criminal briefs of evidence. In 2024, the OPP developed and piloted a bespoke GenAI tool to explore how AI 'can be used to assist in brief analysis'.¹⁰⁹ The OPP reported that one challenge they are facing is the increasing complexity and volume of information in police briefs (often due to the use of telephone and CCTV evidence). This has prompted the OPP to consider how AI could help staff sift through huge amounts of information.¹¹⁰
- 2.78 The pilot was designed to address this by processing and analysing police briefs to create summaries based on the evidence. It then mapped these into a chart of evidence.¹¹¹ The OPP are assessing the effectiveness of the pilot and investigating what opportunities there may be in future to implement such tools in their work. This work is ongoing and representatives of the OPP stated that the OPP is continuing to develop bespoke tools linked to the OPP's knowledge systems to provide secure and context-specific outputs.¹¹²
- 2.79 AI is also being used by Australian law enforcement agencies in the investigative process to analyse vast amounts of electronic evidence.¹¹³ The Australian Federal Police and the Western Australia Police piloted a cloud-based AI platform. It was used to process and analyse large volumes of potential evidentiary data across many data sources including emails, text messages, social media posts, CCTV footage, videos and photos.¹¹⁴

105 Submission 16 (Law Institute Victoria).

106 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 4.

107 Karin Derkley, 'Digital Discovery' (2024) 98(9) *Law Institute Journal* 11 <https://www.liv.asn.au/Web/Law_Institute_Journal_Land_News/Web/LIJ/Year/2024/09September/Digital_discovery.aspx>.

108 Ibid 12.

109 Submission 17 (Office of Public Prosecutions).

110 Ibid.

111 Ibid.

112 Provided as supplementary information (August 2025) to Consultation 6 (Office of Public Prosecutions).

113 Rumpa Dasgupta et al, 'Unlocking Australia's AI Usage in Law Enforcement from Human Involvement Perspective: A Systematic Literature Review' [2025] *AI & Society* 9 <<https://doi.org/10.1007/s00146-025-02350-6>>.

114 Ibid 9–10.

Hearing stage

- 2.80 AI may have several applications in court and tribunal hearings. AI could be used in court rooms to deliver services such as translation and transcription functions. AI might also be used to create pre- and post-hearing summaries to support judicial officers. Additionally, evidence will increasingly involve the use and misuse of AI.

Transcription

- 2.81 Recent advancements in AI transcription tools using natural language processing were discussed in our consultation paper. From our consultations we heard that transcription tools have been piloted in the County Court, the Magistrates' Court and VCAT.

- 2.82 The County Court is trialling a speech-to-text transcription AI tool. During the pilot phase the technology was:

available in four courtrooms (two criminal and two civil). The pilot will conclude at the end of 2025, after which time the Court will undertake a review prior to deciding whether there is value in rolling out the technology across the Court.¹¹⁵

- 2.83 The Magistrates' Court began piloting an AI transcription tool in 2024 to turn audio files into text files:

The program is installed on users' machines, so transcribed data is contained. Approximately 8 judicial officers used this to assist in revision of both their own personal notes and/or when reviewing audio recordings of evidence or submissions. The pilot was about testing the accuracy of audio-to-text transcription. Accuracy was assessed by 38% of the users as being unsatisfactory. A human still needs to identify the speakers in the transcript.¹¹⁶

- 2.84 VCAT has piloted a live transcription tool for use in hearings.¹¹⁷ This involves using AI technology to produce 'instantaneous speech-to-text output of proceedings'.¹¹⁸ VCAT is considering how it might use this functionality in future. It could potentially be used to enable Tribunal Members to see a transcription of what is being said in the hearing room in real time.¹¹⁹

- 2.85 The Supreme Court also noted transcription as a possible future area where automation could produce efficiencies.¹²⁰

- 2.86 The Juries Commissioner suggested that in future, AI transcription may be able to support the participation of jurors by improving the accessibility of courtrooms. He ventured that:

Natural language processing tools could enable individuals who are deaf or hard of hearing to participate in jury service, for example by generating a real-time transcription of court proceedings that a juror with hearing impairments could read and follow along with using a court-provided tablet device.¹²¹

- 2.87 Transcription tools are also being used by some Victorian lawyers. The VLSB+C census found that of Victorian lawyers using AI, 26 per cent were using AI transcription tools, for example to take notes from meetings and calls with clients.¹²²

- 2.88 Internationally, AI speech recognition tools are being used or piloted to create transcriptions of live or recorded court hearings.¹²³

115 Submission 24 (County Court of Victoria).

116 Consultation 15 (Magistrates' Court of Victoria).

117 Consultation 9 (Victorian Civil and Administrative Tribunal).

118 Victorian Civil and Administrative Tribunal, *Annual Report 2023-24* (Report, September 2024) 29.

119 Consultation 9 (Victorian Civil and Administrative Tribunal).

120 Submission 26 (Supreme Court of Victoria).

121 Submission 19 (Juries Commissioner).

122 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 4.

123 See for examples Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 11 <<https://docs.un.org/en/A/80/169>> based on submissions from Colombia, India, Latvia, Lithuania, Malaysia, Spain and the Mongolian Judges' Association.

Translation

2.89 AI is being used by some Victorian lawyers for translation purposes. We heard from the Law Institute of Victoria that some lawyers are already using AI 'to translate client instructions and documents'.¹²⁴

2.90 Some closed AI legal tools such as Harvey can provide translation functions.¹²⁵ These tools are being used by several law firms across Australia.¹²⁶

2.91 AI has also been used by community organisations to provide legal information to clients. We heard that InTouch used the Wordly AI translation tool to provide a legal information session to clients about family violence intervention orders in multiple languages. It was found that the AI tool was more accurate at translating common languages, but had 'mixed results in less common languages, such as Urdu'.¹²⁷

2.92 From our consultations, it appears that AI is not currently being formally used for translation services in Victoria's courts and VCAT. However, the Supreme Court stated that AI is available for limited use by its judicial officers and staff in a range of video meeting platforms for example Teams, Zoom and Webex. In using those platforms AI may be used in:

transcription, captions, and real-time translation, although real-time translation may be disabled on some platforms. The Court notes that transcription by video meeting platforms does not form the official transcript of proceedings. The Court has arrangements with several providers of recording and transcription services, and the transcripts they prepare are the official transcripts. Similarly, AI translation functions are not relied upon, with qualified translators being used in proceedings.¹²⁸

2.93 It is important to note that different tools, and different contractual or subscription arrangements for tools, will provide different levels of assurance about privacy and security. We discuss these considerations in Chapter 3.

2.94 Several stakeholders suggested that the use of AI for translation services could enhance access to justice. The OPP suggested that AI could potentially play a role in translating documents for non-English speaking victims and witnesses in future.¹²⁹ This could significantly enhance access to justice in the community. The Juries Commissioner also identified that AI translation tools could potentially improve accessibility of the justice system if it were used to 'open jury service to individuals who are currently considered ineligible due to being unable to adequately communicate in or understand English'.¹³⁰

124 Submission 16 (Law Institute Victoria).

125 'Harvey – Professional Class AI', *Harvey* (Web Page, 2025) <<https://www.harvey.ai>>; 'How Tiang & Partners Unlocked "Magic" with Harvey for Enhanced Client Service', *Harvey* (Web Page) <<https://www.harvey.ai/customers/tiang-and-partners>>.

126 'ABL Announces New Investment in AI Driven Technology', *Arnold Bloch Leibler* (Web Page) <<https://www.abl.com.au/insights-and-news/abl-announces-new-investment-in-ai-driven-technology/>>; 'Ashurst Launches Global Harvey Partnership Following Extensive Firmwide Trial', *Ashurst* (Web Page, 25 June 2024) <<https://www.ashurst.com/en/who-we-are/our-news-work-market-recognition/ashurst-launches-global-harvey-partnership-following-extensive-firmwide-trial/>>; 'Gilbert + Tobin Launches Harvey AI Platform', *Gilbert and Tobin* (Web Page, 18 February 2025) <<https://www.gtlaw.com.au/news/gilbert-tobin-launches-harvey-ai-platform/>>; 'King & Wood Mallesons Australia Partners with Harvey AI', *King & Wood Malleson* (Web Page, 13 May 2025) <<https://www.kwm.com/au/en/about-us/media-center/king-and-wood-mallesons-australia-partners-with-harvey-ai.html>>; Grace Robbie, "Harvey" AI Rolled out across KWM', *LawyersWeekly* (online, 16 May 2025) <<https://www.lawyersweekly.com.au/biglaw/42108-harvey-ai-rolled-out-across-kwm>>.

127 Consultation 26 (InTouch Multicultural Centre Against Family Violence); This was also supported in the UN Special Rapporteur on the Independence of judges and lawyers report which found 'AI remains significantly less reliable in its translation of some languages, in particular so-called low-resource (including Indigenous) languages, which lack large online data sets or are spoken by relatively small populations'; Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, *Margaret Satterthwaite*, UN Doc A/80/169 (16 July 2025) 11 <<https://docs.un.org/en/A/80/169>>.

128 Submission 26 (Supreme Court of Victoria).

129 Submission 17 (Office of Public Prosecutions). See also Submission 23 (Victorian Bar Association).

130 Submission 19 (Juries Commissioner).

Summaries

- 2.95 Our consultation paper identified that GenAI tools could potentially assist court staff in the preparation of case summaries to assist judicial officers.
- 2.96 VCAT identified one future AI use case they are considering is the preparation of pre- and post-hearing summaries.¹³¹
- 2.97 AI summarisation tools are being considered for use in courts and tribunals.¹³² In Singapore, a GenAI tool has been developed to summarise case documents for Tribunal Magistrates and self-represented litigants in the Small Claims Tribunals. This tool will soon be available to generate summaries that will 'help Tribunal Magistrates prepare for trial, with a good understanding of the facts involved in each dispute'.¹³³
- 2.98 As discussed below from paragraph [2.146] the Coroners Court is testing tools to prepare short summaries about matters for news media organisations. Internationally, Arizona's Supreme Court has developed AI avatars to summarise and explain rulings of the court to the public.¹³⁴

Evidence

- 2.99 Evidence before courts may increasingly involve AI in several ways. For example, AI may be used to produce:
- predictive models of future events (risk assessments)
 - forensic and biometric evidence
 - expert reports
 - affidavits and witness statements
 - audio and visual evidence, including material altered by GenAI (such as records of interview, body camera or dash camera footage). GenAI also introduces the risk of 'deepfake' evidence.

Predictive models

- 2.100 AI may be used by policing agencies to predict where and when future crimes may be likely to occur. Victoria Police's *Strategy for Digitally Transforming Victoria Police 2023–28* states that it will aim to use connected data to make policing decisions. In future, Victoria Police will have '[p]redictive and preventative strategies developed using data and AI-enabled tools and statistical modelling'.¹³⁵
- 2.101 Predictive analytics tools have been used by policing agencies internationally, with some facing criticism. The Gangs Violence Matrix is a predictive analytics tool that was used by London's Metropolitan Police to forecast gang-related violence. It produced a risk rating which informed whether police would exercise their stop and search powers. Use of this tool was subject to legal challenge and was ultimately found to be unlawful because it was racially discriminatory and contravened human rights.¹³⁶

131 Victorian Civil and Administrative Tribunal, *Annual Report 2023-24* (Report, September 2024) 29.

132 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 8 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>> For example, in the UK guidance to judicial office holders identifies that AI is potentially useful for summarising large bodies of text, and for summarising meetings.

133 Singapore Courts, *Media Release: New Generative AI-Powered Case Summarisation Tool to Help Small Claims Tribunals Users* (Media Release, 10 September 2025) <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release--new-generative-ai-powered-case-summarisation-tool-to-help-small-claims-tribunals-users>>.

134 Sejal Govindarao, 'Arizona Supreme Court Taps AI Avatars to Make the Judicial System More Publicly Accessible', *Associated Press (AP)* (online, 19 March 2025) <<https://apnews.com/article/ai-artificial-intelligence-arizona-court-653060178ab9661a3ca6ddc37ac12907>>.

135 Victoria Police, *Strategy for Digitally Transforming Victoria Police 2023–2028* (Report, 2023) 15 <<https://www.police.vic.gov.au/sites/default/files/2024-06/Strategy-for-Digitally-Transforming-Victoria-Police-2023%E2%80%932028.pdf>>.

136 Harriet Green, 'Consciousness over Code: How Judicial Review Can Address Algorithmic Decision-Making in Policing' (2024) 5(8) *York Law Review* 8, 18–19.

Forensic and biometric evidence

- 2.102 AI tools can be used to identify individuals. A facial recognition technology system known as iFace is used by Victoria Police in its investigations to identify criminal suspects.¹³⁷ Victoria Police uses iFace to search for persons of interest against an offender image database.¹³⁸ In 2020, there were 86 police stations across Victoria with iFace facial recognition system capture points which allowed 'for the capture of facial images of offenders during processing, which are then added to the database holdings'.¹³⁹
- 2.103 In Toronto, Canada, police are using NeoFace Reveal by NEC.¹⁴⁰ This system is used in the investigatory stage to compare an image of a criminal suspect with a database of criminal record images. It uses a fixed algorithm to provide images from the database that may match the captured image. Potential matches are examined by a facial recognition analyst and then provided to the investigator.
- 2.104 Victoria Police use the iFace tool retrospectively 'after an incident has occurred, as part of a police investigation'.¹⁴¹ In comparison, live facial recognition technology is the real time immediate identification of individuals, for example through surveillance cameras.¹⁴²
- 2.105 The use of live facial recognition tools has come under scrutiny in several countries. Internationally, South Wales Police faced legal action over the piloting of an automated live facial recognition tool.¹⁴³ The system extracted faces captured on a live feed from a camera and automatically compared them to a watchlist. If a match was detected an alert was produced and a police officer determined whether to intervene. The use of the tool was deemed to be unlawful for breaching privacy rights.¹⁴⁴
- 2.106 The use of facial recognition tools has faced legal action in Australia for breaching privacy rights. For example, the Privacy Commissioner Carly Kind found that Bunnings Group Limited unlawfully interfered with the privacy of the individuals through its facial recognition technology system, which captured the faces of people who entered certain Bunnings stores in Victoria and New South Wales.¹⁴⁵
- 2.107 In addition to facial recognition tools, AI can support investigatory processes in a range of forensic science fields such as forensic pathology. The Australia New Zealand Policing Advisory Agency and the National Institute of Forensic Science Australia New Zealand identified that AI presents 'tremendous opportunities to enhance practice by speeding-up processes and augmenting forensic science decision-making'.¹⁴⁶ The *Research and Innovation Roadmap 2020-25* highlights that research should be conducted as a priority into applying 'AI to support the development of automated workflows (e.g. forensic pattern recognition for fingerprint comparison, and interrogation and analysis of big data for automated intelligence)'.¹⁴⁷ While many AI uses in forensic science are still in the early exploratory phase, several future opportunities are being considered such as the use of AI models to investigate gunshot wounds,¹⁴⁸ or to help forensic experts identify corpses by estimating their age and sex.¹⁴⁹

137 Farrah Tomazin, 'Police Using Facial Recognition Cameras at Victoria's Busiest Stations', *The Age* (online, 25 December 2019) <<https://www.theage.com.au/politics/victoria/cops-using-facial-recognition-cameras-at-victoria-s-busiest-stations-20191220-p53m0e.html>>.

138 Victoria, *Parliamentary Debates*, Legislative Council, 23 April 2020, 1518 (Lisa Neville, Minister for Police).

139 Ibid 1518.

140 'Artificial Intelligence', *Toronto Police Service* (Web Page, 2025) <<https://www.tps.ca/police-reform/artificial-intelligence/>>.

141 Victoria, *Parliamentary Debates*, Legislative Council, 23 April 2020, 1518 (Lisa Neville, Minister for Police).

142 Freddie Booth, 'Unlocking the Power of Retrospective Facial Recognition', *NEC Software Solutions UK* (Web Page, 3 February 2025) <<https://www.necsws.com/article/public-safety/unlocking-the-past-the-power-of-retrospective-facial-recognition>>.

143 *R (on the application of Edward Bridges) v South Wales Police* [2020] EWCA Civ 1058.

144 Ibid [210].

145 *Commissioner Initiated Investigation into Bunnings Group Ltd (Privacy)* [2024] AICmr 230, [273].

146 Australia New Zealand Policing Advisory Agency (ANZPAA) and National Institute of Forensic Science (NIFS), *Research and Innovation Roadmap 2020-2025* (Guidance, 19 October 2020) 2 <<https://www.anzpa.org.au/nifs/services/research-innovation>>.

147 Ibid.

148 Francesco Sessa et al, 'Advancing Diagnostic Tools in Forensic Science: The Role of Artificial Intelligence in Gunshot Wound Investigation—A Systematic Review' (2025) 5(3) *Forensic Sciences* 30 <<https://www.mdpi.com/2673-6756/5/3/30>>.

149 Ioannis Ketsikioulafis et al, 'Artificial Intelligence in Forensic Sciences: A Systematic Review of Past and Current Applications and Future Perspectives' (2024) 16(9) *Cureus* e70363, 11 <<https://www.cureus.com/articles/294368-artificial-intelligence-in-forensic-sciences-a-systematic-review-of-past-and-current-applications-and-future-perspectives>>.

Expert reports

- 2.108 Courts rely on the opinions of a vast range of experts across both criminal and civil law. The use of AI by experts will vary across professions and fields of expertise. Experts may use AI for data analytics and modelling functionalities. Experts may also use GenAI to draft their report to a court or tribunal.
- 2.109 As discussed above, we heard that AI will increasingly be used in forensic evidence. It also has applications in medical diagnostics.¹⁵⁰ Representatives of the Coroners Court said the use of AI by medical experts may arise in several ways in their coronial work such as through the analysis of CT scans and toxicology reports.¹⁵¹
- 2.110 There are many other fields where AI is currently being used or will be used by experts. For example, within the engineering profession AI has been used for decades to optimise designs and analyse vast amounts of data, providing insights that inform decision-making, control systems and lead to more effective engineering solutions.¹⁵² Courts and tribunals may need to consider this information in expert reports in proceedings for planning and environment matters.
- 2.111 Representatives from the Federal Circuit and Family Court noted the potential benefits of AI to support experts in drafting reports more efficiently, if use is appropriate and transparent.¹⁵³
- 2.112 There are also emerging international examples where experts have relied on AI tools to draft reports which have been found to contain hallucinations and inaccuracies.¹⁵⁴

Affidavits and witness statements

- 2.113 Some people are using AI to assist in the production of affidavits, witness and character statements.
- 2.114 Warnings about the use of large language models in preparing character references emerged in *Director of Public Prosecutions v Khan*.¹⁵⁵ Justice Mossop held that little weight could be placed on a character reference from the offender's brother because the reference appeared to be generated by an AI program such as ChatGPT.¹⁵⁶
- 2.115 We also heard from our consultations that AI could provide access to justice benefits in helping self-represented litigants draft statements. A representative of the Federal Circuit and Family Court provided an example about how AI may support access to justice for self-represented litigants in the drafting of submissions (discussed in Chapter 7).¹⁵⁷

Audio and visual evidence and deepfakes

- 2.116 AI systems using 'computer vision' draw information from images, videos and other visual inputs, and can replace visual images with text. This could reduce exposure to harmful and distressing imagery. The removal of distressing images is being considered in the Coroners Court AI pilot, as discussed at paragraph [2.146].

150 Md Faiyazuddin et al, 'The Impact of Artificial Intelligence on Healthcare: A Comprehensive Review of Advancements in Diagnostics, Treatment, and Operational Efficiency' (2025) 8(1) *Health Science Reports* e70312 <<https://doi.org/10.1002/hsr2.70312>>.

151 Consultation 2 (Coroners Court of Victoria).

152 Michael Bell, *The Impact of AI and Generative Technologies on the Engineering Profession* (Report, Engineers Australia, January 2025) 8 <<https://www.engineersaustralia.org.au/publications/impact-ai-and-generative-technologies-engineering-profession>>.

153 Consultation 13 (Federal Circuit and Family Court of Australia).

154 *Kohls v Ellison* (D Minn, 0:24-cv-3754, 10 January 2025). A United States District Judge for the District of Minnesota found that an expert report prepared by an AI expert on the dangers of AI and misinformation ironically contained non-existent citations.

155 *Director of Public Prosecutions (ACT) v Khan* [2024] ACTSC 19.

156 *Ibid* [44].

157 Consultation 13 (Federal Circuit and Family Court of Australia).

- 2.117 AI is being explored for use by the Australian Federal Police in partnership with Monash University through the AI for Law Enforcement and Community Safety Lab. They are investigating how AI can be used in law enforcement, such as helping triage child sexual abuse material or in the identification of firearms.¹⁵⁸ Critically, AI can be used 'to distinguish between real and AI-generated images of child exploitation, enabling accurate victim identification'.¹⁵⁹ In one example, a Tasmanian man was sentenced for two years in prison for uploading and downloading AI-generated child abuse material.¹⁶⁰
- 2.118 International police agencies are implementing AI tools to reduce the time taken to review large amounts of CCTV and to identify objects of interest in CCTV footage. For example, in Canada the Toronto Police Service is testing BriefCam to assist 'investigators in reviewing large video evidence files to identify and flag for specific objects, or recognize specific licence plates through optical character recognition'.¹⁶¹ The BriefCam system flags items of interest and then an investigator reviews the flagged material. The Toronto Police Service's website states it is also piloting an automated license plate recognition tool.
- 2.119 GenAI has created the potential to generate images and audio. With this comes the ability to produce deepfakes. A deepfake is commonly a 'digital photo, video or sound file of a real person that has been edited to create an extremely realistic but false depiction of them doing or saying something that they did not actually do or say'.¹⁶² AI-manipulated audio may end up in courts and tribunals as evidence in a range of criminal and civil matters.¹⁶³

158 Consultation 20 (AI for Law Enforcement and Community Safety Lab).
 159 Rumpa Dasgupta et al, 'Unlocking Australia's AI Usage in Law Enforcement from Human Involvement Perspective: A Systematic Literature Review' [2025] *AI & Society* 9 <<https://doi.org/10.1007/s00146-025-02350-6>>.
 160 Ibid.
 161 'Artificial Intelligence', *Toronto Police Service* (Web Page, 2025) <<https://www.tps.ca/police-reform/artificial-intelligence/>>.
 162 'Deepfake Trends and Challenges - Position Statement', *eSafety Commissioner* (Web Page, 1 September 2024) <<https://www.esafety.gov.au/industry/tech-trends-and-challenges/deepfakes>>.
 163 Federica Celli, 'Deepfakes Are Coming: Does Australia Come Prepared?' (2020) 17(2) *Canberra Law Review* 193, 201-203 <<https://classic.austlii.edu.au/au/journals/CanLawRw/2020/18.pdf>>; Venessa Ninovic, 'Deepfake Crime: Trends, Threats and Implications' (2024) 1(2) *International Journal of Contemporary Intelligence Issues* 41, 43.

Post-hearing stage

2.120 Once all of the evidence has been heard and final addresses have been made in a civil trial, the jury or judge will make a decision (or judgment).¹⁶⁴ In a criminal trial, when a jury returns a verdict of guilty on all or any of the charges, the accused is found guilty.¹⁶⁵ There will then be a sentencing hearing, in which the prosecution and defence make sentencing submissions to the judge, who must impose a sentence on the offender.¹⁶⁶

AI use by judicial officers

2.121 Judicial officers could potentially use different types of AI at different stages of the court process. For example, judicial officers might use AI before hearing a matter to create pre-hearing summaries or chronologies, or during hearings to take notes through AI transcription tools. Judicial officers could potentially use AI post-hearing, for example, to improve the readability of draft judgments.

2.122 AI tools may be used to support judicial officers in performing their core role as decision makers. But AI tools could also be used to influence or even substitute judicial decision-making. We heard that risks increased depending on how close the use of AI was to judicial decision-making.¹⁶⁷

2.123 From our research there is no evidence that AI is currently being used by judicial officers in Victoria to influence or form the reasons for judicial decisions. This aligns with the AI guidelines released by the Supreme Court and County Court which state:

AI is not presently used for decision making nor used to develop or prepare reasons for decision because it does not engage in a reasoning process nor a process specific to the circumstance before the court.¹⁶⁸

2.124 We heard that where AI is currently being used or considered by judicial officers in Victoria, it is as an aid to support judicial officers in performing their decision-making function. For example, the Supreme Court noted that AI is currently available to support judicial officers and staff in limited ways:

- legal research databases such as LexisNexis, AustLII, and WestLaw. AI is used in natural language search, citation analysis (for example, NoteUp in AustLII), and Rules as Code chatbot functions. While some databases feature more advanced AI functions these are not currently available, however, the Law Library of Victoria is arranging trial access for librarians to evaluate LexisNexis' and Westlaw's advanced AI products
- Microsoft tools (Word, Editor, Windows features). AI is used in grammar/spell check, text prediction, cybersecurity (for example spam detection)
- other tools (for example, Adobe, Google search, Siri). AI is used in optical character recognition, autocomplete and virtual assistance.¹⁶⁹

2.125 There appears to be some interest in exploring further opportunities to support judicial decision-making. For example, the Coroners Court is considering a tool for developing chronologies (see paragraph [2.146]). VCAT has stated that they are considering future uses of AI, for example in the drafting of orders.¹⁷⁰ The Supreme Court has identified that in future:

164 County Court of Victoria, *Factsheet 7: Civil Trial Processes* (Fact Sheet) 4 <<https://www.countycourt.vic.gov.au/files/documents/2018-08/factsheet-7-civil-trial-processes.pdf>>

165 County Court of Victoria, *Factsheet 6: Criminal Trial Process* (Fact Sheet) 3 <<https://www.countycourt.vic.gov.au/files/documents/2020-07/factsheet-6-criminal-trial-process.pdf>>

166 Ibid.

167 Consultation 7 (Judicial College of Victoria).

168 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) 4, para 12 <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>

169 Submission 26 (Supreme Court of Victoria).

170 Victorian Civil and Administrative Tribunal, *Annual Report 2023-24* (Report, September 2024) 29.

There may be potential for the use of AI to assist judicial officers and associates in the organisation and efficient consideration of submissions and evidence. That includes the use by those persons of the 'off-the-shelf' tool currently being evaluated by the Law Library for tasks such as the comparison of witness statements and outlines. Potential uses include tagging and filtering eCourtbooks and transcripts, allowing for efficient searching.¹⁷¹

- 2.126 Chief Justice Gageler stated that the High Court plans to run a pilot in 2025 to test closed AI programs for editing judgments, but this tool will 'not generate the original script; it is to improve' judgments.¹⁷²
- 2.127 There are emerging international examples of judicial officers using AI tools in a supportive capacity. For example, in England and Wales judges were recently given access to a private AI tool, Microsoft's 'Copilot Chat' which could be used in several ways, such as to summarise large bodies of text.¹⁷³
- 2.128 In Singapore, the judiciary is exploring and testing how AI may be used to assist judicial officers and judges for:
- Legal research—for example, in Singapore the public AI tool Pair Search is a search engine with legislative parliamentary and Supreme Court data which allows for 'some analysis of Supreme Court Judgements [sic]'.¹⁷⁴
 - Querying and interrogating submissions and evidence by allowing judges to pose questions and obtain answers from submissions and evidence.¹⁷⁵
 - Drafting judgments—experiments so far have been described as 'quite promising', however, there are several issues still to be worked through to ensure public trust and confidence in judges is maintained.¹⁷⁶
- 2.129 Germany has also implemented a range of judicial support tools. In the Higher Regional Court, in Stuttgart Germany, an AI assistant called 'OLGA' has been created to support judges and clerks to 'sift through documents faster and use specific search criteria to find relevant information from various documents'.¹⁷⁷ It can help 'analyse and classify applications based on the facts'.¹⁷⁸ OLGA has been used for:
- thousands of pending cases at the Higher Regional Court in Stuttgart, concerning false exhaust emission values for diesel engines. The complaints often exceed 100 pages, making the use of OLGA a practical solution for saving costs and achieving greater efficiency.¹⁷⁹

171 Submission 26 (Supreme Court of Victoria).

172 Michael Pelly, 'An Interview with Chief Justice Gageler', *Westlaw Updates & Alerts* (Web Page, 8 July 2025) 3 <<https://support.thomsonreuters.com.au/product/westlaw-precision-australia/updates-alerts/interview-chief-justice-gageler>>.

173 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 8 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

174 Justice Aidan Xu, 'The Use (and Abuse) of AI in Court' (Speech, IT Law Series 2025: Legal and Regulatory Issues with Artificial Intelligence, 30 July 2025) [16] <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-aidan-xu-speech-at-the-it-law-series-2025-legal-and-regulatory-issues-with-artificial-intelligence>>; 'Introduction to Pair Search', *Pair Search* (Web Page, 8 August 2024) <<https://search-pair.guides.gov.sg>>

175 Justice Aidan Xu, 'The Use (and Abuse) of AI in Court' (Speech, IT Law Series 2025: Legal and Regulatory Issues with Artificial Intelligence, 30 July 2025) [17] <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-aidan-xu-speech-at-the-it-law-series-2025-legal-and-regulatory-issues-with-artificial-intelligence>>.

176 Ibid [13]-[25].

177 Eckhard Schindler, 'Judicial Systems Are Turning to AI to Help Manage Vast Quantities of Data and Expedite Case Resolution', *IBM* (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>>.

178 European Commission for the Efficiency of Justice (CEPEJ), Artificial Intelligence Advisory Board (AIAB), *1st AIAB Report on the Use of Artificial Intelligence (AI) in the Judiciary Based on the Information Contained in the Resource Centre on Cyberjustice and AI* (CEPEJ-AIAB (2024) 4 Rev 5, 28 February 2025) 8.

179 Ibid.

- 2.130 There are some examples in international jurisdictions where judicial officers have stated that they have used AI in their judgment. For example, in *Ross v United States Justice Deahl* in the dissenting judgment stated, when considering what was common knowledge he had asked ChatGPT, 'Is it harmful to leave a dog in a car, with the windows down a few inches, for an hour and twenty minutes when it's 98 degrees outside?'¹⁸⁰ However, Justice Deahl ultimately clarified that, 'I do not mean to suggest that ChatGPT is a good proxy for what is, and isn't, common knowledge—it is definitely not.'¹⁸¹
- 2.131 In our consultation paper we discussed that in 2023, Justice Chitkara of the Punjab and Haryana High Court in India relied on ChatGPT to conduct jurisprudence research on matters of cruelty and bail to support a determination around bail in 2023.¹⁸² Subsequently, in 2024, Justice Sharma of the Manipur High Court disclosed use of ChatGPT for conducting research to determine relevant service conditions of the Village Defence Force in the state.¹⁸³
- 2.132 Some international jurisdictions have adopted AI tools for judicial officers that go beyond supportive applications to include tools that can advise, influence and even replace judicial decision-making. Our consultation paper discussed the Mexican Expertus system, which advises judicial members on specific administrative matters,¹⁸⁴ and the 'Smart Court' system in China, which has integrated AI to automate judgments in some cases.¹⁸⁵
- 2.133 Italy and Spain have also introduced AI initiatives which may lead to AI being used to influence, guide or replace aspects of judicial decision-making. In 2022, Spain introduced legislation—the *Ley de Eficiencia Digital (Digital Efficiency Act)*—to support the development of 'AI algorithms that could generate a total or partial draft that might constitute the foundation or support of a judicial decision'.¹⁸⁶
- 2.134 Another example is the Predictive Algorithms and Judicial Decisions project in Genoa, Italy, which is designed to explore 'predictive algorithms for judicial decisions in a civil liability framework'.¹⁸⁷ Other examples include an AI-based tool used by local courts in Argentina to issue rulings in tax foreclosure cases.¹⁸⁸
- 2.135 Further discussion on the types of AI tools that may be made available to judicial officers is contained in Chapter 8.

180 *Ross v United States* 331 A.3d 220 (DC 2025), 236.

181 *Ibid* 236 n 4.

182 Niyati Sahoo, 'The Future of AI in Legal Practice: Trends and Predictions' (2024) 7(1) *International Journal of Law Management & Humanities* 2194, 2195, n 4 <<https://ijlmh.com/paper/the-future-of-ai-in-legal-practice-trends-and-predictions/>> citing; *Jaswinder Singh v State of Punjab and other* [2023] PHHC 044541.

183 Kaye Lushington, 'Manipur HC Uses ChatGPT: Potential and Challenges of AI as Court's Assistant', *International Business Times* (online, 24 May 2024) <<https://www.ibtimes.co.in/manipur-hc-uses-chatgpt-potential-challenges-ai-courts-assistant-868441>>; *Md Zakir Hussain vs State of Manipur & Others* [2024] High Court of Manipur WPC/70/2023.

184 Tania Sourdin, 'Judge v Robot? Artificial Intelligence and Judicial Decision-Making' (2018) 41(4) *University of New South Wales Law Journal* 1114, 1119 <<https://www.unswlawjournal.unsw.edu.au/article/judge-v-robot-artificial-intelligence-and-judicial-decision-making/>>.

185 Changqing Shi, Tania Sourdin and Bin Li, 'The Smart Court – A New Pathway to Justice in China?' (2021) 12(1) *International Journal for Court Administration* 9–10 <<https://iacajournal.org/articles/10.36745/ijca.367>>.

186 Tania Sourdin, 'Replacing, Supporting or Enhancing Judges? Judge AI Considerations for the Future' (2024) 98(9) *Australian Law Journal* 696, 697 n 9 citing J Martin Pastor, 'Retos de la justicia Digital' in F Conde, J Banacloche and F Gascón Inchausti (eds), *Logros y retos de la justicia civil en España* (Tirant lo Blanch Madrid, 2023).

187 *Ibid* 697.

188 International Bar Association Alternative and New Law Business Structures Committee, *Artificial Intelligence Working Group, Guidelines and Regulations to Provide Insights on Public Policies to Ensure Artificial Intelligence's Beneficial Use as a Professional Tool* (Report, International Bar Association, 18 September 2024) 22.

AI in bail and sentencing

- 2.136 In Australia, risk assessments are undertaken to inform various decision points in the justice system such as:
- bail
 - sentencing
 - within the prison system to classify offenders, identify risks and needs
 - parole
 - post-sentencing in relation to high-risk offenders in consideration of applications for extended supervision orders and continuing detention orders.¹⁸⁹
- 2.137 Statistical or actuarial risk prediction tools 'are statistical models used to predict the probability of a particular future outcome'.¹⁹⁰ They can be used by forensic psychologists and psychiatrists to prepare risk assessments to support judicial officers to examine the risk of an offender committing future harm.¹⁹¹ These tools 'assign numerical values to risk and (in more recent versions) protective factors and then weigh and combine the item ratings to produce risk scores'.¹⁹²
- 2.138 Most risk assessment tools used in the criminal justice system 'are usually much simpler than the deep neural networks used in many modern artificial intelligence systems' but can still be described as 'basic forms of AI' and have faced similar challenges.¹⁹³
- 2.139 As an example, the Violent Extremism Risk Assessment-Version 2 Revised (VERA-2R) has been used in Australia to assess the risk of offenders committing terrorism offences. However, concerns about the validity and opaqueness of VERA-2R have been raised in part because it is not openly accessible to the public.¹⁹⁴
- 2.140 In our consultation paper we looked at international examples of predictive tools used to support sentencing and bail decisions. One example was the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), which is an algorithm used in the US to conduct risk assessments to support sentencing.¹⁹⁵ Another international example is the development of a prototype AI in Papua New Guinea to predict sentence ranges to inform judges' decision-making.¹⁹⁶ If adopted, the tool could potentially be used to provide judges with a sentence range based on history and context.
- 2.141 In July 2025, the UK Ministry of Justice announced they are investigating how AI can be used to support better decisions 'through predictive and risk-assessment models (e.g. predicting the risk of violence in custody)'.¹⁹⁷ In a press release the Ministry of Justice stated that:

189 Carolyn McKay, 'Predicting Risk in Criminal Procedure: Actuarial Tools, Algorithms, AI and Judicial Decision-Making' (2020) 32(1) *Current Issues in Criminal Justice* 22, 27 <<https://doi.org/10.1080/10345329.2019.1658694>>; Bernadette McSherry and Piers Gooding, 'Predicting the Risk of Future Terrorism: Lessons for Mental Health Experts from the Benbrika Case' (2024) 31(3) *Journal of Law and Medicine* 515 <<https://search.informit.org/doi/10.3316/informit.T2025032900005701743337296>>; Adrian Staples, 'Some Reservations about the Use of Artificial Intelligence in Sentencing Decisions' (2020) 94(12) *Australian Law Journal* 949, 959 <<https://search.informit.org/doi/10.3316/agispt.20210119042390>>.

190 Law Commission of Ontario, *The Rise and Fall of AI and Algorithms in American Criminal Justice: Lessons for Canada* (Report, October 2020) 15 <<https://www.lco-cdo.org/wp-content/uploads/2020/10/Criminal-AI-Paper-Final-Oct-28-2020.pdf>>.

191 Bernadette McSherry and Piers Gooding, 'Predicting the Risk of Future Terrorism: Lessons for Mental Health Experts from the Benbrika Case' (2024) 31(3) *Journal of Law and Medicine* 515, 515 <<https://search.informit.org/doi/10.3316/informit.T2025032900005701743337296>>.

192 Ibid.

193 Law Commission of Ontario, *The Rise and Fall of AI and Algorithms in American Criminal Justice: Lessons for Canada* (Report, October 2020) 15 <<https://www.lco-cdo.org/wp-content/uploads/2020/10/Criminal-AI-Paper-Final-Oct-28-2020.pdf>>.

194 Bernadette McSherry and Piers Gooding, 'Predicting the Risk of Future Terrorism: Lessons for Mental Health Experts from the Benbrika Case' (2024) 31(3) *Journal of Law and Medicine* 515, 517 <<https://search.informit.org/doi/10.3316/informit.T2025032900005701743337296>>.

195 In *State of Wisconsin v Loomis*, Justice Bradley found that the use of COMPAS by a court was permissible if the judge was notified of the tool's limitations and as long as the judge made the final sentence determination. Notably, the Wisconsin Supreme Court held that a trial court's use of COMPAS in sentencing did not violate the defendant's right to due process even though the methodology was not able to be disclosed to the court, nor the defendant: *State of Wisconsin v Loomis* 371 Wis.2d 235 (2016).

196 'Introducing PNG Judges to Artificial Intelligence Techniques', *Manukau Institute of Technology* (Web Page, 25 March 2025) <<https://www.manukau.ac.nz/news-stories/introducing-png-judges-to-artificial-intelligence-techniques/>>.

197 Ministry of Justice (UK), *AI Action Plan for Justice* (Policy Paper, 31 July 2025) '2. Embed AI across the justice system' <<https://www.gov.uk/government/publications/ai-action-plan-for-justice/ai-action-plan-for-justice>>.

AI will be used across prisons, probation and courts to better track offenders and assess the risk they pose with tools that can predict violence behind bars, uncover secret messages sent by prisoners and connect offender records across different systems.¹⁹⁸

2.142 However, significant risks have been associated with the use of predictive risk assessments. For example, COMPAS faced criticism because of the proprietary nature of the tool and because it was found to have systematised racial bias against African Americans.¹⁹⁹ To prevent these risks the EU has prohibited the use of AI systems that carry out risk assessments 'with regard to natural persons in order to assess the likelihood of their offending or to predict the occurrence of an actual or potential criminal offence based solely on profiling them or on assessing their personality traits and characteristics.'²⁰⁰

2.143 As we also consider in Chapter 3, the use of AI for bail or sentencing decisions was considered high risk by stakeholders.²⁰¹ Community legal centre representatives raised concerns that, 'Risk assessment tools, when AI is applied to calculate bail risk, etc, can result in racial profiling.'²⁰²

2.144 But the OPP considered that there may be a future role for AI to play in the analysis of sentencing data. For example, AI could help to provide sentencing indications based on previous sentencing ranges and decisions. We heard from representatives of the OPP that:

Judges have in the past indicated that they require more guidance on sentencing from both counsel, and this could be a helpful area for AI. This might be lower risk because the cases are publicly available, and you could go back to the source material to check ... The benefit for developing guidance on sentencing ranges goes back to AI's ability to sift through huge volumes of material ... There may be benefit in revising the process of what we do with AI, including sentencing. We can use AI to rethink our processes rather than trying to replicate what we have always done.²⁰³

2.145 As an example of potential use of AI in sentencing, the Judicial Commission of NSW has developed the Judicial Information Research System.²⁰⁴ This contains sentencing statistics that judicial officers can use as a 'guide to the pattern of sentences imposed by courts for criminal offences'.²⁰⁵ This tool does not currently use AI but rather provides quantitative statistics based on prior criminal court decisions to help judicial officers understand what the average sentencing range may be for a particular offence. In future, there may be opportunities to apply AI to this sort of database to detect patterns and provide insights into sentencing trends and averages.

198 Ministry of Justice (UK) and Shabana Mahmood MP, Lord Chancellor and Secretary of State for Justice, *AI to Stop Prison Violence Before It Happens* (Press Release, 31 July 2025) <<https://www.gov.uk/government/news/ai-to-stop-prison-violence-before-it-happens>>.

199 Julia Angwin et al, 'Machine Bias', *ProPublica* (online, 23 May 2016) <<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>>; Jeff Larson et al, 'How We Analyzed the COMPAS Recidivism Algorithm', *ProPublica* (online, 23 May 2016) <<https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm>>.

200 *Regulation (EU) 2024/1689 (Artificial Intelligence Act)* [2024] OJ L 2024/1689, recital 42.

201 Submissions 20 (Deakin Law Clinic), 23 (Victorian Bar Association).

202 Consultation 8 (Federation of Community Legal Centres Workshop).

203 Consultation 6 (Office of Public Prosecutions).

204 'Judicial Information Research System (JIRS)', *Judicial Commission of New South Wales* (Web Page) <<https://www.judcom.nsw.gov.au/judicial-information-research-system-jirs>>.

205 *Ibid.*

Coroners Court of Victoria AI Pilot

- 2.146 The Coroners Court is investigating how AI may be used to improve processes and the wellbeing of coroners and staff. This Court is unique because unlike the rest of Victoria's courts which are adversarial, it is an inquisitorial jurisdiction. This means coroners are actively involved in the investigation of cases.²⁰⁶ Cases also do not follow the formal adversarial structure outlined in the earlier section of this chapter.
- 2.147 One of the Court's roles is to independently investigate deaths in Victoria. The Court is set up 'to discover the circumstances that contributed to a death, not apportion blame, or determine criminal guilt or civil liability'.²⁰⁷
- 2.148 A significant part of the work of this Court is to engage with families and friends who are experiencing loss, and the coroners and court staff undertake very confronting work.²⁰⁸ Because of this, a significant focus of the Court is to support staff wellbeing and ensure that the risk of vicarious trauma to coroners and staff is understood and managed.²⁰⁹
- 2.149 In 2023–24, the Court initiated a pilot program to investigate, 'workflows and tasks within the Court that could be improved or enhanced with the assistance of AI and Generative AI'.²¹⁰ The initial pilot involved the testing of prototypes by court staff and confirmed the feasibility for AI tools to be used in the court's work.
- 2.150 Following this, the Court is now in the process of undertaking concept testing of a range tools. This includes tools to:
- a) automatically redact images in coronial briefs and/or provide a written summary describing the contents of an image to reduce exposure to distressing images
 - b) prepare a short summary about the nature of a matter for provision to news media organisations for informing them about upcoming hearings
 - c) manage and organise voluminous records, and assist in the preparation of chronologies of key events from a coronial brief and other source materials
 - d) extract key data that enables the coroner to interrogate the coronial brief, identify evidentiary gaps and efficiently locate relevant evidence.²¹¹
- 2.151 The Court has indicated that the tools have the 'potential to significantly reduce staff exposure to confronting material and time spent on repetitive administrative tasks'.²¹² The Court is focused on ensuring the tools aid and support staff and coroners in a way that ensures human oversight and judicial independence is maintained.²¹³
- 2.152 The Court has stated that:
- All pilot testing will occur on a secure, isolated system with no private data passed to other entities. The Court continues to evaluate the project's effectiveness, exploring responsible expansion while prioritising ethical considerations and stakeholder engagement throughout the process.²¹⁴
- 2.153 In future, if these tools are expanded and formally adopted, the Court will have to grapple with how to maintain privacy and data protection of any information entered into the tools. Another key implementation piece will be to consider how they communicate the development and use of these tools to the public. The Court has taken steps to support transparency by publishing information about its AI pilot program on the Court website.²¹⁵

206 Coroners Court of Victoria, *Annual Report 2023-2024* (Report, October 2024) 11 <<https://www.coronerscourt.vic.gov.au/sites/default/files/2024-11/CCOV%20Annual%20Report%202023-2024.pdf>>.

207 Ibid.

208 Ibid 12.

209 Ibid 41.

210 Submission 4 (Coroners Court of Victoria).

211 Ibid.

212 Coroners Court of Victoria, *Annual Report 2023-2024* (Report, October 2024) 15 <<https://www.coronerscourt.vic.gov.au/sites/default/files/2024-11/CCOV%20Annual%20Report%202023-2024.pdf>>.

213 Submission 4 (Coroners Court of Victoria).

214 'Technology at the Court', *Coroners Court of Victoria* (Web Page) <<https://www.coronerscourt.vic.gov.au/technology-court>>.

215 Ibid.

CHAPTER
03

Opportunities and risks of AI

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3. Opportunities and risks of AI

Overview

- This chapter explores opportunities and risks of AI for Victoria's courts and tribunals.
- AI offers opportunities to increase access to justice and improve court efficiency and innovation.
- Different types of AI used within court and tribunal settings carry different types and scales of risk. Risk also varies depending on who is using AI and in what context.
- New opportunities and risks will emerge as AI evolves. Over time, AI will be applied to more diverse tasks which may increase the risk of unintended consequences. Understanding the AI lifecycle and AI's potential risks is fundamental to using it safely.
- Given the pace of technological change, a significant risk for Victoria's courts and tribunals is the risk of not acting.

Opportunities of AI for courts and tribunals

- 3.1 Our consultation paper identified potential opportunities for using AI in courts and tribunals. Below we discuss stakeholder views on opportunities, building on examples discussed in Chapter 2. While some opportunities were based on existing pilots, some were hypothetical or based on AI uses in other court jurisdictions.
- 3.2 In submissions and consultations (see Table 1), we heard about a range of opportunities relating to:
 - access to justice
 - improved court efficiency and innovation.

Table 1: Identified opportunities for AI use in courts and tribunals

Access to justice	Improved court efficiency and innovation
<ul style="list-style-type: none"> • providing timely access to court information for court users • responding to common inquiries • directing court users around court facilities • reducing court processing times • facilitating online hearings • increasing access for people in remote and rural settings • helping people navigate the justice system • simplifying legal information and providing information in accessible plain English formats • improving user experiences of the jury system • providing automated support to court users, through prepopulating forms, compliance alerts or automated messages • providing alternative solutions to disputes.¹ 	<ul style="list-style-type: none"> • automating administrative tasks, such as document processing, court scheduling and case triaging • improving scheduling and rostering • enhancing case management systems for court records, lists and documents • improving electronic filing and extraction of data from filed documents • providing timely access to transcripts and audio recordings • assisting in the review of case data • providing more effective data reporting and data analytics • generating case summaries and chronologies • improving search functionalities to identify relevant documents and materials • assisting in the analysis and review of documents • assisting in drafting and proofing documents such as emails and file notes • conducting legal research • reducing vicarious trauma for staff.²

3.3 The use of AI in a safe way is an important precondition for realising opportunities. The Coroners Court said:

The Coroners Court is optimistic about the opportunities that AI presents to assist the Court in achieving its objectives and purposes. If managed safely and responsibly, AI tools have the potential to greatly enhance the administration of justice and improve outcomes for families and the wider community.³

Enhancing access to justice

3.4 AI offers significant opportunities for increasing access to justice for court and tribunal users.⁴ There are significant opportunities to enhance access to justice if AI tools are safely implemented (see Table 1).⁵

1 Submissions 6 (Victorian Legal Services Board and Commissioner), 7 (Dr Natalia Antolak-Saper), 12 (Victoria Legal Aid), 14 (Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne), 16 (Law Institute Victoria), 19 (Juries Commissioner), 23 (Victorian Bar Association), 24 (County Court of Victoria), 26 (Supreme Court of Victoria), 27 (Federation of Community Legal Centres and Justice Connect). Consultations 5 (Victorian Bar Association), 15 (Magistrates' Court of Victoria), 24 (Victorian Advocacy League for Individuals with Disability), 30 (Eastern Community Legal Centre).

2 Submissions 4 (Coroners Court of Victoria), 8 (Damian Curran), 12 (Victoria Legal Aid), 16 (Law Institute Victoria), 19 (Juries Commissioner), 23 (Victorian Bar Association), 24 (County Court of Victoria), 25 (Court Services Victoria), 26 (Supreme Court of Victoria), 27 (Federation of Community Legal Centres and Justice Connect). Consultations 4 (Victorian Legal Services Board and Commissioner), 6 (Office of Public Prosecutions), 25 (Microsoft).

3 Submission 4 (Coroners Court of Victoria).

4 Submissions 6 (Victorian Legal Services Board and Commissioner), 8 (Damian Curran). Consultations 26 (inTouch Multicultural Centre Against Family Violence), 35 (Victoria Legal Aid).

5 See also Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite*, UN Doc A/80/169 (16 July 2025) 7–9, 11 <<https://docs.un.org/en/A/80/169>>.

- 3.5 As the Federation of Community Legal Centres and Justice Connect highlighted:
- With rising unmet legal need and millions of people missing out on the legal help they need each year, the benefits of ethically adopting and using AI tools to improve access to justice for people who interact with Victoria's legal system, courts and tribunals far outweighs any potential risks.⁶
- 3.6 Courts could implement AI to improve participation in proceedings. There may be opportunities to use AI tools to translate hearings and information into other languages, including sign language.⁷ However, we were also cautioned about possible accuracy risks, as discussed later at paragraph [3.54]. We were frequently told that AI may be able to help self-represented litigants by providing access to advice and assistance in preparing well-structured court documents.⁸ A recent Victorian study noted at least 78 per cent of respondents with legal needs did not receive necessary assistance, indicating a substantial gap in legal service provision.⁹
- 3.7 Using AI for online dispute resolution as part of court processes could also potentially improve access to justice by:
- reducing the cost of resolving matters for litigants through lower legal expenses and court fees
 - decreasing the time taken to resolve disputes, noting significant caseloads and backlogs in courts and tribunals
 - simplifying the justice system with clearer pathways to resolve disputes
 - giving court users more choice and autonomy in how they resolve their disputes
 - increasing access for people in remote or rural areas with virtual court services, such as through translation services that are accessible remotely.¹⁰

Improving court efficiency and innovation

- 3.8 If implemented safely and responsibly, AI may assist courts and lawyers to provide services and perform functions efficiently and effectively (see Table 1).¹¹ As we consider in Chapter 9, safe design depends on consultation with affected court users.
- 3.9 We heard that court operations could benefit from greater productivity and efficiency by automating some administrative or repetitive tasks.¹² The use of AI could also support court and tribunal functions. However, outcomes will only be improved if the use of AI is consistent with judicial values and principles. The Special Rapporteur on the independence of judges and lawyers stated any decision to use or implement AI tools in a judicial system should be made by judges.¹³
- 3.10 The introduction of AI tools may in some instances lead to improved outcomes for court employees. The Coroners Court highlighted that AI could help to reduce vicarious trauma for staff by reducing exposure to large volumes of distressing images.¹⁴ The Juries Commissioner highlighted that the use of AI may also help minimise the impact of vicarious trauma on jurors.¹⁵

6 Submission 27 (Federation of Community Legal Centres and Justice Connect).

7 Submission 19 (Juries Commissioner).

8 Submissions 7 (Dr Natalia Antolak-Saper), 24 (County Court of Victoria). Consultation 13 (Federal Circuit and Family Court of Australia).

9 Nigel J Balmer et al. *Everyday Problems and Legal Need* (The Public Understanding of Law Survey (PULS) Vol.1, Victorian Law Foundation, 2023) 10 <<https://puls.victorialawfoundation.org.au/publications/everyday-problems-and-legal-need>>.

10 Submissions 6 (Victorian Legal Services Board and Commissioner), 14 (Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne).

11 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 11–12 <<https://docs.un.org/en/A/80/169>>.

12 Submissions 4 (Coroners Court of Victoria), 26 (Supreme Court of Victoria), 27 (Federation of Community Legal Centres and Justice Connect). See also Conference of State Court Administrators (COSCA), *Generative AI & the Future of the Courts: Responsibilities and Possibilities* (Policy Paper, National Center for State Courts, August 2024) <<https://www.ncsc.org/resources-courts/generative-ai-future-courts>>.

13 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 19 <<https://docs.un.org/en/A/80/169>>.

14 Submission 4 (Coroners Court of Victoria). Also Submission 25 (Court Services Victoria). The role of AI in reducing staff access to traumatic materials was also referred to by Consultation 6 (Office of Public Prosecutions).

15 Submission 19 (Juries Commissioner).

3.11 Opportunities to improve court efficiency should not come at the cost of quality of outcomes for court users. The Australian Human Rights Commission advised that ongoing monitoring and periodic review should occur after an AI system has been deployed. This should include regular testing for human rights compliance.¹⁶ To realise efficiencies of an AI tool, courts should assess potential benefits and use data to measure if these are achieved.¹⁷ However, the Productivity Commission has observed that productivity gains resulting from investment in AI may be challenging to measure.¹⁸

3.12 There are opportunities for the use of AI by legal practices, which may have an indirect benefit on court efficiency.¹⁹ As stated by representatives of the Office of Public Prosecutions:

The use of AI technology has the potential to lead to enhanced productivity and efficiency across legal practice. It is anticipated that the effective use of AI will help cut through the administrative burden on staff and enable solicitors to spend more time engaging in in-depth legal analysis and decision making.²⁰

3.13 More generally, AI-enabled technologies represent an opportunity for Victoria's courts and tribunals to consider how the court system can operate in innovative ways. Representatives of the VLSB+C commented on those involved in the justice system who would prefer to hold onto traditional court practices:

We need to be more sophisticated than that because we will end up replicating current processes rather than thinking about how the justice system can work more effectively for more people.²¹

3.14 The UN's Special Rapporteur on the independence of judges and lawyers considered:

States should identify, from the perspective of those experiencing justice problems, data-driven goals for the advancement of human rights. In some circumstances, AI may offer a path to achieving such goals. However, AI should not be adopted without careful assessment of its potential harms, whether these can be eliminated, and whether there are other solutions that are less risky and have fewer negative climate impacts.²²

3.15 If courts are to harness the future opportunities of AI, it will require planning and vision. Examples from England and Wales, Singapore, and New Zealand indicate how technological innovation can be guided by coordinated planning. This includes:

- The AI Action Plan for Justice, released in 2025 by the UK Ministry of Justice, which seeks to coordinate and drive the responsible adoption of AI across the justice system.²³ Prior to this, the England and Wales' HM Courts and Tribunal Service Reform Programme sought to transform court use of technology through digital solutions that included a single case management system for all criminal courts, and the installation of video technology in 70 per cent of all courtrooms.²⁴

16 Sophie Farthing et al, *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 92 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>.

17 Submission 10 (Castan Centre for Human Rights Law, Monash University).

18 Productivity Commission, *Interim Report - Harnessing Data and Digital Technology* (Report, August 2025) 105 <<https://www.pc.gov.au/inquiries/current/data-digital/interim>>.

19 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 12 <<https://docs.un.org/en/A/80/169>> suggested AI may be used to support the right to assistance from a lawyer working in legal aid or a community legal centre by reducing their time engaged in administrative matters.

20 Submission 17 (Office of Public Prosecutions).

21 Consultation 4 (Victorian Legal Services Board and Commissioner).

22 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 19 <<https://docs.un.org/en/A/80/169>>.

23 Ministry of Justice (UK), *AI Action Plan for Justice* (Policy Paper, 31 July 2025) <<https://www.gov.uk/government/publications/ai-action-plan-for-justice/ai-action-plan-for-justice>>.

24 HM Courts & Tribunals Service, 'Modernising Courts and Tribunals: Benefits of Digital Services', *GOV.UK* (Web Page, 24 March 2025) <<https://www.gov.uk/guidance/modernising-courts-and-tribunals-benefits-of-digital-services>>.

- The Courts of the Future Taskforce established by the Supreme Court of Singapore in 2016, which led to the development of a five-year blueprint and the implementation of initiatives relating to online disputes, virtual hearings and AI.²⁵
- The *Digital Strategy for Courts and Tribunals* introduced by the Chief Justice of New Zealand, which has a governance framework involving periodic review by the Heads of Bench.²⁶

3.16 Adequate funding and planning will be required to effectively implement AI technologies.²⁷ As the Supreme Court noted:

The Court is currently operating in a resource constrained environment. While this encourages consideration of the use of new technologies to produce efficiencies, it also severely limits the Court's ability to investigate, acquire, and implement new technologies.²⁸

Risks of AI for courts and tribunals

3.17 In consultations and submissions, we heard about possible risks of using AI in Victoria's courts and tribunals. These include risks identified in our consultation paper:

- **breaches of information security and data privacy** through disclosure of personal and sensitive information by individuals or courts
- **lack of explainability** and the opacity of AI technology
- **bias** when the use of an AI tool does not demonstrate fairness, such as with data (algorithmic) and systems (reinforcing) bias
- **inaccuracy**, hallucinations, mistakes, deepfakes and 'scheming'
- **reduced quality of outputs** due to courts' overreliance on new technologies
- **access to justice challenges** for people with lower digital skills or experiencing barriers to justice.

3.18 We also heard concerns about additional risks:

- **improper use** resulting in overreliance on AI, inaccurate use and potential infringement of human rights
- **lack of transparency** about how AI is used and who is responsible for its use
- **intellectual property infringements** resulting from the use of copyrighted information to develop and train AI models
- **undermining of professional obligations** if lawyers and experts do not understand the limitations of AI use
- **loss of skills and capabilities**, through deskilling or replacement of roles
- **devaluing human connection** where AI tools replace opportunities for court users to interact with court staff, widening the digital divide and increasing distrust in the justice system
- **adverse environmental impacts** due to increased energy consumption for AI systems

25 Supreme Court Singapore, *A Future-Ready Judiciary: Supreme Court Annual Report 2017* (Report, 2017) 7 <https://www.judiciary.gov.sg/docs/default-source/publication-docs/supreme_court_annual_report_2017.pdf?sfvrsn=bf9a0805_4>; Justice Ming explored potential AI uses in pre hearing and post hearing phases based on the Technology Blueprint developed by the Taskforce: Justice Chua Lee Ming, 'Technology in the Singapore Courts' (Speech, 2nd China-ASEAN Justice Forum, Singapore, 8 June 2017) 5, 6.

26 Office of the Chief Justice of New Zealand, *Digital Strategy for Courts and Tribunals* (Report, March 2023) 32 <<https://www.courtsofnz.govt.nz/assets/7-Publications/2-Reports/20230329-Digital-Strategy-Report.pdf>>.

27 Submissions 16 (Law Institute Victoria), 27 (Federation of Community Legal Centres and Justice Connect). See also Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 10 <<https://docs.un.org/en/A/80/169>>.

28 Submission 26 (Supreme Court of Victoria).

- **reduced trust in the justice system** and the potential for damage to institutional trust in courts
- **risks during implementation** due to poor design or poorly planned procurement and management of AI tools.

3.19 Building on risks identified in our consultation paper, we heard more about how these risks could impact Victoria's justice system. These risks are addressed below.

Information security and data privacy risks

- 3.20 We heard extensive concerns about information security and data privacy risks. The Office of the Victorian Information Commissioner suggested these risks are not new but are exacerbated by the speed and scale in which AI technologies analyse information and generate outputs.²⁹
- 3.21 Victoria's courts and tribunals deal with large volumes of confidential, sensitive and personal information. As discussed in our consultation paper, the risk to privacy will depend on what information is shared with AI tools, and how information is processed and stored. Additional risks arise because AI may use data in ways that were not consented to when that data was collected.³⁰ Security of data is also a concern, cyberattacks or tampering with algorithms could disrupt or influence court operations.³¹ In recognition of these risks, the Canadian Judicial Council guidance recommends that courts implement information security systems and protocols, giving special consideration to AI-specific threats.³²
- 3.22 The Supreme Court highlighted that the use of AI also requires consideration of other legislative obligations that restrict the publication or disclosure of information.³³
- 3.23 Privacy concerns were also raised in relation to human rights. The Human Rights Law Centre stated that the use of AI technologies may infringe on the right to privacy.³⁴ The Castan Centre cautioned that privacy risks were evident in even 'innocuous' administrative functions, like case management and scheduling. This is because uploading personal information onto an AI tool 'creates open-ended risks'.³⁵ Privacy risks that arise from the use of AI is considered later in this chapter and in Chapter 5.
- 3.24 We also heard that entering personal information into public General Purpose AI tools like ChatGPT could breach client confidentiality obligations.³⁶ The Federation of Community Legal Centres and Justice Connect stated, 'Confidential or privileged information should never be entered into public tools'.³⁷
- 3.25 Our consultation paper outlined an example where the Office of the Victorian Information Commissioner found a child protection worker had used ChatGPT to draft a report for the Children's Court.³⁸ This was found to be a serious breach of information privacy principles because it involved inputting personal and sensitive information into ChatGPT.³⁹
- 3.26 The use of speech-to-text transcription or translation tools also raises concerns about client confidentiality, privacy and information and data security—particularly where tools use biometric data to identify individual speakers.⁴⁰

29 Submission 5 (Office of the Victorian Information Commissioner).

30 Submissions 5 (Office of the Victorian Information Commissioner), 6 (Victorian Legal Services Board and Commissioner).

31 Submission 5 (Office of the Victorian Information Commissioner). Consultations 20 (AI for Law Enforcement and Community Safety Lab), 30 (Eastern Community Legal Centre).

32 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 8

<<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

33 Submission 26 (Supreme Court of Victoria).

34 Submission 15 (Human Rights Law Centre).

35 Submission 10 (Castan Centre for Human Rights Law, Monash University).

36 Submissions 5 (Office of the Victorian Information Commissioner), 20 (Deakin Law Clinic).

37 Submission 27 (Federation of Community Legal Centres and Justice Connect).

38 Office of the Victorian Information Commissioner (OVIC), *Investigation into the Use of ChatGPT by a Child Protection Worker* (Report, September 2024) <<https://ovic.vic.gov.au/regulatory-action/investigation-into-the-use-of-chatgpt-by-a-child-protection-worker/>>.

39 Ibid.

40 Andreas Nautsch et al, 'Preserving Privacy in Speaker and Speech Characterisation' (2019) 58 *Computer Speech & Language* 441, 448 <<https://www.sciencedirect.com/science/article/pii/S0885230818303875>>.

- 3.27 These risks are acute for Victoria's courts and tribunals where there are:
- large volumes of cases⁴¹
 - confidential, sensitive and personal information relating to litigants, defendants and victims⁴²
 - data management practices that rely on third-party services.⁴³
- 3.28 Numerous stakeholders noted that with or without AI, there are always risks with the court management of data.⁴⁴ A representative of Cenitex added that information and privacy risks have not changed. Risk is 'just amplified by the likelihood of it occurring when using AI tools'.⁴⁵
- 3.29 Opportunities for Victoria's courts and tribunals to address information security, privacy and data management risks are addressed in Chapter 9.

Lack of explainability

- 3.30 'Explainability' refers to whether a person can explain how an AI model or tool makes predictions or decisions. AI models are often too complex to easily explain.⁴⁶ This is significant for courts and tribunals because procedural fairness requires that people can understand and challenge a decision, or the evidence informing a decision.
- 3.31 In our consultation paper, we highlighted two common barriers to explaining AI systems:
- the technical 'black box'—many GenAI systems create responses based on statistical calculations so complex that the reasoning for those responses cannot be followed by humans
 - commercial barriers—some developers seek to protect commercial advantage by refusing to explain the underlying methods of their AI products to courts.
- 3.32 There are also risks for judicial decision makers when using AI, as they have a duty to provide reasons for decisions. This is discussed further in Chapter 8.⁴⁷

Bias

- 3.33 In our consultation paper, we drew a distinction between data and systems bias. Data (or algorithmic) bias involves bias based on how an AI model has been trained, which can result from a developer's use of selective or unrepresentative data.⁴⁸ Systems (or reinforcing) bias occurs when an AI model uses data that may be correct but reinforces existing underlying societal bias in the data, amplifying negative societal effects over time.⁴⁹ This is particularly concerning because bias can be reinforced over time,⁵⁰ and there is no straightforward technical solution to address the risk.

41 Consultation 6 (Office of Public Prosecutions).

42 Submission 24 (County Court of Victoria). Consultation 28 (Monash University Digital Law Group).

43 Consultations 14 (Office of the Victorian Information Commissioner), 21 (Public Record Office Victoria).

44 Submissions 10 (Castan Centre for Human Rights Law, Monash University), 12 (Victoria Legal Aid). Consultations 14 (Office of the Victorian Information Commissioner), 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses).

45 Consultation 29 (Cenitex).

46 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 12–13 <<https://docs.un.org/en/A/80/169>>.

47 *Wainohu v New South Wales* [2011] HCA 24; (2011) 243 CLR 181, [54].

48 Shahriar Akter et al, 'Algorithmic Bias in Data-Driven Innovation in the Age of AI' (2021) 60 *International Journal of Information Management* 102387, 1–2 <<https://linkinghub.elsevier.com/retrieve/pii/S0268401221000803>>; Sophie Farthing et al, *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 106–7 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>; Paul W Grimm, Maura R Grossman and Gordon V Cormack, 'Artificial Intelligence as Evidence' (2021) 19(1) *Northwestern Journal of Technology and Intellectual Property* 9, 42.

49 Centre for Data Ethics and Innovation (CDEI), *Review into Bias in Algorithmic Decision-Making* (Report, November 2020) 26, 28, 100 <https://assets.publishing.service.gov.uk/media/60142096d3bf7f70ba377b20/Review_into_bias_in_algorithmic_decision-making.pdf>.

50 Submissions 15 (Human Rights Law Centre), 18 (Northern Community Legal Centre).

- 3.34 A significant concern raised in submissions and consultations was the negative impact of bias on the right to a fair hearing. Human rights bodies and community legal centres expressed strong concerns about the risk of bias in AI-supported decision making where there is no human oversight.⁵¹
- 3.35 The Human Rights Law Centre said systemic bias was one of the primary risks associated with the use of AI in judicial processes.⁵²
- 3.36 The Northern Community Legal Centre described systemic bias in judicial decision-making as a primary concern, noting historical issues with discrimination and systemic bias in courts.⁵³

Inaccuracy

- 3.37 Inaccuracy from responses generated by AI tools was a common concern. GenAI tools can provide outputs in a wide range of contexts that are incorrect or made up (hallucinated) but appear convincing, ranging from the summarisation of information in a legal document to legal research.⁵⁴
- 3.38 Public General Purpose AI tools such as ChatGPT are more likely to be inaccurate compared to models that:
- a) are trained on subject-specific material (for example legal or organisation-specific large language models)
 - b) draw on subject-specific material (for example General Purpose AI Models connected to a subject-specific database).⁵⁵
- 3.39 The second method is also called 'Retrieval Augmented Generation', which involves legal documents being stored on dedicated databases, allowing responses to be tailored to specific jurisdictions and legal contexts.
- 3.40 Although this is a common way to address inaccuracy, it is important to recognise it does not eliminate these risks.⁵⁶ A Stanford University study highlighted that claims about the reliability of some specialised AI products are overstated and that dedicated legal tools can hallucinate on a regular basis. Legal research tools assessed in the study were found to have hallucination rates between 17 and 33 per cent, compared to 43 per cent for GPT-4.⁵⁷

51 Submissions 12 (Victoria Legal Aid), 15 (Human Rights Law Centre). Consultation 8 (Federation of Community Legal Centres Workshop).

52 Submission 15 (Human Rights Law Centre).

53 Submission 18 (Northern Community Legal Centre).

54 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 9, 16–17 <<https://docs.un.org/en/A/80/169>>.

55 Submission 14 (Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne); Ivan Belcic and Cole Stryker, 'RAG vs. Fine-Tuning', *IBM Think* (Web Page, 14 August 2024) <<https://www.ibm.com/think/topics/rag-vs-fine-tuning>>. For a comparison of the impact of fine-tuning vs Retrieval Augmented Generation techniques on accuracy see Oded Ovadia et al. 'Fine-Tuning or Retrieval? Comparing Knowledge Injection in LLMs' (2024) arXiv:2312.05934v3 [cs.AI] <<http://arxiv.org/abs/2312.05934>>.

56 Michael Legg, Vicki McNamara and Armin Alimardani, 'The Promise and the Peril of the Use of Generative Artificial Intelligence in Litigation' (2025) 48(4) *University of New South Wales Law Journal* (forthcoming) 5–6 <<https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/UNSWLRS/2025/23.html>>.

57 Varun Magesh et al. 'Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools' (2025) 22(2) *Journal of Empirical Legal Studies* 216, 216, 225 <<https://onlinelibrary.wiley.com/doi/10.1111/jels.12413>>.

3.41 There are now many examples where hallucinated AI responses have been submitted to courts in Australia.⁵⁸ In these instances, court submissions have included:

- cases that do not exist
- quotes that exist but are attributable to different cases
- cases that exist but consider different subject matter or have no relevance to the proceeding.⁵⁹

This includes a Victorian matter where fake citations directly caused delays to the conclusion of a criminal hearing before the Supreme Court.⁶⁰

3.42 Different AI tools may produce inaccurate responses depending on:

- the type of AI and whether it is suitable for the task⁶¹
- whether the AI model has continued to be updated⁶²
- whether the AI model has been the subject of malicious attacks that impact its behaviour or capability⁶³
- the type of data the AI model was trained on (for example, there may be jurisdictional differences if a tool was trained on legal cases from the United States rather than from Australian jurisdictions)⁶⁴
- whether the tool draws on specialised material, such as legal databases to respond to queries (also known as Retrieval Augmented Generation)⁶⁵
- the detail, context and refinement of the prompt.⁶⁶

3.43 A research study conducted at the University of Wollongong found that although undergraduate papers generated by GenAI did not outperform the average law student, use of well-designed prompts and fine-tuning enabled some GenAI papers to exceed the average score.⁶⁷ Overall, the study noted that GenAI was particularly weak at critical analysis tasks but newer models showed greater accuracy and more structured reasoning.⁶⁸

58 See *Dayal* [2024] FedCFamC2F 1166; *Murray on behalf of the Wamba Wamba Native Title Claim Group v State of Victoria* [2025] FCA 731; *Bottrill v Graham & Anor (No 2)* [2025] NSWDC 221; *Nikolic & Anor v Nationwide News Pty Ltd & Anor* [2025] VSCA 112; *Wang v Moutidis* [2025] VCC 1156; *Kaur v RMIT* [2024] VSCA 264; *Luch v Secretary, Services Australia* [2025] FCAFC 26; *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95; *Handa & Mallick* [2024] FedCFamC2F 957; *JNE24 v Minister for Immigration and Citizenship* [2025] FedCFamC2G 1314; *JML Rose Pty Ltd v Jorgensen (No 3)* [2025] FCA 976; *Finch v Heat Group Pty Ltd* [2024] FedCFamC2G 161; *May v Costaras* [2025] NSWCA 178; *Weedbrook v Partlin* [2024] QDC 194; *Ivins v KMA Consulting Engineers Pty Ltd & Ors* [2025] QIRC 141; *QWYN and Commissioner of Taxation* [2025] ARTA 83; *LJY v Occupational Therapy Board of Australia* [2025] QCAT 96; *Lakraev v McConkey* [2024] TASSC 35; *Director of Public Prosecutions (ACT) v Khan* [2024] ACTSC 19.

59 Chief Justice Bell, 'Change at the Bar and the Great Challenge of Gen AI' (Speech, Address to the Australian Bar Association, Sydney, 29 August 2025) 22–29 <<https://inbrief.nswbar.asn.au/posts/13dbc1d59f076b32283b003eb800f0de/attachment/BellCJ-ABA-20250829.pdf>>.

60 *Director of Public Prosecutions v GR* [2025] VSC 490, [72]–[80].

61 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 9 <<https://docs.un.org/en/A/80/169>>; Tambiama Madiaga, *General-Purpose Artificial Intelligence* (PE 745.708, European Parliamentary Research Service, March 2023) 2; Jose Hernandez-Orallo, 'Caveats and Solutions for Characterising General-Purpose AI' in *ECAI 2024* (IOS Press, 2024) 2, 3; Jan Kocoń et al, 'ChatGPT: Jack of All Trades, Master of None' (2023) 99 *Information Fusion* 101861, 2 <<https://www.sciencedirect.com/science/article/pii/S156625352300177X>>.

62 Donald R Polaski and Marissa J Brienza, 'Managing AI: Risks and Opportunities' (2023) 12(7) *PM World Journal*, 6–7 <<https://pmworldjournal.com/article/managing-ai-risks-and-opportunities>>.

63 Anthony M Barrett et al, *AI Risk-Management Standards Profile for General-Purpose AI Systems (GPAIS) and Foundation Models* (Report, Center for Long-Term Cybersecurity, UC Berkeley, November 2023) 7, 12 <<https://cltc.berkeley.edu/wp-content/uploads/2023/11/Berkeley-GPAIS-Foundation-Model-Risk-Management-Standards-Profile-v1.0.pdf>>.

64 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 9 <<https://docs.un.org/en/A/80/169>>; Xinyue Shen et al, 'In ChatGPT We Trust? Measuring and Characterizing the Reliability of ChatGPT' (2023) arXiv:2304.08979v2 [cs.CR]:1-21, 12 <<http://arxiv.org/abs/2304.08979>>.

65 Varun Magesh et al, 'Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools' (2025) 22(2) *Journal of Empirical Legal Studies* 216 <<https://onlinelibrary.wiley.com/doi/10.1111/jels.12413>>.

66 Jan Kocoń et al, 'ChatGPT: Jack of All Trades, Master of None' (2023) 99 *Information Fusion* 101861, 12–15 <<https://www.sciencedirect.com/science/article/pii/S156625352300177X>>; Xinyue Shen et al, 'In ChatGPT We Trust? Measuring and Characterizing the Reliability of ChatGPT' (2023) arXiv:2304.08979v2 [cs.CR]:1-21, 2, 7 <<http://arxiv.org/abs/2304.08979>>.

67 Armin Alimardani, 'Generative Artificial Intelligence vs. Law Students: An Empirical Study on Criminal Law Exam Performance' (2024) 16(2) *Law, Innovation and Technology* 777, 808 <<https://doi.org/10.1080/17579961.2024.2392932>>.

68 Ibid 811–813.

- 3.44 The risk of inaccuracy was a common concern for Victoria's courts and tribunals when considering the potential future use of AI tools. Representatives of the Magistrates' Court stated that the focus of their transcription pilot (discussed in Chapter 2) was to test the accuracy of speech-to-text transcription services.⁶⁹
- 3.45 In addition, we heard about AI 'scheming', where certain AI tools strategically pursue goals that diverge from the intentions set by human developers.⁷⁰ This can involve a wide range of misleading behaviours, ranging from misrepresenting a response to disabling an oversight mechanism to avoid being shut down.⁷¹ An OpenAI report outlined that this risk is evident in major AI systems, which are good at exploiting loopholes in their reward structure, much like humans.⁷²

Lack of reliability

- 3.46 We heard about risks related to reliability and validity. While related to accuracy, these concerns focus on whether the AI tool works as intended and performs reliably and consistently over time.⁷³ One risk we heard about was 'model drift', where training for an AI model is not updated and becomes inaccurate or redundant over time.⁷⁴
- 3.47 We heard that reliability risks may be addressed through in-house and third-party testing, such as testing consistency of outputs with repeated questions or across different situations.⁷⁵ We heard that testing reliability of an AI tool is necessary, particularly within the context of a criminal hearing.⁷⁶ But the complexity of AI models can raise challenges for demonstrating reliability.
- 3.48 The accuracy and reliability of court-managed AI tools also depends on establishing and maintaining well-structured, well-governed data management systems, consistent with existing data management standards.⁷⁷ Some stakeholders said that reliability and accuracy required testing from independent third parties.⁷⁸ We also heard that adequate resourcing for the ongoing maintenance of internal data is important.⁷⁹

Access to justice challenges

- 3.49 While some stakeholders saw opportunities to enhance access to justice, there were also concerns that AI use in courts and tribunals may impede access to justice.
- 3.50 Different groups and communities face barriers in their access or ability to use digital technologies. This is commonly referred to as the 'digital divide'. Digital exclusion is influenced by socio-economic factors such as income and education.⁸⁰ This digital divide is also more likely to be experienced by older Australians, First Nations peoples, people with disability and people living in rural or regional areas.⁸¹

69 Consultation 15 (Magistrates' Court of Victoria).

70 Submission 11 (Dr Armin Alimardani).

71 Alexander Meinke et al, 'Frontier Models Are Capable of In-Context Scheming' (2025) arXiv:2412.04984v2 [cs.AI]:1-72, 7-9 <<http://arxiv.org/abs/2412.04984>>.

72 'Detecting Misbehavior in Frontier Reasoning Models', *OpenAI* (Web Page, 10 March 2025) <<https://openai.com/index/chain-of-thought-monitoring/>>.

73 National Institute of Standards and Technology (NIST), *Artificial Intelligence Risk Management Framework (AI RMF 1.0)* (NIST AI 100-1, U.S. Department of Commerce, January 2023) 13 <<http://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>>.

74 Consultation 23 (Dr Fabian Horton). See also Donald R Polaski and Marissa J Brienza, 'Managing AI: Risks and Opportunities' (2023) 12(7) *PM World Journal* 6-7 <<https://pmworldjournal.com/article/managing-ai-risks-and-opportunities>>.

75 Consultation 20 (AI for Law Enforcement and Community Safety Lab).

76 Consultation 5 (Victorian Bar Association).

77 Submission 10 (Castan Centre for Human Rights Law, Monash University). Consultations 14 (Office of the Victorian Information Commissioner), 20 (AI for Law Enforcement and Community Safety Lab), 21 (Public Record Office Victoria).

78 Submissions 15 (Human Rights Law Centre), 20 (Deakin Law Clinic). Consultation 20 (AI for Law Enforcement and Community Safety Lab).

79 Consultation 14 (Office of the Victorian Information Commissioner). Also Consultation 23 (Dr Fabian Horton) who emphasised you cannot 'set and forget' organisational supports for AI systems, for instance, to compensate against the risk of 'model drift'.

80 Julian Thomas et al, *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2018* (Report, RMIT University, Centre for Social Impact, and Telstra, 2018) 14 <<http://apo.org.au/node/184091>>.

81 Julian Thomas et al, *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2023* (Report, ARC Centre of Excellence for Automated Decision-Making and Society, RMIT University, Swinburne University of Technology, and Telstra, 2023) 7, 9 <https://www.digitalinclusionindex.org.au/wp-content/uploads/2023/07/ADI-2023-Summary_Report_Final-1.pdf>; Julian Thomas et al, *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2018* (Report, RMIT University, Centre for Social Impact, and Telstra, 2018) 15-16 <<http://apo.org.au/node/184091>>.

- 3.51 A recurring concern from stakeholders was that the introduction of AI by Victoria's courts and tribunals could increase an existing digital divide. The Federation of Community Legal Centres and Justice Connect cautioned that, 'The digital divide remains a challenge, as individuals with limited digital literacy or access may struggle to use AI-powered legal tools effectively'.⁸²
- 3.52 The Northern Community Legal Centre highlighted that in Australia:
- Those who are lower socioeconomic, living in public housing, those over the age of 75 years old, live remotely, and/or are First Nations people are experiencing stagnant or deteriorating levels of access. These cohorts represent some of those with the highest legal need and high levels of justiciable problems, including family violence.⁸³
- 3.53 The Northern Community Legal Centre represent some of those with the lowest access or capacity to use technology.⁸⁴ It told us that many victim-survivors dealing with family violence are living in unstable accommodation and do not have access to a reliable internet connection.⁸⁵
- 3.54 We heard that many AI tools are not currently sophisticated enough to negotiate diverse migrant cultural contexts, and that this is often compounded by educational disadvantage.⁸⁶ While transcription and translation tools offer opportunities to enhance access to justice, we were also cautioned that certain translation tools:
- are underpinned by the English language and cannot properly translate deep cultural differences⁸⁷
 - fail to understand vernacular use of different languages⁸⁸
 - may provide translations that do not reflect culturally sensitive experiences of trauma.⁸⁹
- 3.55 A separate access to justice challenge relates to unequal access to high quality AI tools.⁹⁰ This issue touches upon the right to a fair hearing and the 'equality of arms' principle, which requires parties to a legal proceeding to be 'treated in a manner ensuring that they have a procedurally equal position to make their case during the whole course of the trial'.⁹¹ Judge Vytautas Mizaras and others have considered that the use of AI may impact on this principle. This could include when certain parties are able to gain an advantage through their special access to technological expertise.⁹²
- 3.56 There is a disparity in access to AI tools, with many parts of the legal sector lacking resources to develop AI systems.⁹³ Some stakeholders stated that AI tools available to self-represented litigants, smaller legal practices and community legal centres are likely to be less precise and reliable than those available to better-resourced organisations.⁹⁴

82 Submission 27 (Federation of Community Legal Centres and Justice Connect).

83 Submission 18 (Northern Community Legal Centre).

84 Ibid.

85 Ibid.

86 Consultation 26 (inTouch Multicultural Centre Against Family Violence). See also Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 11 <<https://docs.un.org/en/A/80/169>>.

87 Consultation 16 (Maria Dimopoulos AM and Eva Hussain).

88 Ibid.

89 Submission 18 (Northern Community Legal Centre).

90 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 13–14 <<https://docs.un.org/en/A/80/169>>.

91 See *Ragg v Magistrates Court of Victoria* [2008] VSC 1; (2008) 18 VR 300, [45]–[66] where the Supreme Court of Victoria outlined the nature and scope of the principle of 'equality of arms' as an aspect of the right to a fair hearing and related it to Article 14 of the International Covenant on Civil and Political Rights; See also Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 4–5 <<https://docs.un.org/en/A/80/169>>; Kalliopi Terzidou, 'The Use of Artificial Intelligence in the Judiciary and Its Compliance with the Right to a Fair Trial' (2022) 31(3) *Journal of Judicial Administration* 154, 162 <<https://search.informit.org/doi/10.3316/agispt.20220401064756>>.

92 Vytautas Mizaras et al, 'AI Judges in Courts of the Future and the Right to a Fair Trial' (forthcoming) in *Cambridge Handbook of AI and Technologies in Courts* (Cambridge University Press, 2026) 7.

93 Submission 27 (Federation of Community Legal Centres and Justice Connect).

94 Submissions 11 (Dr Armin Alimardani), 16 (Law Institute Victoria), 27 (Federation of Community Legal Centres and Justice Connect).

3.57 In contrast, several larger law firms have developed in-house AI tools or invested in specialised legal-specific AI services.⁹⁵ While these specialised and often closed tools can reduce inaccuracies and information security concerns, the potential increase in the digital divide is apparent. We explore differences in the risk profiles between these types of AI later in this chapter.

Improper use

3.58 Unintended misuse of AI commonly arises when people over rely on AI tools, believing the technology to be infallible and not understanding the limitations.⁹⁶ As a result they fail to review AI outputs before relying on them.

3.59 Courts and tribunals need to consider not only risks embedded in the AI tool but also the person using the tool. As the Law Institute of Victoria stated:

Members of the LIV note that a potential risk not identified in the Consultation Paper flows from the assumption that all users possess equal knowledge, skills, and understanding of AI technology, and thus the expectation that generative AI outputs will be consistent for all users, irrespective of their level of sophistication. This assumption is unrealistic and may result in unintended consequences.⁹⁷

3.60 While unintended misuse of AI tools is a risk that applies to all court users, we heard specific concerns about self-represented litigants relying too heavily on AI tools like ChatGPT.⁹⁸ This could lead to inaccurate information provided to courts, which may 'create further burdens in workload for courts'⁹⁹ by increasing court time and resources spent reviewing documents and slowing timely access to justice.¹⁰⁰

3.61 In Queensland, District Court Judge Porter commented that while self-represented litigants do not have the same professional duties as lawyers, this does not give them 'a free pass to uncritically adopt the output of AI models' and that there may come a time where a litigant who is reckless in the accuracy of their filings may be found to be in contempt of court.¹⁰¹

3.62 GenAI use could also result in more and longer AI-generated court documents 'flooding'¹⁰² the court system.

95 'Allens Launches Enterprise Version of ChatGPT, Airlie', *Allens* (Web Page, 17 August 2023) <<https://www.allens.com.au/insights-news/news/2023/08/allens-launches-enterprise-version-of-chatgpt-airlie/>>; 'Ashurst Launches Global Harvey Partnership Following Extensive Firmwide Trial', *Ashurst* (Web Page, 25 June 2024) <<https://www.ashurst.com/en/who-we-are/our-news-work-market-recognition/ashurst-launches-global-harvey-partnership-following-extensive-firmwide-trial/>>; Ry Crozier, 'King & Wood Mallesons Australia to Give Gen AI Tool to 1200 Lawyers', *iTNews* (online, 15 May 2025) <<https://www.itnews.com.au/news/king-wood-mallesons-australia-to-give-gen-ai-tool-to-1200-lawyers-617184>>; 'Maddocks Partners with AI Legal Platform Cicero', *Maddocks* (Web Page, 29 January 2025) <<https://www.maddocks.com.au/insights/maddocks-partners-with-ai-legal-platform-cicero>>; Microsoft News Centre, 'Briefing the Future: MinterEllison's AI-Powered Legal Leap Helps Employees Save Five Hours of Their Workday' (Web Page, 7 December 2023) <<https://news.microsoft.com/en-au/features/briefing-the-future-minterellisons-ai-powered-legal-leap-helps-employees-save-five-hours-of-their-workday/>>; Angelica Snowden, "'Pushing Generative AI to Its Limits": How Top Australian Law Firms Are Leaning into AI', *The Australian* (online, 11 May 2025) <<https://www.theaustralian.com.au/business/technology/pushing-generative-ai-to-its-limits-how-top-australian-law-firms-are-leaning-into-ai/news-story/13404fb0e1a58045faee2758c3a4d682>>; Edmund Tadros, 'MinterEllison Sets Target of 80pc Using AI by March', *Australian Financial Review* (online, 16 December 2024) <<https://www.afr.com/companies/professional-services/minterellison-sets-target-of-80pc-using-ai-by-march-20241207-p5kwwk5>>.

96 Submissions 11 (Dr Armin Alimardani), 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice). Consultation 23 (Dr Fabian Horton).

97 Submission 16 (Law Institute Victoria).

98 Submissions 7 (Dr Natalia Antolak-Saper), 11 (Dr Armin Alimardani).

99 Submission 10 (Castan Centre for Human Rights Law, Monash University).

100 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice). Consultation 35 (Victoria Legal Aid). Conference of State Court Administrators (COSCA), *Generative AI & the Future of the Courts: Responsibilities and Possibilities* (Policy Paper, National Center for State Courts, August 2024) 10 <<https://www.ncsc.org/resources-courts/generative-ai-future-courts>> In *LJY v Occupational Therapy Board of Australia* [2025] QCAT 96, Deputy President Dann commented that the use of GenAI leading to the inclusion of inaccurate information in documents filed 'wastes the time for Tribunal members in checking and addressing these hallucinations. It causes a significant waste of public resources'; at [26]. In *Bottrill v Graham & Anor (No 2)* [2025] NSWDC 221, Judge Gibson commented that the use of GenAI had led to court time being wasted: at [68]. In *May v Costaras* [2025] NSWCA 178, Chief Justice Bell stated 'The respondent's written and oral submissions were a cogent demonstration that the use of artificial intelligence by non-legally trained users is likely to add to the cost and complexity of legal proceedings without appreciable benefit': at [49].

101 *Weedbrook v Partlin* [2024] QDC 194, [41]; The potential for litigants to be found in contempt of court when recklessly relying on AI has also been considered in international cases, as outlined in a recent speech by Chief Justice Bell: Chief Justice Bell, 'Change at the Bar and the Great Challenge of Gen AI' (Speech, Address to the Australian Bar Association, Sydney, 29 August 2025) 31 <<https://inbrief.nswbar.asn.au/posts/13dbc1d59f076b32283b003eb800f0de/attachment/BellCJ-ABA-20250829.pdf>>.

102 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

- 3.63 Improper uses can also occur with the production of fake evidence, such as where synthetic 'deepfake' content is created by court users.¹⁰³ Chapter 5 considers this topic in further depth.
- 3.64 There were also concerns about improper use by lawyers if limitations of AI are not well understood. The overreliance by lawyers on AI tools can result in poorer quality or inaccurate submissions to courts, delays in resolving matters and other negative impacts upon clients.¹⁰⁴ Risks arise where lawyers and others using AI do not appropriately review and verify AI-generated outputs. This is considered further in Chapters 5 and 10. Some people expressed concerns that AI software vendors were not appropriately alerting lawyers to the risks of inaccuracy from specialised AI legal tools.¹⁰⁵
- 3.65 Responses by courts and tribunals to the improper use of AI has involved referring lawyers to the relevant professional regulatory body.¹⁰⁶ In one instance, the VLSB+C varied the practising certificate of a lawyer who provided inaccurate citations and summaries to the court generated by AI, preventing him from operating his own practice or handling trust moneys.¹⁰⁷

Lack of transparency

- 3.66 Transparency is a critical feature of public trust. It requires that organisations provide meaningful information on when an AI tool is used and how its use could affect individuals. Transparency is a principle included in national and international AI regulatory approaches, such as the Australian Government's AI Ethics Principles.
- 3.67 During consultations there was a strong desire for courts and tribunals to be transparent about their use of AI tools.¹⁰⁸ In Chapter 9, we discuss methods for Victoria's courts and VCAT to clearly communicate their use of AI.

Intellectual property infringements

- 3.68 General Purpose AI models are trained on large and diverse data sets. They are often developed by 'scraping' content directly from the internet, which may include copyrighted material.¹⁰⁹
- 3.69 Stakeholders were concerned that General Purpose AI models have used copyrighted materials to train their models without permission or payment.¹¹⁰ Stakeholders argued that Victoria's courts and VCAT need to ensure compliance with copyright obligations and avoid 'complicity in potential infringements by AI tools'.¹¹¹
- 3.70 This risk also contributes to transparency issues as there is often a 'lack of information on what copyright materials had been used to train AI models and how those materials had been accessed'.¹¹² This can make it difficult to determine if infringement of copyright laws has occurred or to allow affected parties to seek remuneration.¹¹³

103 Submissions 16 (Law Institute Victoria), 24 (County Court of Victoria).

104 Consultations 17 (Digital Rights Watch), 33 (Law Firms Australia).

105 Submission 6 (Victorian Legal Services Board and Commissioner). Consultation 23 (Dr Fabian Horton).

106 *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95, [38]; *JNE24 v Minister for Immigration and Citizenship* [2025] FedCFamC2G 1314, [35]; *Dayal* [2024] FedCFamC2F 1166, [21].

107 'Statement on the "Mr Dayal" Matter', *Victorian Legal Services Board and Commissioner* (Web Page, 2 September 2025) <<https://www.lsb.vic.gov.au/news-updates/news/statement-mr-dayal-matter>>.

108 Submissions 5 (Office of the Victorian Information Commissioner), 6 (Victorian Legal Services Board and Commissioner), 10 (Castan Centre for Human Rights Law, Monash University), 15 (Human Rights Law Centre), 27 (Federation of Community Legal Centres and Justice Connect).

109 Senate Select Committee on Adopting Artificial Intelligence (AI), Parliament of Australia, *Report of the Select Committee on Adopting Artificial Intelligence (AI)* (Final Report, November 2024) 84–86 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Adopting_Artificial_Intelligence_AI/AdoptingAI/Report>.

110 Submission 13 (Name withheld).

111 Submission 20 (Deakin Law Clinic).

112 Attorney-General's Department (Cth), *Copyright and AI Reference Group – Transparency* (Discussion Paper, September 2024) 4 <<https://www.ag.gov.au/rights-and-protections/publications/copyright-and-ai-transparency-discussion-paper>>.

113 *Ibid.*

Devaluing human connection

- 3.71 Community legal centres were concerned that the introduction of AI systems in Victoria's courts and VCAT could entirely replace some human functions and access points.¹¹⁴ For example, human phone services in courts could be replaced with online chatbots.¹¹⁵ This was identified as particularly problematic for people with complex needs, as well as older individuals and those with disabilities.¹¹⁶ The Victorian Advocacy League for Individuals with Disability suggested the introduction of AI tools may discount the importance of social interaction in helping people with a disability to have meaningful experiences of the administration of justice.¹¹⁷
- 3.72 Representatives from Eastern Legal Community Centre also highlighted that people who are confident and have the capacity to use technology may get a better outcome or more help compared to those who are less confident or less able to use technology.¹¹⁸

Loss of skills and capabilities

- 3.73 The introduction of AI may lead to the deskilling or replacement of some roles or jobs.¹¹⁹ We heard concerns about the potential for AI transcription tools to replace interpreters over time, and the negative impact on outcomes for court users.¹²⁰
- 3.74 Northern Community Legal Centre stated that the introduction of AI may further reduce perceived staffing needs by courts and tribunals and result in increased pressure on other sector services.¹²¹
- 3.75 The Office of the Victorian Information Commissioner also cautioned that if an AI tool is used to automate parts of court processes or functions, it is possible that skills and knowledge for completing these processes will be lost. This is a risk if the AI system fails or tasks need to be completed manually.¹²²

Reduced trust in the justice system

- 3.76 An important risk relates to the distinctiveness of courts and tribunals as public institutions. In a recent speech about the advent of social media and AI, the Chief Justice of Western Australia explored what makes public trust in the judiciary distinct. He stated trust in any judge is derived from trust in the court as an institution:

our capacity for objectivity, and our human capacity for distinguishing between the real and the artificial, it will be precisely there that our institutional trustworthiness, and the trust upon which our legitimacy rests, may be renewed and in which it may be preserved.¹²³

114 Submission 27 (Federation of Community Legal Centres and Justice Connect). Consultation 30 (Eastern Community Legal Centre).

115 Consultations 8 (Federation of Community Legal Centres Workshop), 30 (Eastern Community Legal Centre).

116 Submission 27 (Federation of Community Legal Centres and Justice Connect). Consultations 24 (Victorian Advocacy League for Individuals with Disability), 30 (Eastern Community Legal Centre).

117 Consultation 24 (Victorian Advocacy League for Individuals with Disability).

118 Consultation 30 (Eastern Community Legal Centre).

119 The potential impact of AI on displacement and job quality is explored in a recent parliamentary report. See House of Representatives Standing Committee on Employment, Education and Training, Parliament of Australia, *The Future of Work: Inquiry into the Digital Transformation of Workplaces* (Final Report, January 2025) 59–77 <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Employment_Education_and_Training/-/link.aspx?id=36683744EBF54AE8A2FA5F42DAFDAB5E&_z=z>.

120 Consultation 16 (Maria Dimopoulos AM and Eva Hussain).

121 Submission 18 (Northern Community Legal Centre).

122 Submission 5 (Office of the Victorian Information Commissioner).

123 Justice Peter Quinlan, 'The Impact of Social Media and AI on Public Trust in the Judiciary' (Speech, Global Summit of Hellenic Lawyers, Athens, Hellas, 9 July 2025) 16 <https://www.supremecourt.wa.gov.au/_files/Speeches/2025/The%20Impact%20of%20Social%20Media%20and%20AI%20on%20Public%20Trust%20in%20the%20Judiciary.pdf>.

3.77 Victoria's courts and tribunals have responsibilities as public institutions to all Victorians and face significant risks if institutional trust is harmed.¹²⁴ As outlined by the Conference of State Court Administrators in the United States:

Public confidence in the courts depends not only on what judges and court administrators know about AI, but also what the public knows about how the courts themselves implement AI systems.¹²⁵

3.78 There are reputational risks when court staff and judicial officers use AI. As one submission stated:

The Court can foresee other potential issues if judicial officers were to use AI in judicial decision-making, which would include, broadly, harm to the public trust in judges and courts, and 'truth decay' caused by a decline of trust in legal decisions.¹²⁶

3.79 These risks are addressed in the guidelines we propose for judicial officers and court staff in Chapters 8 and 9.

Risks during implementation

3.80 Resource considerations are important to support the effective implementation of AI systems.¹²⁷ For instance, the UK Action Plan refers to the need for sustained funding that ensures AI pilot programs can 'transition to scalable solutions'.¹²⁸ Resources are required to develop skills and expertise within an organisation that can support delivery of AI,¹²⁹ from design and procurement through to implementation and eventual decommission.

3.81 As considered at paragraph [3.48], resourcing considerations include establishing internal processes to help structure, align and maintain data systems. For example, reliance on custom data sets can minimise errors, but managing custom data is expensive and time consuming, as both digital infrastructure and underlying data require updates and monitoring to maintain data quality. There may also be issues with how AI tools work with the organisation's existing technology.¹³⁰

3.82 The growth in the number and range of AI products will increase the risk of unintended consequences over time. Careful implementation is critical to managing many of the risks that have been identified. Emerging international guidance to courts highlights this view.¹³¹ This was reiterated by the Law Institute of Victoria:

124 Consultation 14 (Office of the Victorian Information Commissioner).

125 Conference of State Court Administrators (COSCA), *Generative AI & the Future of the Courts: Responsibilities and Possibilities* (Policy Paper, National Center for State Courts, August 2024) 6 <<https://www.ncsc.org/resources-courts/generative-ai-future-courts>>.

126 Submission 24 (County Court of Victoria).

127 For instance, the Digital Transformation Agency advises government agencies to designate a funding tier across digital investments as a way to classify the scale of potential risk. See Digital Transformation Agency (Cth), *Assurance Framework for Digital & ICT Investments* (V2.4, May 2025) 10–14 <<https://www.digital.gov.au/sites/default/files/documents/2025-09/IOF-Assurance-Framework.pdf>>.

128 Ministry of Justice (UK), *AI Action Plan for Justice* (Policy Paper, 31 July 2025) <<https://www.gov.uk/government/publications/ai-action-plan-for-justice/ai-action-plan-for-justice>>.

129 See Julien Pollack, Natalie Smith and Wei-Ting Hong, *Assessing Delivery Confidence of Digital Projects: Guidance for Independent Assurers* (Assurance Research Series No 1, Digital Transformation Agency & University of Sydney, October 2024) 13, 16 <<https://ses.library.usyd.edu.au/handle/2123/33123>>; Jake Goldenfein, 'Algorithmic Transparency and Decision-Making Accountability: Thoughts for Buying Machine Learning Algorithms' in *Closer to the Machine: Technical, Social, and Legal Aspects of AI* (Office of the Victorian Information Commissioner (OVIC), 2019) 59; Patricia Gomes Rêgo de Almeida and Carlos Denner dos Santos Júnior, 'Artificial Intelligence Governance: Understanding How Public Organizations Implement It' (2025) 42(1) *Government Information Quarterly* 102003:1-18, 4 <<https://www.sciencedirect.com/science/article/pii/S0740624X24000959>>.

130 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 9–10 <<https://docs.un.org/en/A/80/169>>; See also Julien Pollack, Natalie Smith and Wei-Ting Hong, *Assessing Delivery Confidence of Digital Projects: Guidance for Independent Assurers* (Assurance Research Series No 1, Digital Transformation Agency & University of Sydney, October 2024) 20 <<https://ses.library.usyd.edu.au/handle/2123/33123>>.

131 AI Rapid Response Team, *AI and the Courts: Getting Started* (Interim Guidance, National Centre for State Courts, March 2024) <<https://www.ncsc.org/sites/default/files/media/document/RRT-AI-getting-started-march-2024.pdf>>; AI Rapid Response Team, *AI and the Courts: Platform Considerations* (Interim Guidance, National Center for State Courts, March 2024) <<https://www.ncsc.org/sites/default/files/media/document/RRT-AI-platform-considerations-march-2024.pdf>>; Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 3–6 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-lIA-par-les-tribunaux-eng.pdf>>; See also United Nations Educational, Scientific and Cultural Organization (UNESCO), *Draft Guidelines for the Use of AI Systems in Courts and Tribunals* (Guidelines, May 2025) 15 <<https://unesdoc.unesco.org/ark:/48223/pf0000393682>>.

It is crucial that AI is implemented with caution, ensuring fairness, transparency, and human oversight to maintain the integrity of court processes.¹³²

3.83 We heard that:

- Victoria's courts and tribunals may need expert advice to ensure procured AI tools can perform as intended¹³³
- decisions to procure and use an AI tool should be informed by appropriate risk assessment¹³⁴
- third-party data and information practices may not align with obligations under the *Privacy and Data Protection Act 2014 (Vic)* (PDP Act) and Public Record Office Victoria standards on record-keeping¹³⁵
- monitoring and assessment should be ongoing¹³⁶
- organisational planning is needed in the event an AI tool fails.¹³⁷

3.84 The Human Rights Law Centre stated that 'AI systems, if poorly designed or implemented, risk undermining procedural fairness and the right to a fair trial'.¹³⁸

Emerging opportunities and risks of AI

3.85 The risks and opportunities identified above reflect the current state of AI. The speed and scale of technological change will influence future opportunities and risks. Some existing risks may be addressed by current regulatory approaches. But new uses and risks will also emerge, which may require different regulatory responses.¹³⁹

3.86 A representative of the Coronial Council stated:

Given the pace of change, there is a need to future-proof a court's approach to regulating AI. We must keep up with what will be possible or available and applied in practice as the AI capability evolves.¹⁴⁰

3.87 A range of emerging technological innovations may affect the further use of AI in courts and tribunals. These include:

- **Agentic AI**—AI tools that not only respond to user prompts but can pursue complex goals or undertake open-ended tasks with limited direct supervision and over long timespans.¹⁴¹ This could involve a lawyer directing an AI agent to review their work and identify flaws in a court submission. It could involve a legal team allowing an AI agent to listen to internal meetings so the AI agent can propose work allocation or next steps in the management of a case.¹⁴²

132 Submission 16 (Law Institute Victoria).

133 Submission 6 (Victorian Legal Services Board and Commissioner). Consultations 12 (County Court of Victoria), 20 (AI for Law Enforcement and Community Safety Lab).

134 Consultation 14 (Office of the Victorian Information Commissioner). For example, the OPP undertook a risk assessment aligned to the organisation's stated risk appetite for their pilot of the AmicusX AI system: Consultation 6 (Office of Public Prosecutions).

135 Submission 5 (Office of the Victorian Information Commissioner). Consultation 21 (Public Record Office Victoria). *Privacy and Data Protection Act 2014 (Vic)*; *Public Records Act 1973 (Vic)* s 12; Public Record Office Victoria, *Recordkeeping Policy: Artificial Intelligence Technologies and Recordkeeping* (Policy, 29 February 2024) <https://prov.vic.gov.au/sites/default/files/files/documents/ai_tech_and_recordkeeping_policy_v1_2024.pdf>.

136 Submissions 15 (Human Rights Law Centre), 18 (Northern Community Legal Centre), 25 (Court Services Victoria). Consultations 9 (Victorian Civil and Administrative Tribunal), 23 (Dr Fabian Horton).

137 Submission 5 (Office of the Victorian Information Commissioner).

138 Submission 15 (Human Rights Law Centre).

139 Consultation 5 (Victorian Bar Association).

140 Consultation 10 (Coronial Council of Victoria).

141 Anirban Mukherjee and Hannah Hanwen Chang, 'Stochastic, Dynamic, Fluid Autonomy in Agentic AI: Implications for Authorship, Inventorship, and Liability' (2025) arXiv:2504.04058v1 [cs.CY]:1-38, 4 <<http://arxiv.org/abs/2504.04058>>; Isaac Triguero et al, 'General Purpose Artificial Intelligence Systems (GPAIS): Properties, Definition, Taxonomy, Societal Implications and Responsible Governance' (2024) 103 *Information Fusion* 102135:1-25, 14 <<https://www.sciencedirect.com/science/article/abs/pii/S1566253523004517?via%3Dihub>>.

142 Zach Warren, 'ILTA Evolve: Finding the Use Cases for Law Firms around Agentic AI Systems', *Thomson Reuters Institute* (Web Page, 12 May 2025) <<https://www.thomsonreuters.com/en-us/posts/technology/ilta-evolve-agentic-ai-use-cases/>>.

- **Multimodal AI**—Agentic AI tools that understand and adapt different kinds of data, or respond to different types of sensory input, from video, audio, text and images.¹⁴³ This could involve a self-represented litigant having a statement they drafted being represented as an AI-based avatar at a court proceeding.¹⁴⁴
- **Neurotechnology**—New technologies that interact directly with the brain and can decode or visually project a person's thoughts.¹⁴⁵ This could involve a new kind of lie detector that monitors brain waves to detect concealed information.¹⁴⁶

3.88 A great deal of public debate is currently focused on the extent of the reasoning capabilities of major AI models and how far this can progress based on current model capability.¹⁴⁷ 'Reasoning' in this sense is still not human sentience, but the capacity for AI to step through conclusions to solve problems and include logical references. While the addition of 'reasoning' capabilities is useful to substantiate an output, emerging research highlights that these processes still do not reflect human logic,¹⁴⁸ and can create new risks of deception in relation to transparency and trust.

3.89 Related to the capacity of AI tools to 'reason', Artificial General Intelligence or AGI is often described as a hypothetical stage when AI models finally surpass human intelligence in many or all domains of knowledge.¹⁴⁹ While AGI may seem the subject of science fiction, some leaders within the field suggest AGI may be reached well within the next decade.¹⁵⁰ The consequence of the development of AI with deep reasoning is beyond the scope of this report. However, the development of fully autonomous AI systems may require fundamental reconsideration of regulatory approaches, beyond what has been considered in this report.

3.90 Nonetheless, the most significant risk given the pace of technological change is the risk of not acting. This view was put forward by the Federation of Community Legal Centres and Justice Connect:

In our experience, the risks most identified can be easily managed when the right guiding principles and user-centred approaches are adopted. We foresee greater risks in Victorian courts and tribunals not using AI and failing to invest in becoming AI literate, as the use of AI technologies becomes increasingly mainstream as a useful tool for people to understand and navigate the everyday legal problems they face.¹⁵¹

143 Zane Durante et al, 'Agent AI: Surveying the Horizons of Multimodal Interaction' (2024) arXiv:2401.03568v2 [cs.AI]:1-80 <<http://arxiv.org/abs/2401.03568>>; Isaac Triguero et al, 'General Purpose Artificial Intelligence Systems (GPAIS): Properties, Definition, Taxonomy, Societal Implications and Responsible Governance' (2024) 103 *Information Fusion* 102135:1-25, 14 <<https://www.sciencedirect.com/science/article/abs/pii/S1566253523004517?via%3Dihub>>.

144 For example, see Lars Daniel, 'AI Avatars Replacing Human Lawyers In Court? Recent Case Says Not So Fast', *Forbes* (online, 8 April 2025) <<https://www.forbes.com/sites/larsdaniel/2025/04/08/ai-avatars-replacing-human-lawyers-in-court-recent-case-says-not-so-fast/>>.

145 Allan McCay, *Neurotechnology, Law and the Legal Profession* (Horizon Report for the Law Society, The Law Society of England and Wales, August 2022) <<https://www.lawsociety.org.uk/topics/research/how-will-brain-monitoring-technology-influence-the-practice-of-law>>.

146 Leda Tortora et al, 'Neuroprediction and A.I. in Forensic Psychiatry and Criminal Justice: A Neurolaw Perspective' (2020) 11 *Frontiers in Psychology* Article 220, 3–4 <<https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2020.00220/full>>.

147 Anil Ananthaswamy, 'How Close Is AI to Human-Level Intelligence?' (2024) 636 *Nature* 22 <<https://www.nature.com/articles/d41586-024-03905-1>>; Elizabeth Gibney, 'AI Models Are Capable of Novel Research': OpenAI's Chief Scientist on What to Expect' (2025) 641 *Nature* 830 <<https://www.nature.com/articles/d41586-025-01485-2>>.

148 Iman Mirzadeh et al, 'GSM-Symbolic: Understanding the Limitations of Mathematical Reasoning in Large Language Models' (2025) arXiv:2410.05229v2 [cs.LG]:1-24, 12 <<http://arxiv.org/abs/2410.05229>>; Teo Susnjak et al, 'Over the Edge of Chaos? Excess Complexity as a Roadblock to Artificial General Intelligence' [2025] *IEEE Transactions on Cybernetics* 1, 11 <<https://ieeexplore.ieee.org/abstract/document/11175023>>; Philipp Mondorf and Barbara Plank, 'Beyond Accuracy: Evaluating the Reasoning Behavior of Large Language Models -- A Survey' (2024) arXiv:2404.01869v2 [cs.CL]:1-27, 10 <<http://arxiv.org/abs/2404.01869>>.

149 Sébastien Bubeck et al, 'Sparks of Artificial General Intelligence: Early Experiments with GPT-4' (2023) arXiv:2303.12712v5 [cs.CL]:1-155 <<http://arxiv.org/abs/2303.12712>>; Meredith Ringel Morris et al, 'Position: Levels of AGI for Operationalizing Progress on the Path to AGI' in *Proceedings of the 41st International Conference on Machine Learning* (Conference Paper, 5 June 2024) 36308:1-14, 2 <<https://openreview.net/forum?id=OofzEysK2D>>.

150 'OpenAI's Altman: Here's What to Expect from AI in 2025', *NYT/DealBook Summit* (CNBC Television, 5 December 2024) <<https://www.youtube.com/watch?v=PQgUHLpQIAA>>; 'Dario Amodei of Anthropic's Hopes and Fears for the Future of A.I.', *Hard Fork* (New York Times, 1 March 2025) <https://www.youtube.com/watch?v=YhGUSlvsu_Y>; In comparison, see Gokul Yenduri et al, 'Artificial General Intelligence: Advancements, Challenges, and Future Directions in AGI Research' (2025) 13 *IEEE Access* 134325, 134329 <<https://ieeexplore.ieee.org/document/11096544>> who suggest AGI might achieve greater prominence in the next 20 years.

151 Submission 27 (Federation of Community Legal Centres and Justice Connect).

Understanding different AI risks

- 3.91 In our consultation paper, we acknowledged distinct opportunities and risks based on:
- the type of AI
 - how the AI tool is designed to be used
 - whether the AI is used for proper or improper purposes.
- 3.92 Feedback to the Commission emphasised that risks of AI in courts and tribunals are not equal and depend on the following factors:
- **Risk based on type of AI**—does the AI tool feature GenAI capabilities? Is the AI tool a public tool?
 - **Risk based on who is using AI**—is the user bound by professional obligations?
 - **Risk based on proximity to the decision stage**—what stage or type of matter is the AI tool used or deployed for?
 - **Risk based on complexity**—is the tool applied to consistent, repeatable facts? Does the use require interpretation of law?

Risk based on type of AI

- 3.93 We stated in Chapter 1 that the Commission adopts the OECD's definition of AI in this report.¹⁵² This definition is broad and incorporates a diverse range of AI tools. As a representative of the Coronial Council stated, defining the type of AI is important:
- Where do you define what is and what is not AI? The Grammarly app allows you to improve language. Is it AI or just advanced computation work or a large statistical package? There is a function in MS Word which assists sentence structure. Where do you cross the line and say this is AI?¹⁵³
- 3.94 Different types of AI used in court and tribunal settings carry different types and scale of risk.¹⁵⁴ We heard about specific risks related to:
- Generative AI (GenAI)
 - public and closed AI.

What are the risks from Generative AI?

- 3.95 GenAI systems generate content as text, images, music, audio and videos, based on a user's prompts.¹⁵⁵ New applications of GenAI are observable in agentic AI models and tools.
- 3.96 Machine learning techniques underpin GenAI systems. This refers to the way algorithms find patterns from data and learn from these patterns for future application. This has become so sophisticated that GenAI systems can generate future answers based on the memory of previous interactions and prompts.
- 3.97 GenAI systems do not apply human logic. They generate a response by applying trained machine learning models to new and unseen data.¹⁵⁶ This involves the application of sophisticated calculations based on statistical probability that can predict the next word, phrase or pixel, and are 'learned' by analysing a vast store of training data. GenAI models also involve human developers in training the AI model, by reinforcing behaviour towards better and more accurate responses. This is why every response produced by a GenAI tool contains the risk of hallucination.

152 Organisation for Economic Co-operation and Development (OECD), *Explanatory Memorandum on the Updated OECD Definition of an AI System* (OECD Artificial Intelligence Papers No 8, 5 March 2024) <doi.org/10.1787/623da898-en>.

153 Consultation 10 (Coronial Council of Victoria).

154 Submission 5 (Office of the Victorian Information Commissioner), Consultation 29 (Cenitex).

155 Fan Yang, Jake Goldenfein and Kathy Nickels, *GenAI Concepts: Technical, Operational and Regulatory Terms and Concepts for Generative Artificial Intelligence (GenAI)* (Report, ARC Centre of Excellence for Automated Decision-Making and Society (ADM+S), and the Office of the Victorian Information Commissioner (OVIC), 2024) 4 <<https://doi.org/10.60836/PSMC-RV23>>.

156 Ibid 1, 2, 4.

- 3.98 The scope of GenAI tools is broad and some 'specialised' GenAI applications do not share the same problems as public General Purpose AI like ChatGPT.¹⁵⁷
- 3.99 AI guidelines issued by courts and tribunals often focus on the risk of GenAI without recognising how risks differ within this broad category of AI tools. Issues with the definition of GenAI are reflected in revisions made by the NSW Supreme Court to its Practice Note.¹⁵⁸ Recent changes to the Practice Note exclude and do not regulate kinds of GenAI that:
- correct spelling or grammar
 - provide transcriptions or translations
 - assist with formatting
 - generate chronologies from original source material
 - operate as search engines
 - operate as dedicated legal research software.¹⁵⁹
- 3.100 This in part reflects how GenAI capabilities are common in everyday use and that users may not realise they are using AI tools. It may suggest that as GenAI capabilities become more commonplace, the perceived risk profile may be reduced.
- 3.101 While the revised GenAI definition excludes dedicated 'legal research software', we note that research studies demonstrate that 'the hallucination problem persists at significant levels' for specialised legal research tools.¹⁶⁰

What is the difference between public vs closed AI?

- 3.102 Even though GenAI underpins many kinds of AI tools, applications and models, different risks arise when comparing the use of public and closed AI tools. We use these terms for this report to distinguish between AI tools, products and services available to the public, compared with those that an organisation (such as a court or law firm) creates or manages.
- 3.103 Figure 4 provides real-world examples of public and closed AI. In practice, tools may not always fit precisely within these categories due to complex supply chains and data flows.
- 3.104 Both public and closed AI are comprised of three main types of AI:
- **General Purpose AI**—has general capabilities that can be applied to many tasks
 - **Specialised AI**—has specific capabilities designed for specific tasks such as legal research
 - **Embedded AI**—refers to AI functionalities built into existing software and products.
- 3.105 General Purpose AI tools such as ChatGPT can undertake a wide variety of tasks. International regulation of AI, such as the implementation of the European Union's *Artificial Intelligence Act 2024*, has displayed a focus on placing regulatory controls on General Purpose AI systems.¹⁶¹

157 See *Regulation (EU) 2024/1689 (Artificial Intelligence Act)* [2024] OJ L 2024/1689, art 3 (63) which defines 'General-purpose AI Model' to mean 'an AI model, including where such an AI model is trained with a large amount of data using self-supervision at scale, that displays significant generality and is capable of competently performing a wide range of distinct tasks regardless of the way the model is placed on the market and that can be integrated into a variety of downstream systems or applications, except AI models that are used for research, development or prototyping activities before they are placed on the market'.

158 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) [2], [6] <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>. The Practice Note applies to lawyers and unrepresented parties. It was originally issued on 21 November 2024 and was revised on 28 January 2025.

159 Ibid.

160 Varun Magesh et al, 'Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools' (2025) 22(2) *Journal of Empirical Legal Studies* 216, 217 <<https://onlinelibrary.wiley.com/doi/10.1111/jels.12413>>.

161 *Regulation (EU) 2024/1689 (Artificial Intelligence Act)* [2024] OJ L 2024/1689, art 53; European Commission, *Guidelines on the Scope of Obligations for Providers of General-Purpose AI Models under the AI Act* (Report, 18 July 2025) <<https://digital-strategy.ec.europa.eu/en/library/guidelines-scope-obligations-providers-general-purpose-ai-models-under-ai-act>>.

- 3.106 Specialised AI tools are developed for a specific, fixed and identifiable purpose or function. They are designed and trained to perform specific tasks or to focus on specialised domains of knowledge, such as contract review. Legal research tools such as Lexis+ AI and Westlaw Precision are examples of closed specialised tools.
- 3.107 Embedded AI refers to AI applications integrated into existing software or technology products. The AI capability within these products may not be obvious to a user, or a user may not be notified AI is being used.¹⁶² This type of AI may be used in everyday applications. Examples include voice-activated assistants like Siri or Alexa, or AI Overview which provides a summary of information at the top of each Google Search.

Figure 4: Types of AI

	PUBLIC AI	CLOSED AI
GENERAL PURPOSE	<ul style="list-style-type: none"> Chat GPT Google Gemini Bing Copilot Claude Perplexity AI DeepSeek 	<ul style="list-style-type: none"> QChat
SPECIALISED	<ul style="list-style-type: none"> Google Translate (neural machine translation) Apple Dictation (speech-to-text software) Leonardo.AI Stable Diffusion Canva AI (image generators) 	<ul style="list-style-type: none"> Lexis+ AI Westlaw Precision CoCounsel LEAP Legal AI Harvey AI Airlie – Allens Smart Assist – Justice Connect Dragon (speech-to-text software)
EMBEDDED	<ul style="list-style-type: none"> Google AI Overview (GenAI assistant) Siri Alexa Cortana (voice-activated assistants) 	<ul style="list-style-type: none"> Microsoft 365 Copilot Adobe AI Assistant (GenAI assistant)

Public AI

- 3.108 'Public AI' refers to AI tools that are openly accessible to the public, typically via the internet. Public AI tools are trained on broad, often public, datasets most commonly for general purpose use.
- 3.109 The Judicial Council of California recently stated the phrase 'public' would not include 'any system that the court creates or manages ... or any court-operated system the court uses to provide those outside the court with access to court data'.¹⁶³ Although not as clearly defined, the term 'public' when describing AI use is contained in many court guidelines in Australia and other jurisdictions.¹⁶⁴
- 3.110 In very limited instances, this definition of public AI may include AI tools developed on a non-commercial basis and made available to the public by experts, lawyers or public institutions using past reports, judgments or precedent letters.

Closed AI

- 3.111 'Closed AI' is defined in contrast to public AI. Closed AI tools are generally not openly accessible to the public and information used in closed AI tools remain within a controlled environment. When an AI tool is 'closed' there are controls to reduce risks related to privacy, or confidentiality settings that protect information from being made publicly available or used to train the AI tool.
- 3.112 The phrase 'closed AI' was used by High Court Chief Justice Stephen Gageler in a recent interview,¹⁶⁵ and the phrase 'closed set' was used by Justice Needham in a recent speech.¹⁶⁶ In our consultations, we often heard the phrase 'closed system'.¹⁶⁷ The AI Guidance from the US National Centre for State Courts, uses the phrase 'closed AI model'.¹⁶⁸
- 3.113 We note the Office of the Victorian Information Commissioner used the term 'enterprise' GenAI tools, characterising certain AI tools that are 'approved and managed by organisations and operate in secured environments'.¹⁶⁹ However, this phrase is more commonly used for AI tools used inside an organisation or 'enterprise', such as Microsoft 365 Copilot.
- 3.114 The concept of 'closed AI' is different from 'closed source'. The phrase 'closed source AI' is used in some court guidelines, including the NSW Supreme Court's AI Practice Note.¹⁷⁰ In our consultation paper, we highlighted the difference between open and closed source referred to whether the underlying architecture of the AI tool is freely available.

163 Judicial Council of California, Artificial Intelligence Task Force, *Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work* (Report to the Judicial Council No 25-109, 16 June 2025) 11 <<https://jcc.legistar.com/View.ashx?M-F&ID=14303119&GUID=OC94642A-28D3-47C0-8AE9-1E4DE3A96DFC>>.

164 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) 2, para 8 <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>; Queensland Courts, *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers* (Guidelines, 13 May 2025) 2. <<https://www.courts.qld.gov.au/about/news/news233/2024/the-use-of-generative-artificial-intelligence-ai>>; Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 5-6 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>; Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (Guidelines, 7 December 2023) 2 <<https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf>>; Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024) 3; This phrase was also used in consultations and submissions such as Consultation 9 (Victorian Civil and Administrative Tribunal) and Submission 17 (Office of Public Prosecutions).

165 Michael Pelly, 'An Interview with Chief Justice Gageler', *Westlaw Updates & Alerts* (Web Page, 8 July 2025) <<https://support.thomsonreuters.com.au/product/westlaw-precision-australia/updates-alerts/interview-chief-justice-gageler>>.

166 Justice Jane Needham, 'AI and the Courts in 2025: Where Are We, and How Did We Get Here?' (Speech, 2025 Judges Series Hosted by the Commercial Law Association of Australia, NSW State Library, 27 June 2025) 8 <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-needham/needham-j-20250627>>.

167 Submission 16 (Law Institute Victoria). Consultations 6 (Office of Public Prosecutions), 9 (Victorian Civil and Administrative Tribunal).

168 AI Rapid Response Team, *Artificial Intelligence: Guidance for Use of AI and Generative AI in Courts* (Guidance, National Centre for State Courts, 7 August 2024) 4 <<https://www.ncsc.org/sites/default/files/media/document/AI-Courts-NCSC-AI-guidelines-for-courts.pdf>>.

169 Submission 5 (Office of the Victorian Information Commissioner). For example, the QLD Government has implemented a GenAI virtual assistant for QLD Government employees that can undertake a wide variety of tasks, called QChat.

170 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) 1, para 4 <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>.

- 3.115 Features of closed AI tools typically include:
- Some mitigation against privacy risks—as control of closed AI tools may be 'ringfenced', meaning that data uploaded to the AI tool can be isolated, the AI tool can be modified to ensure user prompts are not remembered, or to not allow data that is shared to train the underlying model.¹⁷¹
 - Stronger compliance with legal obligations than public AI—this may occur through contractual agreement, although clear contractual terms are necessary to improve safety.¹⁷²
- 3.116 For instance, the Office of Public Prosecutions referred to its concerns with the use of public AI systems for legal work by staff, which in part led to their pilot of a closed AI tool.¹⁷³ The Office of the Victorian Information Commissioner warned that using sensitive or private information in a public AI tool would be a breach of privacy legislation.¹⁷⁴
- 3.117 In Figure 4, we distinguish between two versions of Copilot. Bing Copilot operates as a public General Purpose AI tool and shares all the risks of other public AI tools. In contrast, Microsoft 365 Copilot is a secure version of Copilot. This means it can be ringfenced and it can forget user prompts, but use of this tool requires a subscription.
- 3.118 Hallucinations will still occur on closed AI tools, although the likelihood of inaccuracy may be reduced due to more targeted training data, such as through Retrieval Augmented Generation.¹⁷⁵
- 3.119 Potential users of closed AI may include members of the public, not just those employed by a court or legal practice. Justice Connect's Smart Assist AI is an example of a closed AI tool available to the public.¹⁷⁶
- 3.120 A further consideration for the use of closed AI systems relates to data residency which relates to 'the physical or geographical location of an organization's data'.¹⁷⁷ The information entered into a public AI tool is likely to be stored outside Victoria, and in many cases, in jurisdictions that do not have information privacy and information security laws equivalent to the PDP Act. This may contravene Information Privacy Principle 9, relating to transborder data flows.¹⁷⁸
- 3.121 Closed AI systems are an important consideration for court uses of AI moving forward.¹⁷⁹ As stated by a representative of the Federal Circuit and Family Court:
- Most tools currently sit on open-source platforms, which poses privacy risks ... [a] priority is to explore whether and how AI can be piloted within an in house closed model which ensures that highly sensitive information is retained within a secure walled garden.¹⁸⁰

171 Consultations 25 (Microsoft), 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses), 34 (Human Technology Institute). Submission 10 (Castan Centre for Human Rights Law, Monash University).

172 Representatives of Microsoft discussed how they spend time with Australian clients seeking to assist them with privacy obligations including in relation to public disclosure and data residence: Consultation 25 (Microsoft). Representatives of OVIC emphasised that broad contractual terms may need to be supported by the assurance regime: Consultation 14 (Office of the Victorian Information Commissioner).

173 Consultation 6 (Office of Public Prosecutions).

174 Consultation 14 (Office of the Victorian Information Commissioner). See also Privacy and Data Protection Deputy Commissioner, 'Public Statement: Use of Personal Information with ChatGPT', *Office of the Victorian Information Commissioner* (Web Page, February 2024) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/public-statement-use-of-personal-information-with-chatgpt/>>.

175 Consultation 25 (Microsoft).

176 Submission 27 (Federation of Community Legal Centres and Justice Connect). Justice Connect, 'Our AI Project', *Justice Connect* (Web Page) <<https://justiceconnect.org.au/about/innovation/legal-help-experience/ai-project/>>.

177 'Data Residency: What Is It and Why Is It Important?', *IBM: Think* (Web Page, 13 February 2024) <<https://www.ibm.com/think/insights/data-residency-why-is-it-important>>.

178 Office of the Victorian Information Commissioner (OVIC), *Guidelines to the Information Privacy Principles (IPP Guidelines)* (Report, 14 November 2019) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/guidelines-to-the-information-privacy-principles/>>.

179 Consultation 6 (Office of Public Prosecutions).

180 Consultation 13 (Federal Circuit and Family Court of Australia).

3.122 The cost of implementing AI is important to take into consideration. Funding is required to develop, procure and maintain AI tools and costs will vary significantly depending on the type and scope of the tool.¹⁸¹ For the deployment of an AI tool to remain safe, closed AI systems will incur costs along an AI tool's lifecycle, from design to deployment, from training to monitoring.¹⁸²

Differences across types of closed AI

3.123 The benefits and limitations of the different types of AI are illustrated in Figure 5. In this section we focus on three types of closed AI tools:

- procured tools
- developed tools
- hybrid tools.

3.124 Understanding risks associated with different types of closed AI can assist Victoria's courts and tribunals in assessing and mitigating risk.¹⁸³ The three identified types of closed AI can often be differentiated by three factors:

- **accessibility**—whether access is provided to subscribers, authorised user or to a target audience
- **ownership**—whether an AI tool is owned by a third party or by the authorising organisation itself
- **customisation**—the extent to which an AI can be tailored through fine-tuning or systems integration.

Figure 5: Pros and Cons of types of AI

	PUBLIC AI	CLOSED AI		
		PROCURED	DEVELOPED	HYBRID
+	Limited cost No product deployment required	Secure deployment Vendor support	Tailored to environment Systems integration Reviewable reliability and transparency	Tailored to environment Systems integration Limited in-house technical expertise required
-	No assurance of confidentiality or data privacy Compliance requirements unenforceable No dedicated support No or limited systems integration	Vendor lock-in High ongoing costs Contract management Potentially limited customisation	High capital expenditure Long development time In-house expertise required	Shared data controls Long development time Performance guarantees to be negotiated

181 Consultation 14 (Office of the Victorian Information Commissioner).

182 For instance, see Digital Transformation Agency (Cth), *Australian Government's AI Technical Standard* (Version 1, July 2025) 47 <<https://www.digital.gov.au/policy/ai/AI-technical-standard>> Criterion 30 is to perform cost analysis across all aspects of the AI system.

183 Consultation 14 (Office of the Victorian Information Commissioner).

- 3.125 Procured (or off-the-shelf) tools refer to AI products licensed from a third party. These generally cannot usually be customised. Access to off-the-shelf solutions is usually subscriber-based. Many are hosted on cloud services and do not require internal technical support for the AI tool to properly function.¹⁸⁴
- 3.126 Developed (or custom-built) tools are built 'in-house', meaning built within the organisation wishing to use them. They do not formally involve a third party and are tailored to the organisation's goals, requirements and data systems.¹⁸⁵ The key benefit is that controls and testing are potentially in place to protect the owner. While developed tools can reduce some risks, they often require internal technical expertise to maintain and can be costly to develop.¹⁸⁶
- 3.127 Hybrid tools utilise pre-built models but can be tailored in some ways.¹⁸⁷ Often these tools are developed in partnership with a third party. Implementation of a hybrid AI tool does not usually require technical expertise internal to the organisation. Hybrid tools might enable organisations to specify compliance requirements through agreement, such as where data is stored.
- 3.128 For both procured and hybrid tools contractual obligations should be carefully considered.¹⁸⁸ The Public Record Office Victoria noted that:
- If there are decisions being undertaken by third party suppliers ... it requires strong contractual arrangements to make sure data and information records are created and managed appropriately.¹⁸⁹
- 3.129 There are risks that contractual assurances made by commercial vendors are inaccurate or difficult to monitor, particularly around legal compliance with privacy laws.¹⁹⁰ We heard from some stakeholders that it may be effectively impossible in many instances to demonstrate or test data flows, including privacy requirements for personal data to remain in a certain jurisdiction. Representatives of the Office of the Victorian Information Commissioner highlighted:
- In one instance, a Victorian Government department sought to get the Commonwealth e-Safety Commissioner to remove data used by a US company (OpenAI). Open AI declined to regress the model, which would be a very costly exercise for any company. These kinds of technical problems are almost impossible to remediate.¹⁹¹
- 3.130 The significance of maintaining 'data sovereignty' by keeping data in Australia was considered by Court Services Victoria.¹⁹² We heard from other stakeholders that developers need to be transparent about how AI systems are built.¹⁹³

184 Raj Neervannan, 'In-House Or Off-The-Shelf? A C-Suite Decision Framework For Buying Versus Building An AI Model', *Forbes* (online, 13 December 2023) <<https://www.forbes.com/councils/forbestechcouncil/2023/12/13/in-house-or-off-the-shelf-a-c-suite-decision-framework-for-buying-vs-building-an-ai-model/>>; API4AI, 'Custom AI Development vs Off-the-Shelf Solutions: What's Best for Your Business?', *Medium* (Web Page, 20 November 2024) <<https://medium.com/@API4AI/custom-ai-development-vs-off-the-shelf-solutions-whats-best-for-your-business-e33a485d73f4>>; State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024) 20; However, there may be need for internal technical skills relating to maintaining or developing data as highlighted by Consultation 14 (Office of the Victorian Information Commissioner).

185 API4AI, 'Custom AI Development vs Off-the-Shelf Solutions: What's Best for Your Business?', *Medium* (Web Page, 20 November 2024) <<https://medium.com/@API4AI/custom-ai-development-vs-off-the-shelf-solutions-whats-best-for-your-business-e33a485d73f4>>; Cem Dilmegani and Sila Ermut, 'Custom AI: When to Build Your Own Solutions in 2025', *AIMultiple Research* (Web Page, 24 July 2025) <<https://research.aimultiple.com/custom-ai/>>; State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024) 20.

186 For instance, the Federation of Community Legal Centres and Justice Connect highlight equity concerns with the Office of Public Prosecution's access to resources and capability to develop Amicus X: Submission 27 (Federation of Community Legal Centres and Justice Connect).

187 Cem Dilmegani and Sila Ermut, 'Custom AI: When to Build Your Own Solutions in 2025', *AIMultiple Research* (Web Page, 24 July 2025) <<https://research.aimultiple.com/custom-ai/>>.

188 Submission 5 (Office of the Victorian Information Commissioner).

189 Consultation 21 (Public Record Office Victoria).

190 Consultation 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses); See also Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 20 <<https://docs.un.org/en/A/80/169>>.

191 Consultation 14 (Office of the Victorian Information Commissioner).

192 Submission 25 (Court Services Victoria).

193 Submissions 5 (Office of the Victorian Information Commissioner), 10 (Castan Centre for Human Rights Law, Monash University), 15 (Human Rights Law Centre).

- 3.131 Victoria's courts and tribunals should consistently assess whether privacy and security by design should be adopted when exploring AI solutions. 'By design' means embedding data privacy and information security considerations prior, during and after the lifecycle of any specific AI tool. This could include establishing internal privacy policies, conducting privacy impact assessments and considering whether appropriate data systems are in operation before an AI solution is considered.¹⁹⁴ It could also mean determining limits on the kinds of data collected, how that data is used and destroyed.¹⁹⁵
- 3.132 In terms of security by design, this would mean establishing how organisational processes mitigate against cybersecurity breaches.¹⁹⁶ We refer to the need to consider privacy and security by design approaches in our recommended AI assurance framework for Victoria's courts and VCAT in Chapter 9.

Risks based on who is using AI

- 3.133 We heard that there may be different risk levels based entirely on who is using AI within courts and tribunals such as:
- judicial officers
 - court and tribunal staff
 - lawyers
 - experts and witnesses
 - litigants represented and self-represented.

Professional obligations

- 3.134 Different court users are bound by different legal and professional obligations. Lawyers are required to comply with professional obligations. These obligations may assist in mitigating some risks of AI use. But there were different views about whether existing professional obligations are sufficient to shape behaviours and compel compliance by lawyers and expert witnesses.¹⁹⁷ This is discussed further in Chapter 5.

Self-represented litigants

- 3.135 While there are specific benefits identified for self-represented litigants using AI, there are also additional risks. Self-represented litigants who are not lawyers are not subject to professional obligations and may be less equipped to check the accuracy of AI outputs.¹⁹⁸
- 3.136 We heard that self-represented litigants needed communication and training about potential risks of AI use.¹⁹⁹ The Castan Centre stated:

For self-represented litigants the use of generative AI technologies might represent an opportunity to 'level the playing field' by deploying such technologies in the drafting of documents, the writing of submissions, and the like. Courts have already moved to regulate the use of such technologies. But there are recognised problems with legal AI models generating inaccurate information or hallucinating content, which may create further burdens in workload for courts.²⁰⁰

194 Office of the Victorian Information Commissioner (OVIC), *Privacy by Design* (Guidance No D21/24515, January 2022) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/privacy-by-design/>>; See also Ann Cavoukian, 'Privacy by Design: The Definitive Workshop. A Foreword by Ann Cavoukian, Ph.D.' (2010) 3(2) *Identity in the Information Society* 247, 249–250 <<https://doi.org/10.1007/s12394-010-0062-y>>.

195 For example, the importance of privacy by design principles was raised by the complainant in *Send v Department of Jobs, Precincts and Regions (Human Rights)* [2023] VCAT 1267, [18].

196 'Essential Eight Explained', *Australian Signals Directorate* (Web Page, 27 November 2023) <<https://www.cyber.gov.au/resources-business-and-government/essential-cybersecurity/essential-eight/essential-eight-explained>>; For international examples of information security standards also see International Organization for Standardization (ISO), 'ISO/IEC 27001:2022 Information Security, Cybersecurity and Privacy Protection — Information Security Management Systems — Requirements' <<https://www.iso.org/standard/27001>>; National Institute of Standards and Technology (NIST), *The NIST Cybersecurity Framework (CSF) 2.0* (NIST CSWP 29, U.S. Department of Commerce, 26 February 2024) <<https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.29.pdf>>.

197 Submission 16 (Law Institute Victoria), Consultations 5 (Victorian Bar Association), 25 (Microsoft).

198 However, in *Weedbrook v Partlin* [2024] QDC 194, District Court Judge Porter noted that 'While litigants in person do not have the same professional duties, I do not think that gives them a free pass to uncritically adopt the output of AI models.' at [41].

199 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

200 Submission 10 (Castan Centre for Human Rights Law, Monash University).

Risks based on proximity to decision

3.137 The Judicial College of Victoria told us that risk increases the closer the use of an AI tool comes to judicial decision-making.²⁰¹ A similar perspective focused on when AI was used in relation to a court hearing. It was suggested that risk could be classified as increasing the closer the use was to the hearing stage. That is, risks in preparing for a hearing could be seen as different to the risk associated with use after a hearing has occurred.²⁰² We also heard that risk could be influenced by whether there are opportunities for human review of an AI's output. The Victorian Bar suggested the greatest benefit for AI was generally at pre-trial and preparatory stages.²⁰³

Risks based on decision complexity

3.138 Risk was also different based on whether AI was being used for complex or straightforward issues. Courts and others identified benefits for the use of AI in relation to high-volume, low-risk decisions,²⁰⁴ particularly for cases where there is limited judicial discretion.²⁰⁵

3.139 We also heard that each jurisdiction determines cases with different levels of complexity. As the Coroners Court stated:

In considering the risks and benefits of using AI in Victoria's courts and tribunals, this must be put in the context of the functions and purposes of the relevant court or tribunal. The opportunities and risks will differ between jurisdictions, and any framework or regulatory mechanism must take into account these jurisdictional differences.²⁰⁶

Other high-level risks

3.140 We asked what might constitute high-level or high-impact risks in courts or tribunals. The most common high-level risk was use of AI for judicial decision-making, with many stating this should be prohibited.²⁰⁷ Other high-level risks included where the use of AI involves:

- a deprivation of liberty²⁰⁸
- sensitive information or information dealing with marginalised people²⁰⁹
- administrative decisions²¹⁰
- biometrics such as live facial recognition technology²¹¹
- AI tools, models and systems that are not transparent (such as the black box problem), in circumstances where accuracy is required²¹²
- reoffending risk prediction tools²¹³
- provision of legal advice.²¹⁴

201 Consultation 7 (Judicial College of Victoria).

202 Consultation 9 (Victorian Civil and Administrative Tribunal).

203 Submission 23 (Victorian Bar Association).

204 Submission 6 (Victorian Legal Services Board and Commissioner). Consultations 2 (Coroners Court of Victoria), 9 (Victorian Civil and Administrative Tribunal).

205 Confidential consultation.

206 Submission 4 (Coroners Court of Victoria).

207 Submissions 5 (Office of the Victorian Information Commissioner), 8 (Damian Curran), 16 (Law Institute Victoria), 17 (Office of Public Prosecutions), 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice), 23 (Victorian Bar Association), 24 (County Court of Victoria), 27 (Federation of Community Legal Centres and Justice Connect). Consultation 19 (Professor Ian Freckelton AO KC).

208 Submission 17 (Office of Public Prosecutions). Consultations 4 (Victorian Legal Services Board and Commissioner), 5 (Victorian Bar Association), 8 (Federation of Community Legal Centres Workshop).

209 Submission 1 (Name withheld). Consultations 4 (Victorian Legal Services Board and Commissioner), 12 (County Court of Victoria). See also *Regulation (EU) 2024/1689 (Artificial Intelligence Act)* [2024] OJ L 2024/1689, art 5(1)(b).

210 Submissions 23 (Victorian Bar Association), 27 (Federation of Community Legal Centres and Justice Connect). Others, like Submission 6 (Victorian Legal Services Board and Commissioner) described administrative decisions as high risk.

211 Submissions 6 (Victorian Legal Services Board and Commissioner), 8 (Damian Curran). Consultation 17 (Digital Rights Watch). See also *Regulation (EU) 2024/1689 (Artificial Intelligence Act)* [2024] OJ L 2024/1689, art 5(1)(h).

212 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

213 Consultations 8 (Federation of Community Legal Centres Workshop), 17 (Digital Rights Watch). See also *Regulation (EU) 2024/1689 (Artificial Intelligence Act)* [2024] OJ L 2024/1689, art 5(1)(d) which prohibits the use of an AI system for making risk assessments of natural persons in order to assess or predict the risk of a natural person committing a criminal offence.

214 Submission 7 (Dr Natalia Antolak-Saper). Consultation 8 (Federation of Community Legal Centres Workshop).

- 3.141 We note some existing laws already recognise the use of reoffending prediction tools as high-risk. For instance, the *Children, Youth and Families Act 2005* (Vic) does not permit the admissibility of evidence which uses a score, assessment or rating related to a child's risk of reoffending.²¹⁵
- 3.142 Some considered that any court use of GenAI may be considered high-risk where there is limited human oversight.²¹⁶ Others stated any GenAI may become a high-level risk if improperly used, for example, inputting personal or sensitive information into ChatGPT.²¹⁷ The Human Rights Law Centre called for all AI systems potentially used by Victoria's courts and tribunals that produce discriminatory outcomes or contain systemic biases to be prohibited.²¹⁸

Responding to different AI risks

- 3.143 Our recommendations are informed by opportunities and risks described in this chapter, and recognise that risks differ across:
- the type of AI used
 - who is using AI
 - how AI is used.
- 3.144 In this report, we make recommendations in relation to:
- principles for AI use in courts and tribunals (Chapter 6)
 - guidelines to advise court users, judicial officers and court staff about risks and safe use of AI in Victoria's courts and VCAT (Chapters 7 and 8)
 - governance bodies, policies and an AI assurance framework to guide decisions for the of AI use in Victoria's courts VCAT (Chapter 9).
- 3.145 In those chapters we propose that courts clearly define:
- GenAI
 - Public and closed AI.
- 3.146 We also consider different scales of risk depending on the court user and whether they have professional obligations to courts and tribunals.

215 *Children, Youth and Families Act 2005* (Vic) s 347(c).

216 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice). Consultation 8 (Federation of Community Legal Centres Workshop).

217 Submission 1 (Name withheld). Consultations 8 (Federation of Community Legal Centres Workshop), 11 (Law Institute of Victoria), 14 (Office of the Victorian Information Commissioner).

218 Submission 15 (Human Rights Law Centre).

CHAPTER
04

Australian and global AI regulation

66 Overview

66 International cooperation on AI regulation

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74 Regulation at the national level

77 What will national regulation of AI mean for Victoria's courts and VCAT?

4. Australian and global AI regulation

Overview

- The regulatory environment for Victoria's courts and VCAT is shaped by national and international developments which are continuing to evolve.
- This chapter provides an update of AI regulatory frameworks in Australia and overseas, building on developments outlined in our consultation paper.
- Recent global events indicate that international efforts to consolidate global AI regulatory standards are increasingly difficult. The international environment is fragmented, with some jurisdictions focused on risk-based regulation and others encouraging 'innovation'.
- Australia does not have AI-specific legislation. However, the Australian Government is considering regulatory options.
- The Australian Government's progress on the regulation of AI is important for Victoria's courts and VCAT. A national regulatory approach will address risks consistently across the country and promote safe and reliable use of AI.

International cooperation on AI regulation

- 4.1 Globally, AI regulation is evolving and will influence the development of approaches in Australia. Australian laws and regulatory responses can be shaped by international declarations or recommendations. This may affect the quality, range and use of AI tools in courts and tribunals.
- 4.2 The Castan Centre discussed the significance of international law in the context of the human rights treaties which Australia has signed.¹ The Human Rights Law Centre drew attention to United Nations (UN) documents on AI policies, along with references to Victoria's human rights obligations.² It noted the relevance of the UN's *Roadmap for Digital Cooperation* and UNESCO's draft *Guidelines for the Use of AI Systems in Courts and Tribunals*.³

1 Submission 10 (Castan Centre for Human Rights Law, Monash University).

2 Submission 15 (Human Rights Law Centre).

3 United Nations Secretary-General, *Roadmap for Digital Cooperation: Report of the Secretary-General* (Report, June 2020) <<https://digitallibrary.un.org/record/3978036?v=pdf&ln=en>>; See United Nations Educational, Scientific and Cultural Organization (UNESCO), *Draft Guidelines for the Use of AI Systems in Courts and Tribunals* (Guidelines, May 2025) <<https://unesdoc.unesco.org/ark:/48223/pf0000393682>>; Notably Colombia's Superior Council of the Judiciary recently adapted the draft guidelines in partnership with UNESCO: 'Justice Meets Innovation: Colombia's Groundbreaking AI Guidelines for Courts', UNESCO (Web Page, 1 April 2025) <<https://www.unesco.org/en/articles/justice-meets-innovation-colombias-groundbreaking-ai-guidelines-courts>>. See also United Nations Secretary General - *Human Rights in the Administration of Justice: Report of the Secretary-General*, UN Doc A/79/296 (7 August 2024).

International dialogue and agreements

- 4.3 International agreements and initiatives can influence Australia's approaches to regulating AI. Australia is a signatory to the *Bletchley Declaration* and the *Seoul Declaration for Safe, Innovative and Inclusive AI*.⁴
- 4.4 Australia is a member of the Hiroshima AI Process Friends Group, which is led by the G7 and promotes the safe, secure, and trustworthy use of AI.⁵ Through the Global Partnership on AI, Australia signed the 2024 Global Partnership on AI New Delhi Declaration,⁶ and attended the Global Partnership on AI Summit in Belgrade in December 2024.⁷
- 4.5 The first intergovernmental standard on AI was the OECD's *Recommendation of the Council on Artificial Intelligence* in 2019.⁸ It called on governments to build international dialogue to advance knowledge about AI and to promote consensus-driven global technical standards. The OECD's *Recommendation of the Council for Agile Regulatory Governance to Harness Innovation* in 2021 also calls for the 'stepping up' of bilateral, regional and multilateral regulatory cooperation to address the 'transboundary reach of innovation'.⁹
- 4.6 In March 2024, the UN General Assembly adopted a resolution to promote safe, secure and trustworthy AI.¹⁰ This was followed by global efforts throughout 2024 to build cooperation in AI regulation.
- 4.7 The Council of Europe formally adopted the *Framework Convention on Artificial Intelligence* in May 2024.¹¹ Canada, Japan and other non-member states have signed.¹² As of September 2025, Australia has not signed this convention.¹³
- 4.8 In September 2024, UN member states adopted a *Pact for the Future* that includes a *Global Digital Compact*. These seek to shape digital technologies to support the UN's Sustainable Development Goals.¹⁴ The Global Digital Compact calls for enhanced international governance 'to promote coordination and compatibility of emerging artificial intelligence governance frameworks' as a key objective.¹⁵

- 4 Prime Minister's Office, 10 Downing Street, Foreign, Commonwealth & Development Office and Department for Science, Innovation and Technology (UK), *The Bletchley Declaration by Countries Attending the AI Safety Summit, 1-2 November 2023* (Policy Paper, 1 November 2023) <<https://www.gov.uk/government/publications/ai-safety-summit-2023-the-bletchley-declaration/the-bletchley-declaration-by-countries-attending-the-ai-safety-summit-1-2-november-2023>>; 'The Seoul Declaration by Countries Attending the AI Seoul Summit, 21-22 May 2024', *Department of Industry, Science and Resources* (Web Page, 24 May 2024) <<https://www.industry.gov.au/publications/seoul-declaration-countries-attending-ai-seoul-summit-21-22-may-2024>>.
- 5 'Hiroshima AI Process - Friends Group', *Hiroshima AI Process* (Web Page, May 2025) <<https://www.soumu.go.jp/hiroshimaaiprocess/en/meeting.html>>.
- 6 Ministers of the Global Partnership on Artificial Intelligence (GPAI), *2024 GPAI New Delhi Declaration* (Report, 3 July 2024) <<https://wp.oecd.ai/app/uploads/2025/01/gpai-new-delhi-declaration-2024.pdf>>; 'Australia Supports Safe AI through New GPAI Declaration', *Department of Industry, Science and Resources* (Web Page, 29 August 2024) <<https://www.industry.gov.au/news/australia-supports-safe-ai-through-new-gpai-declaration>>.
- 7 'Australia Supports Collaborative AI Research through GPAI Belgrade Declaration', *Department of Industry, Science and Resources* (Web Page, 15 January 2025) <<https://www.industry.gov.au/news/australia-supports-collaborative-ai-research-through-gpai-belgrade-declaration>>.
- 8 Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council on Artificial Intelligence*, OECD/LEGAL/0449, 3 May 2024, 3 <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>> The Recommendation underwent subsequent revisions in November 2023 and May 2024.
- 9 Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council for Agile Regulatory Governance to Harness Innovation*, OECD/LEGAL/0464, 6 October 2021, 12 [5] <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0464>>.
- 10 United Nations, *Seizing the Opportunities of Safe, Secure and Trustworthy Artificial Intelligence Systems for Sustainable Development*, UN Doc A/78/L.49 (11 March 2024) <<https://docs.un.org/A/78/L.49>>.
- 11 Council of Europe, *Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law*, opened for signature 5 September 2024, CETS No. 225 <<https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence>>.
- 12 Global Affairs Canada, *Canada Signs the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law* (News Release, 11 February 2025) <<https://www.canada.ca/en/global-affairs/news/2025/02/canada-signs-the-council-of-europe-framework-convention-on-artificial-intelligence-and-human-rights-democracy-and-the-rule-of-law.html>>; Ministry of Foreign Affairs of Japan, *Signing of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law* (Press Release, 11 February 2025) <https://www.mofa.go.jp/press/release/pressite_000001_00983.html>.
- 13 Council of Europe, *Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law*, opened for signature 5 September 2024, CETS No. 225, 'Chart of signatures and ratifications of Treaty 225' <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty-num=225>>.
- 14 United Nations, *Global Digital Compact*, UN Doc A/79/L.2 (adopted 22 Sept 2024) <https://www.un.org/global-digital-compact/sites/default/files/2024-09/Global%20Digital%20Compact%20-%20English_0.pdf>.
- 15 Ibid [51].

- 4.9 An AI Action Summit was co-hosted by France and India in February 2025, where over 90 countries including Australia signed the *Paris AI Action Statement*.¹⁶ The statement identifies that AI systems should be ethical, trustworthy and promote AI accessibility to reduce the digital divide between advanced and developing nations.¹⁷
- 4.10 Some international initiatives can help to guide approaches to AI use in courts. For instance, the UNESCO *Recommendation on AI Ethics* describes expectations for judicial uses:
- Member States should enhance the capacity of the judiciary to make decisions related to AI systems as per the rule of law and in line with international law and standards, including in the use of AI systems in their deliberations, while ensuring that the principle of human oversight is upheld. In case AI systems are used by the judiciary, sufficient safeguards are needed to guarantee inter alia the protection of fundamental human rights, the rule of law, judicial independence as well as the principle of human oversight, and to ensure a trustworthy, public interest-oriented and human-centric development and use of AI systems in the judiciary.¹⁸
- 4.11 In July 2025, the UN Special Rapporteur on the independence of judges and lawyers recommended that jurisdictions exercise caution when considering the adoption of AI in judicial systems.¹⁹
- 4.12 While the need for global cooperation was a theme in the period between 2019 and 2024, there appears to be a shift in 2025. National AI regulatory approaches have taken different directions, and at this stage the Council of Europe Framework Convention stands as the only binding international agreement.

International AI standards

- 4.13 During our consultations, we heard that international organisations such as the National Institute of Standards and Technology and the International Standards Organisation can help shape AI governance.²⁰ Courts and tribunals could look to international standards as a source of guidance.
- 4.14 International standards provide specific, practical measures for organisations, companies and governments to commit to responsible internal processes and conduct. They align organisations with regulatory standards accepted in other parts of the world.
- 4.15 In recognition of this, the Australian Government sought to align the *Voluntary AI Safety Standard* with two leading international standards on AI management systems, the International Standards Organisation's AS ISO/IEC 42001: 2023 and the National Institute of Standards and Technology's AI RMF 1.0.²¹
- 4.16 Organisations like the Public Record Office Victoria highlight that international standards have an important role in benchmarking acceptable AI practices.²² This may be useful for Victoria's courts and VCAT when they procure third-party AI products and services. If a provider complies with international standards, this indicates that the provider meets globally recognised AI governance practices.

16 'Australia Signs Paris AI Action Summit Statement', *Department of Industry, Science and Resources* (Web Page, 14 February 2025) <<https://www.industry.gov.au/news/australia-signs-paris-ai-action-summit-statement>>.

17 Artificial Intelligence Action Summit, *Statement on Inclusive and Sustainable Artificial Intelligence for People and the Planet* (Report, 11 February 2025) <<https://www.elysee.fr/en/emmanuel-macron/2025/02/11/statement-on-inclusive-and-sustainable-artificial-intelligence-for-people-and-the-planet>>.

18 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Recommendation on the Ethics of Artificial Intelligence* (2022, Adopted on 23 Nov 2021) 28 [63] <<https://unesdoc.unesco.org/ark:/48223/pf0000381137>>.

19 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) <<https://docs.un.org/en/A/80/169>>.

20 The International Organization for Standardization is a non-government organisation that brings together global experts to develop international standards relating to technology and manufacturing, including AI. See 'ISO: Global Standards for Trusted Goods and Services', *ISO* (Web Page) <<https://www.iso.org/home.html>>; National Institute of Standards and Technology is an agency of the United States Department of Commerce whose responsibilities include cultivating trust in the design, development, use and governance of AI technologies and systems. See 'What We Do', *NIST: National Institute of Standards and Technology* (Web Page) <<https://www.nist.gov/>>.

21 Department of Industry, Science and Resources (Cth), National Artificial Intelligence Centre, and CSIRO, *Voluntary AI Safety Standard* (Report, August 2024) <<https://www.industry.gov.au/sites/default/files/2024-09/voluntary-ai-safety-standard.pdf>>. Standards Australia, 'AS ISO/IEC 42001:2023 Information Technology - Artificial Intelligence - Management System' <<https://www.standards.org.au/standards-catalogue/standard-details?designation=as-iso-iec-42001-2023>>.

22 Submission 13 (Name withheld). Consultation 21 (Public Record Office Victoria).

How AI is regulated in other countries

- 4.17 According to one assessment, over 200 AI-related laws had been enacted around the world by the end of 2024, ranging from laws that strengthen measures against online piracy to laws that regulate AI in political advertising.²³
- 4.18 Internationally, jurisdictions have taken different approaches to regulating AI. These include:
- comprehensive statutory approaches—involving risk-based legislation or horizontal legislation aimed across sectors and industries
 - other statutory approaches—establishing framework legislation or relying on amending existing regulation to cover AI-related issues
 - non-statutory approaches—relying on existing guidelines and often anchored in high-level principles. For our purposes this includes countries that have not settled on how to regulate AI.
- 4.19 Regulatory approaches can also be either ex-ante or ex-post:
- Ex-ante regulation—requires companies to meet certain standards before an AI system is deployed, with a focus on preventing harm before it occurs.
 - Ex-post regulation—focuses on enforcement after deployment to target and reduce known risks by issuing fines or penalties in response to proven harm.²⁴
- 4.20 We discuss how these distinctions might inform regulatory responses for safe use of AI in Victoria's courts and VCAT. In this chapter, we consider recent global developments based on the distinction between statutory and non-statutory approaches.

Comprehensive statutory approaches

- 4.21 The following jurisdictions have enacted comprehensive legislation with strong enforceable measures aimed at AI use across sectors and industries:
- European Union: Signed the *Artificial Intelligence Act 2024* (EU AI Act) into law in June 2024.²⁵ The EU AI Act prohibits the use of AI for certain practices, such as biometric categorisations based on sensitive traits, predicting the risk of a person's criminal behaviour based on their personality traits and characteristics²⁶ and real-time biometric identification in public spaces for law enforcement (with some exceptions).²⁷ The Act classifies the administration of justice as high risk and requires AI systems used for these purposes to have risk management, data governance, record keeping, human oversight and other measures to ensure transparency in how those AI systems operate.²⁸ The Act also contains distinctive transparency and regulatory requirements for developers of General Purpose AI systems, as these are considered high risk.²⁹
 - South Korea: Established a comprehensive regulatory framework for AI in January 2025.³⁰ The Act is seen as broadly aligned with the EU AI Act. It takes a risk-based approach and introduces binding obligations for domestic and foreign companies involved in implementing high-impact AI. This includes a requirement

23 Nestor Maslej et al, *The 2025 AI Index Report* (Report, AI Index Steering Committee, Institute for Human-Centered AI, Stanford University, April 2025) 337 <<https://hai.stanford.edu/ai-index/2025-ai-index-report>>

24 Gianclaudio Malgieri and Frank Pasquale, 'Licensing High-Risk Artificial Intelligence: Toward Ex Ante Justification for a Disruptive Technology' (2024) 52 *Computer Law & Security Review* 105899, 2 <<https://www.sciencedirect.com/science/article/pii/S0267364923001097>>.

25 *Regulation (EU) 2024/1689 (Artificial Intelligence Act)* [2024] OJ L 2024/1689 noting that implementation of the Act is taking a staged approach extending until 2 August 2027.

26 Ibid ch II, art 5 However 'this prohibition shall not apply to AI systems used to support the human assessment of the involvement of a person in a criminal activity, which is already based on objective and verifiable facts directly linked to a criminal activity': at art 5(1)(d).

27 Ibid.

28 Ibid ch III art 6(2) and annex III.

29 Ibid ch V.

30 'Framework Act on the Development of Artificial Intelligence and Establishment of Trust (English Translation)', *Center for Security and Emerging Technology, Georgetown University* (Web Page, 9 July 2025) <<https://cset.georgetown.edu/publication/south-korea-ai-law-2025/>>; *Ingong Baljeongwa Shinroe Guiban Joseong Deunge Gwanhan Gibbonberban (Daeon)* [Basic Act (Alternative) on the Development of Artificial Intelligence and the Creation of a Trust Foundation (English Translation)] (S.Kor, Law No. 20676).

to evaluate whether an AI system is high-impact,³¹ and defines compliance requirements for companies using high-impact and GenAI.³² AI business operators providing high-impact AI are required to implement a range of measures, such as a risk management plan, user protection measures, human supervision and documentation of these processes.³³

4.22 Other nations are currently considering comprehensive or risk-based laws:

- Brazil: Passed a Senate Bill in December 2024 to establish a regulatory framework covering the development, use and governance of AI systems. The Bill is set to be voted on by the Chamber of Deputies, before approval by the President.³⁴ The legislation builds on Brazil's national AI strategy and three prior non-legislated Bills focused on reducing harm and promoting innovation. The law prohibits excessive risk systems that classify or rank individuals based on their social behaviour or personality traits. It bans live biometric identification systems unless there is express legal or judicial authorisation.³⁵ The law also classifies the use of AI in the administration of justice as high risk.³⁶
- Mexico: A Bill was introduced in February 2025 to adopt a *General Law on the Use of AI*.³⁷ The Bill seeks to amend the Mexican Constitution to grant its Congress authority to legislate about this matter. The proposed law sets limits on the development and deployment of AI in Mexico and outlines specific prohibitions to prevent its misuse. It also proposes the creation of a national registry on AI systems.³⁸
- Chile: Proposed an AI Bill which sits between self-regulation and risk-based regulation.³⁹ The draft law sets out internationally accepted ethical principles, aligned with the *UNESCO Recommendation on the Ethics of AI*. The Bill classifies AI systems into those presenting an unacceptable risk, high risk, limited risk and no evident risk.⁴⁰
- Canada: The pace of the *Artificial Intelligence and Data Bill*, discussed in our consultation paper, slowed following its second reading.⁴¹ The Bill expired due to the Canadian Federal election in April 2025. This was an omnibus Bill that would have established three separate Acts in areas of law related to consumer privacy and personal data protection, as well as AI.

4.23 Other countries have introduced Bills that contain enforceable measures targeted at specific risks or uses, such as the Philippines,⁴² or have members of legislatures that are proposing comprehensive risk-based approaches, such as deputies to the National People's Congress in China.⁴³

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- 31 Lee & Ko, 'A New Era for AI: Republic of Korea Takes a Bold Step with AI Regulation', *asialaw* (online, 10 January 2025) <<https://www.asialaw.com/NewsAndAnalysis/a-new-era-for-ai-republic-of-korea-takes-a-bold-step-with-ai-regulation/Index/2228>>.
- 32 'Framework Act on the Development of Artificial Intelligence and Establishment of Trust (English Translation)', *Center for Security and Emerging Technology, Georgetown University* (Web Page, 9 July 2025) art II (4) <<https://cset.georgetown.edu/publication/south-korea-ai-law-2025/>>.
- 33 Ibid art 34 (1).
- 34 PL 2338/2023 [Bill No. 2338, of 2023] (Brazil).
- 35 Ibid arts 14 and 15.
- 36 Ibid art 17.
- 37 *Proyecto de decreto por el que se expide la Ley Federal que regula la Inteligencia Artificial* [Draft decree issuing the Federal Law that regulates Artificial Intelligence (English translation)] April 2, 2024 (Congress of the United Mexican States).
- 38 Kimberly Breier, Gerónimo Gutiérrez Fernández and Lorena Montes de Oca, 'New Artificial Intelligence Legislation in Mexico', *Global Policy Watch* (Web Page, 14 March 2025) <<https://www.globalpolicywatch.com/2025/03/new-artificial-intelligence-legislation-in-mexico/>>.
- 39 'Chile Launches National AI Policy and Introduces AI Bill Following UNESCO's Recommendations', *UNESCO* (Web Page, 6 May 2024) <<https://www.unesco.org/en/articles/chile-launches-national-ai-policy-and-introduces-ai-bill-following-unescos-recommendations>>.
- 40 Ministry of Science, Technology, Knowledge and Innovation (Chile), 'Con enfoque basado en riesgos, gobierno presenta proyecto de ley para regular usos de la Inteligencia Artificial' [With a risk-based approach, government presents bill to regulate uses of Artificial Intelligence (English translation)], *MinCiencia* (Web Page, 10 May 2024) <<https://www.minciencia.gob.cl/noticias/con-enfoque-basado-en-riesgos-gobierno-presenta-proyecto-de-ley-para-regular-usos-de-la-inteligencia-artificial/>>.
- 41 Blair Attard-Frost, 'The Death of Canada's Artificial Intelligence and Data Act: What Happened, and What's Next for AI Regulation in Canada?', *Montreal AI Ethics Institute* (Web Page, 17 January 2025) <<https://montrealaiethics.ai/the-death-of-canadas-artificial-intelligence-and-data-act-what-happened-and-whats-next-for-ai-regulation-in-canada/>>; *Artificial Intelligence and Data Act (AIDA)* (Canada).
- 42 Nilo Divinia and Jay-r Pac, 'AI and the Law in the Philippines', *Asia Business Law Journal* (Web Page, 15 April 2024) <<https://law.asia/ai-law-philippines/>>.
- 43 Zhu Ningning, 'Duómíng Dàibǎo Tíchū Guānyú Zhìdìng Rèngōngzhìnéng Fde Yìàn Gōujiàn Quànmìàn Kéxué de Rèngōngzhìnéng Fǎ Zhìdù Tǎi [Several Deputies Proposed a Motion on Formulating an Artificial Intelligence Law to Establish a Comprehensive and Scientific Legal System for AI (English Translation)]', *Legal Daily - NPC* (online, 17 June 2025) <<http://epaper.legaldaily.com.cn/fzrb/content/20250617/ArticleI05005GN.htm>>.

Other statutory approaches

- 4.24 Other governments have proposed standalone legislation but avoided new powers of enforcement. Instead, they have relied on:
- existing laws
 - existing regulatory bodies
 - non-binding measures to encourage compliance.
- 4.25 Some jurisdictions have looked to establish 'framework legislation', which the Australian government has described as legislation focused on adapting existing regulatory frameworks.⁴⁴ Framework legislation would 'provide a consistent set of definitions and measures that would then be implemented through amendments to existing regulatory frameworks' and define 'the guardrails to apply and the threshold for when they would apply'.⁴⁵ This approach can include establishing government agencies to implement national AI strategies, sharing information across government or monitoring risk.
- 4.26 Peru became the first country in South America to enact legislation concerning AI in July 2022.⁴⁶ The law is narrowly focused and establishes the Presidency of the Council of Ministers as the national authority responsible for directing, evaluating and supervising the development of AI in the country.⁴⁷
- 4.27 El Salvador passed a law in February 2025 that is focused on the promotion of AI and technologies.⁴⁸ The law establishes a National Artificial Intelligence Agency to coordinate and supervise obligations established under the law. It also ensures developers who are using open domain data and list themselves on the national register can be exempt from liability resulting from the unintended consequences of AI.⁴⁹
- 4.28 In May 2025, the Japanese parliament enacted a law to promote the development of AI.⁵⁰ Rather than imposing regulations or penalties on AI developers, the Act sets out general principles and lacks specific binding obligations.⁵¹ In early 2024, the Japanese Government had been progressing comprehensive and enforceable legislation, which was abandoned in favour of the approach enacted in May 2025.⁵²
- 4.29 The National Assembly of Vietnam also officially adopted the *Law on Digital Technology Industry* in June 2025, which contains dedicated sections on AI.⁵³ The overall legal framework promotes adopting digital technologies and includes measures to boost domestic innovation, strengthen the digital workforce and attract international talent and capital.

44 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia: Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings* (Proposals Paper, September 2024) 48–9.

45 Ibid 48.

46 *Ley N° 31814, Ley que promueve el uso de la inteligencia artificial en favor del desarrollo económico y social del país* [Law No. 31814, Law that promotes the use of Artificial Intelligence in favor of the economic and social development of the country (English translation)] July 5, 2023 (Peru).

47 'Peru: Implemented Law Promoting the Use of Artificial Intelligence for the Economic and Social Development of Peru (No. 31814)', *Digital Policy Alert* (Web Page) <<https://digitalpolicyalert.org/event/13763-implemented-law-promoting-the-use-of-artificial-intelligence-for-the-economic-and-social-development-of-peru-no-31814>>; Sebastian Smart and Victor M Montori, 'Peru's AI Regulatory Boom: Quantity Without Depth?', *Harvard Kennedy School, Carr-Ryan Centre for Human Rights* (Web Page, 23 April 2025) <<https://www.hks.harvard.edu/centers/carr-ryan/our-work/carr-ryan-commentary/perus-ai-regulatory-boom-quantity-without-depth>>.

48 *Decreto N.o 234: Ley de Fomento a Inteligencia Artificial y Tecnologías* [Decree No. 234: Law for the Promotion of Artificial Intelligence and Technologies (English Translation)] March 3, 2025 (El Salvador).

49 'El Salvador Unveils New Law to Shape AI Development.', *El Salvador in English* (Web Page, 10 February 2025) <<https://elsalvadorinenglish.com/2025/02/10/el-salvador-unveils-new-law-to-shape-ai-development/>>.

50 Kensuke Inueo and Chika Kamata, 'Japan's Emerging Framework for Responsible AI: Legislation, Guidelines and Guidance', *International Bar Association* (Web Page, 16 July 2025) <<https://www.ibanet.org/japan-emerging-framework-ai-legislation-guidelines>>.

51 *Jinkou Chinou Kanren Gijutsu No Kenkyuu Kaihatsu Oyobi Katsuyou No Suishin Nikansuru Houritsu* [Act on Promotion of Research and Development and Utilization of Artificial Intelligence-Related Technologies (English Translation)] Act No. 53 of 2025 (Japan).

52 Hiroki Habuka, 'New Government Policy Shows Japan Favors a Light Touch for AI Regulation', *Wadhvani AI Center, Center for Strategic and International Studies* (Web Page, 25 February 2025) <<https://www.csis.org/analysis/new-government-policy-shows-japan-favors-light-touch-ai-regulation>>.

53 Phong Anh Hoang, 'Vietnam: Landmark Law on Digital Technology Industry - New Frameworks for AI & Digital Assets', *DFDL* (Web Page, 24 June 2025) <<https://www.dfdl.com/insights/legal-and-tax-updates/vietnam-landmark-law-on-digital-technology-industry-new-frameworks-for-ai-digital-assets/>>.

- 4.30 In Taiwan, the National Science and Technology Council published a draft Act on AI in July 2024.⁵⁴ The Bill was approved by Taiwan's Executive Yuan for deliberation in August 2025.⁵⁵ The Bill is focused on encouraging technological innovation and lacks regulatory measures, such as those reflected in the EU AI Act.
- 4.31 Some of these statutory approaches are aligned to the OECD's *Recommendation of the Council for Agile Regulatory Governance to Harness Innovation* which focuses on:
- adjusting regulatory management tools
 - laying institutional foundations that enable cooperation and 'joined up' approaches
 - developing governance frameworks for 'agile' regulation
 - adapting enforcement measures to a country's evolving needs.⁵⁶
- 4.32 These kinds of statutory approaches may evolve over time to include enforceable legislative measures.

Non-statutory approaches to AI regulation

- 4.33 Non-statutory approaches cover a wide range of regulatory responses by different countries. In addition, some governments are in a state of flux, and it is difficult to establish where their regulatory approach will land.
- 4.34 Since October 2024, the United States has shifted to a fragmented regulatory framework with the change of government and the rollback of Executive Orders announced under the previous administration.⁵⁷ In July 2025, the White House announced an *AI Action Plan* focused on fostering innovation, building infrastructure to support AI (such as data centres) and international diplomacy efforts that drive adoption of US technology around the world.⁵⁸
- 4.35 In contrast, Californian legislators have enacted AI-related laws focused on risk assessment, privacy protections and transparency in the use of training data at the state-level.⁵⁹ These were introduced after the California Governor vetoed a bill that would have created AI safety standards protecting people from 'critical harms'.⁶⁰ Illinois legislators have also amended existing human rights laws to prohibit employers from using AI in relation to employment practices and requiring employers to notify employees where AI is used in employment decisions.⁶¹
- 4.36 Other countries have focused on non-binding regulatory strategies such as principles or guidelines. This involves regulators enforcing existing laws on AI developers and companies. These approaches are characterised by strategies that leverage existing regulatory avenues.
- 4.37 Singapore has not proposed specific legislation to govern AI. The Singaporean regulatory approach is described in the *National AI Strategy 2.0*.⁶² This is supplemented by sector-based regulations and guidelines, such as the Info-Communications Media

54 National Science and Technology Council, Republic of China, 'Yùgàozhìdìng "Rèngōng zhìhuì jīběnf" cǎoàn [Announcement of the Draft "Artificial Intelligence Basic Law" (English translation)]', *National Development Council* (Web Page, 13 September 2025) <<https://join.gov.tw/policies/detail/4c714d85-ab9f-4b17-8335-f13b31148dc4>>.

55 Department of Information Services, Executive Yuan, 'Executive Yuan Approves Draft Bill for Basic Law on AI', *Taiwan's Executive Yuan* (Web Page, 28 August 2025) <<https://english.ey.gov.tw/Page/61BF20C3E89B856/89da216e-5741-43e4-aac8-af4551a21499>>.

56 Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council for Agile Regulatory Governance to Harness Innovation*, OECD/LEGAL/0464, 6 October 2021. <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0464>>.

57 *Removing Barriers to American Leadership in Artificial Intelligence 2025*, Exec. Order No.14179, 90 FR 8741 (2025).

58 Executive Office of the President of the United States, *Winning the Race: America's AI Action Plan* (Report, 24 July 2025) <<https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>>.

59 For instance, *California Consumer Privacy Act of 2018: Personal Information*, CA AB1008 (2024) grants consumers various rights with respect to personal information collected by AI developers and companies by amending section 1798.40 of the Civil Code; *Contracts against Public Policy: Personal or Professional Services: Digital Replicas*, CA AB2602 (2024) adds section 927 to the Labor Code to prohibit an employer from requiring an employee to agree to a term or condition that is known by the employer to be illegal and creates prohibitions on the use of AI-generated avatars; *Health Care Services: Artificial Intelligence*, CA AB3030 (2024) amends the Health and Safety Code at Section 1339.75 to require health providers to state when a communication was generated by AI.

60 *Safe and Secure Innovation for Frontier Artificial Intelligence Models Act*, CA SB1047 (2024).

61 *Pub. Act 103-0804 2024* (Ill).

62 Ministry of Communications and Information (Singapore) and Smart Nation Singapore, *National AI Strategy 2.0* (Report, 4 December 2023) <<https://www.smartnation.gov.sg/initiatives/national-ai-strategy>>.

Development Authority's *Proposed Model AI Governance Framework for GenAI* and the *AI Verify Testing Framework developed by the AI Verify Foundation*, an AI governance framework and software toolkit.⁶³

- 4.38 England and Wales have also indicated it will take a non-legislative approach. The *AI Opportunities Action Plan* was commissioned to explore how AI can be harnessed to support economic growth.⁶⁴ The England and Wales governments endorsed all 50 recommendations and committed to implement them over 12 months⁶⁵
- 4.39 These non-statutory approaches in part reflect current global uncertainties. But some countries have determined appropriate AI regulation does not require legislative change.

Considering different regulatory approaches

- 4.40 Countries are taking different approaches to the role of legislative reform in the regulation of AI across the world. At a broad level statutory and non-statutory regulatory responses each have strengths and weaknesses, although this will change depending on the context and issues to be addressed.
- 4.41 Statutory approaches can create legally enforceable obligations, but they may not be as well equipped to:
- keep pace with rapidly changing technologies
 - be effective, if legislative compliance is difficult to understand, monitor or assess
 - protect those adversely affected, where regulators are not appropriately empowered to administer the legislation.⁶⁶
- 4.42 Introducing statutory approaches can be challenging for fast-moving issues, where risks to be addressed are not yet clear or are changing.⁶⁷
- 4.43 Non-statutory approaches are faster to implement and easier to adapt than legislation. But while they can set regulatory expectations, non-statutory approaches are unenforceable. This means that:
- compliance is likely to be incomplete
 - bad actors are most likely to claim they are compliant and are the least likely to comply
 - the public is less likely to trust voluntary measures
 - tailored principles and guidelines may multiply, creating uncertainty and confusion
 - effectiveness is difficult to measure.⁶⁸
- 4.44 The diversity of regulatory approaches from around the world indicates both statutory and non-statutory approaches to AI regulation have important roles to play.

63 AI Verify Foundation and Infocomm Media Development Authority of Singapore. *Model AI Governance Framework for Generative AI: Fostering a Trusted Ecosystem* (Report, 30 May 2024) <<https://aiverifyfoundation.sg/wp-content/uploads/2024/05/Model-AI-Governance-Framework-for-Generative-AI-May-2024-1-1.pdf>>; AI Verify, 'AI Verify: AI Governance Testing Framework and Toolkit', *Personal Data Protection Commission, Singapore* (Web Page, 25 May 2022) <<https://www.pdpc.gov.sg/news-and-events/announcements/2022/05/launch-of-ai-verify---an-ai-governance-testing-framework-and-toolkit>>; Jason Grant Allen, Jane Loo and Jose Luis Luna Campoverde, 'Governing Intelligence: Singapore's Evolving AI Governance Framework' (2025) 1 *Cambridge Forum on AI: Law and Governance* e12, 5 <<https://www.cambridge.org/core/journals/cambridge-forum-on-ai-law-and-governance/article/governing-intelligence-singapores-evolving-ai-governance-framework/5E54A373E193E2D51354ADC1F509B9B4#>>>.

64 Matt Clifford, *AI Opportunities Action Plan: Ramping up AI Adoption across the UK to Boost Economic Growth, Provide Jobs for the Future and Improve People's Everyday Lives*. (Report, Department of Science, Innovation and Technology (UK), 13 January 2025) <<https://www.gov.uk/government/publications/ai-opportunities-action-plan/ai-opportunities-action-plan>>.

65 Department for Science, Innovation & Technology (UK), *AI Opportunities Action Plan: Government Response* (Policy Paper No CP 1242, 13 January 2025) <<https://www.gov.uk/government/publications/ai-opportunities-action-plan-government-response/ai-opportunities-action-plan-government-response>>.

66 A concern relating to appropriate enforcement mechanisms was expressed by Consultation 28 (Monash University Digital Law Group); Gary Marchant and Carlos Ignacio Gutierrez, 'Soft Law 2.0: An Agile and Effective Governance Approach for Artificial Intelligence' (2023) 24(2) *Minnesota Journal of Law, Science & Technology* 375, 379–384 <<https://scholarship.law.umn.edu/mjlst/vol24/iss2/4>>.

67 Gary Marchant and Carlos Ignacio Gutierrez, 'Soft Law 2.0: An Agile and Effective Governance Approach for Artificial Intelligence' (2023) 24(2) *Minnesota Journal of Law, Science & Technology* 375, 377 <<https://scholarship.law.umn.edu/mjlst/vol24/iss2/4>>.

68 Ibid 384–7.

- 4.45 It is useful to consider the breadth of AI regulatory approaches to inform what is most suitable for Victoria's courts and VCAT. Most stakeholders supported principles (Chapter 6) and guidelines (Chapters 7 and 8). Though we were cautioned that principles alone may not be effective. Generally, we heard that non-statutory approaches were considered more flexible than legislation in responding to the rapidly changing AI landscape in the context of courts. We were also cautioned about introducing court-specific legislative change at this early stage (Chapter 5). It was recognised that national regulatory responses could influence Victoria's courts and VCAT.

Regulation at the national level

- 4.46 Australia does not have AI-specific regulation, but the Australian Government has explored a risk-based regulatory approach that involves ex-ante preventative measures. This proposal includes consideration of ways to strengthen existing laws.⁶⁹
- 4.47 The Productivity Commission has recommended AI-specific regulation should be a last resort, where existing or technology neutral regulations are not able to adequately mitigate the risk of harm.⁷⁰
- 4.48 Regulatory responses by the Australian Government may impact approaches to the safe use of AI in Victoria's courts and VCAT. The Victorian Government is engaged with state and national counterparts on the development of a national regulatory approach.
- 4.49 In September 2024, the Australian Government published a paper proposing mandatory guardrails for AI in high-risk settings.⁷¹ The Australian Government's approach builds on its interim response to the *Safe and Responsible AI in Australia* discussion paper.⁷²
- 4.50 Similar guardrails were detailed in the *Voluntary AI Safety Standard*, also published in September 2024. These aim to provide practical guidance to Australian companies and organisations about the safe use of AI.⁷³ The standard is supported by eight voluntary principles called *Australia's AI Ethics Principles*. The principles seek to ensure the safe, secure and reliable use of AI.⁷⁴
- 4.51 Also relevant to AI regulation is the *Privacy and Other Legislation Amendment Act 2024 (Cth)*,⁷⁵ which introduced the first set of 106 recommendations made in the *Privacy Act Review Report*.⁷⁶ The amendments require companies and other organisations to include information in their privacy policies about automated decisions which affect the rights of individuals.⁷⁷ However, the *Privacy Act 1988 (Cth)* does not apply to Victoria's courts or tribunals. The second set of changes are anticipated in 2025.⁷⁸
- 4.52 The report explores a Model Law regulating facial recognition technology that was developed by the Human Technology Institute.⁷⁹ The Australian Government, in its response to the report, agreed further consideration is needed to determine how facial recognition technology and other uses of biometric information should be accommodated in privacy and other relevant frameworks.⁸⁰

69 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia Consultation: Australian Government's Interim Response* (Report, 2024) 22.

70 Productivity Commission, *Interim Report - Harnessing Data and Digital Technology* (Report, August 2025) 2, 20-1 <<https://www.pc.gov.au/inquiries/current/data-digital/interim>>.

71 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia: Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings* (Proposals Paper, September 2024).

72 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia: Discussion Paper* (Discussion Paper, June 2023).

73 Department of Industry, Science and Resources (Cth), National Artificial Intelligence Centre, and CSIRO, *Voluntary AI Safety Standard* (Report, August 2024) <<https://www.industry.gov.au/sites/default/files/2024-09/voluntary-ai-safety-standard.pdf>>.

74 'Australia's AI Ethics Principles', *Department of Industry, Science and Resources* (Web Page, 11 October 2024) <<https://www.industry.gov.au/publications/australias-artificial-intelligence-ethics-principles/australias-ai-ethics-principles>> The first version of these principles was published in 2019. They were updated to reflect the Voluntary AI Safety Standard in November 2024.

75 *Privacy and Other Legislation Amendment Act 2024 (Cth)*.

76 Attorney-General's Department (Cth), *Privacy Act Review Report 2022* (Report, 2022).

77 *Privacy and Other Legislation Amendment Act 2024 (Cth)* pt 15.

78 Australian Government, *Government Response - Privacy Act Review Report* (Report, 2023); 'Interview with the Hon Michelle Rowland MP', *Sunday Agenda* (Sky News, 20 July 2025) <<https://ministers.ag.gov.au/media-centre/transcripts/tv-interview-sky-news-sunday-agenda-20-07-2025>>.

79 Attorney-General's Department (Cth), *Privacy Act Review Report 2022* (Report, 2022) 126.

80 Australian Government, *Government Response - Privacy Act Review Report* (Report, 2023) 10, 23, 28.

- 4.53 A high-level discussion paper on copyright-related issues and transparency was circulated to the Copyright and Artificial Intelligence Reference Group in September 2024. The discussion paper raised two areas that could impact the proposal for mandatory guardrails:
- whether data used to train, fine-tune or test an AI model should be legally obtained
 - whether data sources need to be disclosed.⁸¹
- 4.54 It explored whether organisations and companies developing GenAI tools should ensure the content they create can be detected as artificially generated or manipulated.
- 4.55 A summary of responses highlighted general support for transparency requirements in relation to AI and that transparency measures should be supported through whole-of-economy regulation rather than changes to the *Copyright Act 1968* (Cth).⁸²

Victorian Government alignment with national framework

- 4.56 In June 2024, data and digital ministers representing the Australian, state and territory governments endorsed a *National Framework for the Assurance of Artificial Intelligence in Government* (the National Framework).⁸³ The *Policy for the responsible use of AI in government* was later released and is intended to unify approaches to the governance, assurance and transparency of AI across the Australian Public Service.⁸⁴
- 4.57 The Victorian Government has developed an *Administrative Guideline* based on the National Framework.⁸⁵ The guideline applies minimum standards to public service bodies and public entities as defined under the *Public Administration Act 2004* (Vic).⁸⁶ The guideline is supported by guidance that provides direct and practical advice to Victorian public sector employees, contractors, consultants and volunteers about the safe and appropriate use of GenAI.⁸⁷
- 4.58 Victoria's courts and VCAT and staff employed by Court Services Victoria (CSV) are not currently required to apply the guideline. However, CSV has stated that it operates within government frameworks and seeks to apply the Victorian guidelines.⁸⁸
- 4.59 Other state agencies such as the Public Record Office Victoria and the Office of the Victorian Information Commissioner have released standards and targeted guidance relevant to the use and implementation of GenAI in the Victorian Government.⁸⁹ Some of these developments may be relevant to Victoria's courts and tribunals.⁹⁰

81 Attorney-General's Department (Cth), *Copyright and AI Reference Group – Transparency* (Discussion Paper, September 2024) 3 <<https://www.ag.gov.au/rights-and-protections/publications/copyright-and-ai-transparency-discussion-paper>>.

82 Attorney-General's Department (Cth), *Copyright and AI Reference Group – Transparency* (Discussion Paper, September 2024) <<https://www.ag.gov.au/rights-and-protections/publications/copyright-and-ai-transparency-discussion-paper>>; This follows on from the 'Copyright Enforcement Review 2022-23', *Attorney-General's Department* (Web Page) 1, 3 <<https://www.ag.gov.au/rights-and-protections/copyright/copyright-enforcement-review-2022-23>> undertaken from November 2022 to March 2023.

83 Australian Government et al, *National Framework for the Assurance of Artificial Intelligence in Government: A Joint Approach to Safe and Responsible AI by the Australian, State and Territory Governments* (Report, 21 June 2024).

84 Digital Transformation Agency (Cth), *Policy for the Responsible Use of AI in Government* (Version 1.1, 1 September 2024) <<https://www.digital.gov.au/policy/ai/policy>>; This is supported by the Digital Transformation Agency (Cth), *Australian Government's AI Technical Standard* (Version 1, July 2025) <<https://www.digital.gov.au/policy/ai/AI-technical-standard>>.

85 Department of Premier and Cabinet (Vic), *Administrative Guideline Direction on the Use of DeepSeek Products, Applications and Web Services* (No 2025/1, Issue 1.0, February 2025) <<https://www.vic.gov.au/sites/default/files/2025-02/Administrative-Guideline-DeepSeek.pdf>>; Department of Premier and Cabinet (Vic), *Administrative Guideline - The Safe and Responsible Use of Generative AI in the Victorian Public Sector* (No 2024/07, Issue 1.0, November 2024) <<https://www.vic.gov.au/sites/default/files/2024-11/Generative-AI-Guideline-%281%29.pdf>>.

86 *Public Administration Act 2004* (Vic).

87 Department of Government Services, *Guidance for the Safe and Responsible Use of Generative AI in the Victorian Public Sector* (Report, Victorian Government, 19 March 2025) <<https://www.vic.gov.au/guidance-safe-responsible-use-gen-ai-vps>>.

88 Submission 25 (Court Services Victoria).

89 Such as Office of the Victorian Information Commissioner (OVIC), *Artificial Intelligence – Understanding Privacy Obligations* (Report, April 2021) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/artificial-intelligence-understanding-privacy-obligations/>>; Public Record Office Victoria, *Artificial Intelligence (AI): Capturing and Managing Records Generated by or Using AI Technologies* (Web Page, 31 July 2025) <<https://prov.vic.gov.au/recordkeeping-government/a-z-topics/AI>>.

90 For instance, a report by the Victorian Commissioner for Economic Growth about Victoria's use of AI is yet to be published. Originally due in October 2024, the report was set to include analysis of 'whole of government activities for facilitating the adoption of AI including appropriate policy, legislative and regulatory frameworks': Commissioner for Economic Growth, 'Review of Artificial Intelligence Use in Victoria - Terms of Reference', *VIC.GOV.AU* (Web Page, 5 June 2024) <<https://www.vic.gov.au/review-artificial-intelligence-use-victoria-terms-reference>>.

How risk-based national regulation may impact Victoria's courts and VCAT

- 4.60 It is difficult to predict which position the Australian Government will ultimately take. In November 2024, the Commonwealth Parliamentary Select Committee on Adopting AI recommended that the Australian Government introduce dedicated, whole-of-economy legislation to regulate high-risk uses of AI. This is in line with one of the three options provided in the mandatory guardrails proposals paper.⁹¹ In contrast, in August 2025 the Productivity Commission in an interim report advised the Australian Government to pause steps to implement mandatory guardrails for high-risk AI until a review of regulatory gaps could be completed.⁹²
- 4.61 In its proposal paper, the Australian Government explored how mandatory guardrails could apply to all General Purpose AI.⁹³ It outlined that General Purpose AI systems 'pose unforeseeable risks because they can be applied in contexts they were not originally designed for'.⁹⁴ This is relevant to courts because national regulation could require, for example, developers of GenAI systems used in legal research to comply with mandatory safety requirements.⁹⁵ This would potentially enhance trust and confidence in AI systems used in Victoria's courts and VCAT, particularly for public AI tools that litigants and lawyers may use in court and tribunal proceedings.
- 4.62 The Australian Government also considered a definition of 'foreseeable high-risk uses' which is principles based. This would designate AI systems as high-risk (and subject to mandatory guardrails) where there is a combination of factors, such as the risk of adverse:
- impacts to an individual's recognised human rights
 - impacts to an individual's physical or mental health or safety
 - legal effects, defamation or similarly significant effects on an individual
 - impacts to groups of individuals or collective rights of cultural groups
 - impacts to the Australian economy, society, environment and rule of law.⁹⁶
- 4.63 A principle-based approach to the definition of high-risk could have implications for Victoria's courts and VCAT given that:
- the misapplication of AI by courts and tribunals would risk adverse impacts on Australian society and the rule of law
 - the decision of any court or tribunal may produce an adverse legal effect for an individual
 - the administration of criminal cases directly risks adverse impacts on an individual's human rights such as the right to liberty⁹⁷
 - the use of AI in other court proceedings and in court administration could jeopardise the right to equality before the law and a fair hearing⁹⁸
 - AI tools used to predict recidivism, bail or sentence length in other jurisdictions have been documented to contain bias and could risk adverse impacts for groups and cultural communities⁹⁹

91 Senate Select Committee on Adopting Artificial Intelligence (AI), Parliament of Australia, *Report of the Select Committee on Adopting Artificial Intelligence (AI)* (Final Report, November 2024) 169 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Adopting_Artificial_Intelligence_AI/AdoptingAI/Report>.

92 Productivity Commission, *Interim Report - Harnessing Data and Digital Technology* (Report, August 2025) 21 <<https://www.pc.gov.au/inquiries/current/data-digital/interim>> The final inquiry report is to be handed to the Australian Government in December 2025.

93 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia: Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings* (Proposals Paper, September 2024) 29.

94 *Ibid* 28.

95 *Ibid* 35–42.

96 *Ibid* 19.

97 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 21.

98 *Ibid* ss 8, 24.

99 *Ibid* s 8; See Julia Angwin et al, 'Machine Bias', *ProPublica* (online, 23 May 2016) <<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>>; Jeff Larson et al, 'How We Analyzed the COMPAS Recidivism Algorithm', *ProPublica* (online, 23 May 2016) <<https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm>>.

- data breaches relating to personal and sensitive information collected by court administration may impact upon privacy rights of court users.¹⁰⁰
- 4.64 An alternative proposed by the Australian Government is a list-based approach that could designate any use of AI in the administration of justice as high-risk, alongside a range of specific exemptions.¹⁰¹
- 4.65 The Office of the Victorian Information Commissioner had concerns about whether a national approach would cover certain high-risk GenAI uses.¹⁰² This concern remains relevant given a national approach to AI regulation has not been determined.
- 4.66 It is not yet clear what approach will be taken by the Australian Government. But if AI systems, applications and tools used in courts and tribunals are designated as high-risk or parts of court functions are considered high-risk, compliance with mandatory guardrails will need to be integrated into court and tribunal approaches.

What will national regulation of AI mean for Victoria's courts and VCAT?

- 4.67 We heard that there are constitutional limits on the extent to which the Australian Government can define how state courts operate.¹⁰³
- 4.68 The Supreme Court stated:
- The Court would be wary of legislative reforms to regulate the use of AI if those reforms have the effect of curtailing the judicial process. However, it is recognised that a cautious approach is required to the use of AI in relation to judicial functions.¹⁰⁴
- 4.69 In the future, states may need to introduce legislation to apply elements of a national regulatory framework to courts. Any such future reforms would need to be carefully considered to ensure they do not infringe upon the separation of powers principle which requires the judiciary to operate independently and without interference of the executive arm of government.¹⁰⁵
- 4.70 Despite these limitations, representatives of the Human Technology Institute recognised that there are still 'many areas of activity—especially within the broad domain of legal practice—that can be regulated by the Commonwealth [Australian] Government'.¹⁰⁶
- 4.71 In practice, this means the Australian Government can regulate the organisations and companies that develop and provide AI tools used by litigants, lawyers, Victoria's courts and VCAT. A representative of Digital Rights Watch suggested intervention by the Australian Government could provide a form of accreditation for safe and trustworthy tools. It stated, it 'may be helpful to have a government labelling service that endorses algorithms that comply with voluntary standards'.¹⁰⁷
- 4.72 The County Court endorsed the role of the Australian Government in shaping AI regulation stating a 'broad approach to regulation at the Federal level will allow governments and courts to adopt a consistent approach with the rest of the nation'.¹⁰⁸
- 4.73 Additional amendments to privacy laws were also anticipated to impact the procurement of AI products and tools in Victoria's courts.¹⁰⁹ CSV considered that privacy changes to legislation at state or national levels would have a flow-on effect in the ongoing review of its own AI Framework.¹¹⁰

100 *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 13.

101 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia: Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings* (Proposals Paper, September 2024) 25–7.

102 Consultation 14 (Office of the Victorian Information Commissioner).

103 Consultation 34 (Human Technology Institute); This was also reflected in concerns about implementation of the EU AI Act as identified by Consultation 28 (Monash University Digital Law Group).

104 Submission 26 (Supreme Court of Victoria).

105 See *Kable vs DPP* [1996] HCA 24; (1996) 189 CLR 51 which establishes the principle that the judicial independence of state Supreme Courts should not be impaired by state legislation, also known as the Kable doctrine.

106 Consultation 34 (Human Technology Institute).

107 Consultation 17 (Digital Rights Watch).

108 Submission 24 (County Court of Victoria).

109 Consultations 8 (Federation of Community Legal Centres Workshop), 17 (Digital Rights Watch).

110 Submission 25 (Court Services Victoria).

- 4.74 Regulation at the national level has an important role to play in assisting Victoria's courts and VCAT to make AI use safer by:
- setting the public policy objectives of AI regulation nationally
 - defining national general principles and standards that guide planning and regulation in various jurisdictions
 - coordinating policy making and information sharing across jurisdictions and sectors
 - filling gaps in existing laws and regulatory schemes where specific sectors are not equipped to address harms.
- 4.75 A national regulatory approach would have the benefit of consistently addressing opportunities and risks related to high-risk AI systems, applications and tools. This may have an impact on the type and quality of AI tools available for use in Victoria's courts and tribunals. While national AI regulation is important for consistency, the Commission emphasises consideration must be given to ensure any national reform maintains judicial independence.

Recommendation

1. The Victorian Government should collaborate with the Australian government and other states and territories to develop a consistent and agreed national approach to AI regulation. While national AI regulation is important for safety and consistency, care must be given to ensure any national reform maintains judicial independence.

CHAPTER 05

Is legislative reform necessary for safe use of AI in courts and tribunals?

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5. Is legislative reform necessary for safe use of AI in courts and tribunals?

Overview

- Our terms of reference ask us to consider opportunities to build on existing legislation, regulation and common law to support the safe use of AI in Victoria's courts and tribunals.
- We heard from some stakeholders that legislative reform might be needed in privacy law. There are also emerging issues in evidence law and administrative law that might require legislative reform over time to respond to risks of AI.
- The feedback we received did not identify clear gaps in existing legislation. Given AI technology and use in courts is evolving, and the regulatory environment is still developing at the national level, we are not proposing legislative reform at this stage.
- We were also told that court rules and procedures will need to adapt but can be currently managed within existing rule-making powers.
- This chapter provides an overview of the current legislative framework and considers potential areas where future law reform may be required.

Laws and regulations relevant to AI

- 5.1 While there is no AI-specific legislation in Victoria, elements of Victoria's broader legislative and regulatory framework are relevant in considering how AI can be safely used in Victoria's courts and VCAT. These include:
- court rules and procedures
 - laws and legal principles concerning human rights
 - privacy law
 - evidence law
 - administrative law
 - legal professional obligations.
- 5.2 In our consultation paper we asked for feedback about whether the existing legislative framework required reform. The overwhelming response was that it is too early to consider legislative reform, given AI technology and its use in courts and tribunals is still developing. It was also recognised that the Australian Government is considering broad regulatory responses that could influence approaches by Victoria's courts and VCAT. As a result, the feedback we received did not identify many examples of gaps or areas where law reform may be required.

Court rules and procedures

- 5.3 In our consultation paper, we highlighted that changes to court rules and procedures may be needed to support the safe use of AI in Victoria's courts and VCAT. Through consultations and submissions, we explored potential rules changes that may be required and whether such changes could be made under existing rule-making powers.
- 5.4 Current rule-making powers appear adequate for courts to address immediate issues, such as developing a practice note for court users about their use of AI.
- 5.5 Some courts anticipated legislative changes may be necessary in the future. The extent of legislative and rule changes will depend on the type of AI and how it is used. We were told that without clear examples of AI use, it is difficult to anticipate changes needed across potentially relevant legislation.
- 5.6 Many types of legislation support court processes and operations:
- Acts relating to court structure establish the various courts in Victoria and define core functions and powers. Each Act empowers judicial members to make rules, practice directions and practice notes.
 - Statutory rules on court procedure provide practical detail about how cases are conducted within each court. These rules provide operational details of the primary Acts, specifying procedures for court users, lawyers and court staff.
- 5.7 Other legislation also shapes court processes. For instance, the *Criminal Procedure Act 2009* (Vic) guides a criminal trial process, the *Evidence Act 2008* (Vic) sets out the rules of evidence, and the *Sentencing Act 1991* (Vic) establishes a framework for sentencing.
- 5.8 Various aspects of this legislative framework may become relevant when contemplating future uses of AI across courts and VCAT (see Table 2).

Table 2: Laws impacting Victoria's court processes

Types of Legislation	Examples of relevant Acts and rules
Acts relating to court structure	<ul style="list-style-type: none"> • <i>Supreme Court Act 1986</i> (Vic) • <i>County Court Act 1958</i> (Vic) • <i>Magistrates' Court Act 1989</i> (Vic) • <i>Victorian Civil and Administrative Tribunal Act 1998</i> (Vic) • <i>Coroners Act 2008</i> (Vic) • <i>Children, Youth and Families Act 2005</i> (Vic)
Statutory rules on court procedure	<ul style="list-style-type: none"> • <i>Supreme Court (General Civil Procedure) Rules 2025</i> (Vic)/<i>(Criminal Procedure) Rules 2017</i> (Vic) • <i>County Court Civil Procedure Rules 2018</i> (Vic)/<i>Criminal Procedure Rules 2019</i> (Vic)/<i>County Court Miscellaneous Rules 2019</i> (Vic) • <i>Magistrates' Court General Civil Procedure Rules 2020</i> (Vic)/<i>Criminal Procedure Rules 2019</i> (Vic) • <i>Victorian Civil and Administrative Tribunal Rules 2018</i> (Vic) • <i>Coroners Court Rules 2019</i> (Vic)/<i>Coroners Regulations 2019</i> (Vic) • <i>Children's Court Criminal Procedure Rules 2019</i> (Vic)

Types of Legislation	Examples of relevant Acts and rules
Other Acts shaping court practice and procedure	<ul style="list-style-type: none"> • <i>Bail Act 1977</i> (Vic) • <i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic) • <i>Civil Procedure Act 2010</i> (Vic) • <i>Criminal Procedure Act 2009</i> (Vic) • <i>Evidence Act 2008</i> (Vic) • <i>Evidence (Miscellaneous Provisions) Act 1958</i> (Vic) • <i>Family Violence Protection Act 2008</i> (Vic) • <i>Juries Act 2000</i> (Vic) • <i>Open Courts Act 2013</i> (Vic) • <i>Sentencing Act 1991</i> (Vic) • <i>Vexatious Proceedings Act 2014</i> (Vic)
Administrative and supporting legislation	<ul style="list-style-type: none"> • <i>Court Security Act 1980</i> (Vic) • <i>Health Records Act 2001</i> (Vic) • <i>Public Records Act 1973</i> (Vic) • <i>Privacy and Data Protection Act 2014</i> (Vic) • <i>Spent Convictions Act 2021</i> (Vic) • <i>Judicial Proceedings Reports Act 1958</i> (Vic)

How are court rules and procedures developed?

- 5.9 Legislation that establishes courts also provides for judicial officers of that court to make statutory rules.¹ Court rules set out procedures and conduct to be followed in court proceedings.² This enables courts to adapt procedures as required. The Office of the Chief Parliamentary Counsel may assist in the development of rules but certification by the Chief Parliamentary Counsel is not required.³
- 5.10 The Council of Judges makes rules in the Supreme Court and is supported by a Rules Committee.⁴ In the Magistrates' Court, the Civil Practice Committee supports the Chief Magistrate and Deputy Chief Magistrates in developing statutory rules. The Committee consults on rules, processes and procedures and is comprised of the court's judiciary, administration and representatives of the legal profession.⁵
- 5.11 Courts also publish practice notes or practice directions through the Chief Justice, Chief Judge or Chief Magistrate. These provide guidance on how the court intends to apply the law and manage cases.⁶ Practice notes are not strictly enforceable like legislation. The Supreme Court characterises them as providing 'information about the Court's practice and procedure. They also set out the Court's expectations of parties coming before the Court'.⁷

1 For example, *Supreme Court Act 1986* (Vic) s 25.

2 Ibid s 25(1)(ac).

3 *Subordinate Legislation Act 1994 Guidelines* (Guidelines, Parliament of Victoria, September 2023) 6; *Subordinate Legislation Act 1994* (Vic) s 13.

4 Supreme Court of Victoria, *Annual Report 2020-21* (Report, October 2021) 59; 'The Honourable Justice Cavanough Retires', *Supreme Court of Victoria* (Web Page, 12 December 2024) <<http://www.supremecourt.vic.gov.au/news/the-honourable-justice-cavanough-retires>>.

5 Magistrates' Court of Victoria, *Annual Report 2023-2024* (Report, 28 October 2024) 21 <<https://www.mcv.vic.gov.au/news-and-resources/publications/annual-report-2023-2024>>; Magistrates Court of Victoria, *Annual Report 2020-21* (Report, 18 November 2021) 19.

6 For example, *Supreme Court Act 1986* (Vic) s 28AAA; *County Court Act 1958* (Vic) s 8E; *Magistrates' Court Act 1989* (Vic) s 16A.

7 Supreme Court of Victoria, *Practice Note SC Gen 1 Practice Notes and Notice to the Profession* (Practice Note, 30 January 2017) para 4.3 <<https://www.supremecourt.vic.gov.au/sites/default/files/assets/2017/09/25/18c025b3f/gen1practicenotesandnoticeetotheprofession.pdf>>.

Are reforms to court rules and procedures needed?

- 5.12 The use of AI may require changes to rules and procedures. Specific changes will depend on the type of AI and how it is used.⁸
- 5.13 There are recent examples of changes to court rules and procedures to enable new technology. The Children’s Court made new rules to support the introduction of an electronic case management system.⁹ VCAT described how changes were made to statutory rules to accommodate introduction of a digital portal.¹⁰
- 5.14 While rule changes will be required to implement AI systems, it is difficult to specify these without examples. The County Court stated:
- Whether there is any need for change to legislation, rules or processes will depend on the AI system and its intended application relevant to the Court.¹¹
- 5.15 When implementing AI systems, courts should consider changes to statutory rules, where possible. Rule changes are more flexible than legislative changes and can respond to new use cases as they are identified, with the development of emerging technologies.

Are reforms to court legislative powers needed?

- 5.16 The power to make rules is confined to matters set out in legislation. The specific categories differ across court legislation but are relatively broad. Some courts told us that existing rule-making powers are sufficient to manage wide-ranging matters relating to AI. For instance, the Supreme Court stated:
- The Court can deal with AI through existing rule making powers. Practice notes and guidelines are a better method to manage AI related issues because they are more flexible and can be implemented quickly.¹²
- 5.17 The County Court suggested legislative amendment could clarify that court rule-making powers include the power to govern the use of emerging technologies. For instance, by referring to emerging technologies under section 78 of the *County Court Act 1958* (Vic), which empowers the court to make rules of practice.¹³
- 5.18 In preparing a practice note for court users on the use of GenAI, representatives of VCAT said that no change was required to its statutory rules.¹⁴ Other courts said that there is scope for including AI practice management procedures in practice notes.¹⁵
- 5.19 At this stage, courts appear to have sufficient powers to establish rules, practice directions and practice notes governing use of AI. While rule-making powers do not refer to emerging technology, AI-related rules can likely be made under the existing broad powers.
- 5.20 Other legislative changes may also be required but these are difficult to predict, and none were identified at this early stage.
- 5.21 An example of emerging technology requiring legislative change is during the COVID-19 pandemic, where legislation was introduced to enable the use of technology in courts.¹⁶
- 5.22 Legislation may require amendment if certain court functions become automated, such as tasks currently requiring a registrar or deputy registrar to be present.¹⁷

8 Submission 24 (County Court of Victoria).

9 *Children’s Court Authentication and Electronic Transmission Rules 2020* (Vic).

10 Consultation 9 (Victorian Civil and Administrative Tribunal).

11 Submission 24 (County Court of Victoria).

12 Consultation 32 (Supreme Court of Victoria); Also, Juries Victoria stated it did not require legislative amendment to enable its adoption of AI: Consultation 1 (Juries Victoria).

13 Submission 24 (County Court of Victoria).

14 Consultation 9 (Victorian Civil and Administrative Tribunal).

15 Submission 24 (County Court of Victoria).

16 *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic).

17 For instance, s9 of the *Justice Legislation Amendment (Miscellaneous) Act 2025* (Vic) amends s118 of the *Criminal Procedure Act 2009* (Vic) to allow case direction notices to be filed by electronic means rather than with a registrar at a venue of the court.

- 5.23 We heard from the Magistrates' Court that amendments to some legislation shaping court procedure and practice might be needed in the future. This includes possible amendments to the:
- *Criminal Procedure Act 2009* (Vic)
 - *Civil Procedure Act 2010* (Vic)
 - *Sentencing Act 1991* (Vic).¹⁸
- 5.24 VCAT suggested minor legislative amendments or changes to statutory rules may be needed in future if AI tools are used to assist with tasks currently performed by a human. For example, legislation currently requires a member of the Tribunal, the principal registrar or a nominated 'person' to convene compulsory conferences.¹⁹ If in future this function is assisted by AI, legislative or rule change may be necessary.²⁰
- 5.25 Insights about proposed legislative reforms were not more specific than those listed. In consultations, it was noted that it is difficult to predict legislative or rule changes without knowing how AI could or will be used in courts.

Human rights and AI in Victoria's courts and VCAT

- 5.26 Victoria's courts and VCAT are at an early stage of considering AI.²¹ However, the future uses of AI, from case management systems to neurotechnology,²² may raise human rights issues. Considering the human rights implications of AI is fundamental to public trust in courts and supports a fair and equitable justice system.
- 5.27 It is important for Victoria's courts and VCAT to take a human rights approach to AI issues. A human rights approach 'places the human experience at the core' of analysis and decision making and treats people as rights holders.²³ It also requires collecting data to evaluate whether court and tribunal AI use is in line with human rights norms and standards.²⁴ This can create a focal point for shaping, implementing, monitoring and reviewing court and tribunal AI use.

Victorian legislative framework on human rights

- 5.28 Victoria's courts and VCAT are obliged to give effect to human rights and apply and interpret human rights under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter).²⁵
- 5.29 Charter rights particularly relevant to Victoria's courts and VCAT include:
- recognition and equality before the law²⁶
 - right to a fair hearing²⁷
 - right to liberty and security of person²⁸

18 Consultation 15 (Magistrates' Court of Victoria).

19 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 83(1).

20 Consultation 9 (Victorian Civil and Administrative Tribunal).

21 Although bespoke AI tools are being piloted. See Chapter 2 for further detail.

22 Neurotechnology, neuroscience and AI together have created opportunities for collecting, maintaining and utilising brain data to understand and shape the human mind. Neurotechnologies raise profound human rights problems regarding the right to privacy, and freedom of thought, conscience, religion or belief. These risks will not be discussed in detail here as they go beyond the scope of the reference - there is no discourse that suggests Victorian courts and tribunals will adopt neurotechnology in the near term. For further discussion of human rights and neurotechnology, see, for example, Australian Human Rights Commission, *The Need for Human Rights-Centred Artificial Intelligence* (Submission No 212 to the Department of Industry, Science and Resources Supporting Responsible AI Discussion Paper, 26 July 2023) 11-15 <<https://consult.industry.gov.au/supporting-responsible-ai/submission/view/212>>.

23 Submission 10 (Castan Centre for Human Rights Law, Monash University); See also Sophie Farthing et al, *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 10 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>.

24 Submission 10 (Castan Centre for Human Rights Law, Monash University).

25 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 6(2)(b).

26 *Ibid* s 8.

27 *Ibid* s 24.

28 *Ibid* s 21.

- rights in criminal proceedings²⁹
 - right to privacy³⁰ (discussed later in this chapter).
- 5.30 Victoria's courts and VCAT are bound by sections 4 and 38 to act compatibly with the Charter, and to give proper consideration to relevant Charter rights when acting in an administrative capacity.³¹ Courts also have a responsibility under section 32 to interpret Victorian legislation in a manner compatible with the human rights set out in the Charter, as far as it is possible to do so.³² The Charter provides examples of a court acting in an administrative capacity. This includes committal proceedings, issuing warrants, listing cases, adopting practices and procedures.³³ If there is ambiguity as to whether a judicial or administrative function is being exercised, Victoria's courts and VCAT will consider what legal character the function in question holds.³⁴
- 5.31 There is some uncertainty about the scope of the obligation under section 6(2)(b) for courts and tribunals to act compatibly with Charter rights when acting in a judicial capacity. It has been observed that there are three possible constructions of this obligation: a broad, intermediate or narrow one.³⁵ Generally, courts have adopted the intermediate approach, which considers that the courts' judicial function is to apply or enforce only the Charter rights that relate to the court proceedings.³⁶ However, there remains a lack of clarity about an authoritative approach to this aspect of the Charter's application.
- 5.32 The difficulty of delineating the scope of administrative and judicial functions of the courts is discussed in the privacy section of this chapter.
- 5.33 Courts have obligations under other human rights legislation, particularly in administrative capacities, including the *Equal Opportunity Act 2010* (Vic) and the *Privacy and Data Protection Act 2014* (Vic).

How can Victoria's courts and VCAT protect human rights when using AI?

- 5.34 To protect human rights and avoid risks like algorithmic bias and automation bias, Victoria's courts and VCAT should ensure they have appropriate procurement, oversight and review processes in place. This includes building human rights principles into governance frameworks.³⁷ In Chapter 9, we consider that a human rights impact assessment could form part of an AI assurance framework for Victoria's courts and VCAT when making decisions about AI.
- 5.35 Where possible, courts should adopt human rights impact assessments as part of governance frameworks. Considering human rights in each governance decision involving AI can help courts to maintain public confidence in their ability to use AI and protect human rights.

29 Ibid s 25.

30 Ibid s 13.

31 Ibid ss 4(1)(j), 38.

32 Ibid s 32.

33 See Note in *ibid* s 4(1)(j).

34 *PJB v Melbourne Health (Patrick's case)* [2011] VSC 327; (2011) 39 VR 373, [124] cited in; Judicial College of Victoria, *Charter of Human Rights Bench Book* (Online Manual, 1 September 2017) '2.4 Courts and tribunals as public authorities' [8] n 189 <<https://resources.judicialcollege.vic.edu.au/article/1049904>> (3 August 2023). Summarised here are some characteristics of judicial functions which include having to create new rules of law, making binding determinations of existing legal rights, determining criminal guilt and actions for the enforcement of existing legal rights, and making binding and authoritative determinations of legal rights and duties.

35 *Victoria Police Toll Enforcement v Taha* [2013] VSCA 37; (2013) 49 VR 1, [246].

36 See for example *ibid*; *Secretary to the Department of Human Services v Sanding* [2011] VSC 42; (2011) 36 VR 221, [165]; *Kracke v Mental Health Review Board* [2009] VCAT 646; (2009) 29 VAR 1, [241]; *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61; (2017) 51 VR 624, [32] cited in Judicial College of Victoria, *Charter of Human Rights Bench Book* (Online Manual, 1 September 2017) '2.5.6 Direct application of Charter rights to courts' [5] n 205 <<https://resources.judicialcollege.vic.edu.au/article/1049904>> (10 December 2024).

37 Submissions 10 (Castan Centre for Human Rights Law, Monash University), 15 (Human Rights Law Centre).

- 5.36 Overall, several stakeholders supported human rights impact assessments as an important part of preventing human rights breaches.³⁸ The Australian Human Rights Commission has expressed the same views.³⁹ The Office of the Victorian Information Commissioner suggested that human rights impact assessments should be conducted to determine compliance with the Charter.⁴⁰ This was supported by the Human Rights Law Centre, which stated that assessments should be undertaken at the 'pre-design and deployment stages to identify and mitigate risks to Charter-protected rights'.⁴¹
- 5.37 Human rights impact assessments vary in complexity and sophistication. While there is no human rights impact assessment specifically considering AI use in Victoria's courts, a range of approaches to human rights impact assessments could be applied. Examples include sets of simple, non-AI specific questions,⁴² to more complex AI-specific evaluations.⁴³ The Australian Human Rights Commission has developed a human rights impact assessment tool to consider the use of AI in the banking sector.⁴⁴
- 5.38 The Victorian Equal Opportunity and Human Rights Commission has developed a guide for Victorian public sector workers to consider and apply human rights when making decisions. The guide is not AI-specific but provides a list of considerations that could be applied to the use of AI tools in Victoria's courts and VCAT.⁴⁵ The guide suggests:
- identifying relevant rights
 - identifying any interference or limitations
 - considering what impact the decision will have on the rights of people affected by the decision
 - justifying the decision, after balancing all competing rights and interests, and taking into account whether any limitation on human rights is reasonable, justifiable and proportionate.⁴⁶
- 5.39 In the context of AI, this could include:
- identifying if any human rights are relevant to the procurement, development, management or review of an AI tool
 - identifying any interference or limitation to those rights in those processes
 - identifying possible impacts of a decision on a person's rights, particularly in terms of the right to a fair trial, non-discrimination and privacy
 - considering whether any limitation on a human right is reasonable, justifiable and proportionate to the intended result of the AI tool
 - considering whether there is any less restrictive means available to achieve the intended result
 - conducting a balancing exercise, considering how an AI tool promotes and limits different human rights, and competing private and public interests.

38 Submissions 5 (Office of the Victorian Information Commissioner), 15 (Human Rights Law Centre), 27 (Federation of Community Legal Centres and Justice Connect).

39 Australian Human Rights Commission, *Centring Human Rights in the Governance of Artificial Intelligence* (Submission to the United Nations Office of the Secretary-General's Envoy on Technology, 30 September 2023) 8 <https://humanrights.gov.au/sites/default/files/centring_human_rights_in_the_governance_of_artificial_intelligence_australian_human_rights_commission_0.pdf>; Sophie Farthing et al. *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 98–99 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>.

40 Submission 5 (Office of the Victorian Information Commissioner).

41 Submission 15 (Human Rights Law Centre).

42 Victorian Equal Opportunity & Human Rights Commission, *The Charter of Human Rights and Responsibilities: A Guide for Victorian Public Sector Workers (3rd Edn)* (Report, Victorian Equal Opportunity & Human Rights Commission, January 2024) 13–16 <<https://www.humanrights.vic.gov.au/resources/https-resources-charter-guide-for-vps-2024/>>.

43 For instance, the Law Commission of Ontario's Human Rights AI Impact Assessment tool: Law Commission of Ontario and Ontario Human Rights Commission, *Human Rights AI Impact Assessment* (Report, November 2024) <<https://www.lco-cdo.org/wp-content/uploads/2024/11/LCO-Human-Rights-AI-Impact-Assessment-EN.pdf>>.

44 Australian Human Rights Commission and National Australia Bank (NAB), *Human Rights Impact Assessment Tool: AI-Informed Decision-Making System in Banking* (Report, September 2023) <<https://humanrights.gov.au/our-work/technology-and-human-rights/publications/hria-tool-ai-banking>>.

45 Victorian Equal Opportunity & Human Rights Commission, *The Charter of Human Rights and Responsibilities: A Guide for Victorian Public Sector Workers (3rd Edn)* (Report, Victorian Equal Opportunity & Human Rights Commission, January 2024) 14 <<https://www.humanrights.vic.gov.au/resources/https-resources-charter-guide-for-vps-2024/>>.

46 Ibid.

- 5.40 Internationally, the Law Commission of Ontario, Canada has developed a detailed human rights impact assessment specifically for AI, involving 33 questions to assess and mitigate risks.⁴⁷ Notably, it indicates that AI systems deployed in the justice system are likely to be operating in an area covered by human rights law, which would make a human rights assessment relevant.⁴⁸ The UNESCO *Global Toolkit on AI and the Rule of Law for the Judiciary* provides other examples of impact assessment tools, noting they 'can assist in the identification of risks that judicial operators might not otherwise foresee in AI development and deployment'.⁴⁹
- 5.41 Developing a human rights impact assessment framework tailored to Victoria's Charter obligations would assist court and tribunal use of AI. This was highlighted by the Victorian Equal Opportunity and Human Rights Commission and the Federation of Community Legal Centres and Justice Connect.⁵⁰ If the Victorian Equal Opportunity and Human Rights Commission was to develop such a framework, benefits would extend beyond the Victorian justice system, but it would require appropriate resourcing.
- 5.42 Education is also crucial to ensure that biases are avoided and human rights are considered when courts and tribunals are considering procurement of AI tools. Approaches to education are discussed in Chapter 10.

Privacy risks and AI in Victoria's courts and VCAT

- 5.43 The use of AI in Victoria's courts and VCAT raises significant considerations for privacy and information security risks. These are not new issues for courts, but they are exacerbated by the speed and scale with which AI technology can collect, use, disclose or disseminate personal or sensitive information.⁵¹
- 5.44 AI models are complex, and AI technology can learn and adapt, creating new challenges for privacy. AI can infer personal information from existing data, or use information provided for different purposes.⁵² As the Castan Centre noted:
- While court users consent to a certain level of sharing of personal data in order to participate in the court, the open-ended risks of uploading personal data into AI platforms poses a distinct challenge to existing expectations of privacy and information sharing.⁵³
- 5.45 The Law Institute of Victoria strongly advises lawyers not to enter confidential client information, or information subject to legal professional privilege (LPP), into open AI systems. This is to avoid a breach of confidence or the implied waiver of LPP.⁵⁴ The Law Institute of Victoria's guidance is that even closed AI systems should be used cautiously when entering confidential information:
- Any assertion that an AI [system] is a closed system should be carefully examined given the importance of protecting confidential information. Closed AI systems may still be vulnerable to data breaches, cyber-attacks and exfiltration of training data.⁵⁵
- 5.46 We heard from a representative of Digital Rights Watch that AI systems may breach privacy in the supply chain. For that reason, it may not be appropriate for courts to use such systems, even if they are accurate.⁵⁶ For example, in 2021 Clearview AI was found

47 Law Commission of Ontario and Ontario Human Rights Commission, *Human Rights AI Impact Assessment* (Report, November 2024) <<https://www.lco-cdo.org/wp-content/uploads/2024/11/LCO-Human-Rights-AI-Impact-Assessment-EN.pdf>>.

48 Ibid 12. Justice system includes court services and administrative tribunals, for adjudication, policing, law enforcement, sentencing, corrections, probation and parole.

49 Miriam Stankovich et al, *Global Toolkit on AI and the Rule of Law for the Judiciary* (CI/DIT/2023/AIRoL/01, UNESCO, 2023) 186 <<https://unesdoc.unesco.org/ark:/48223/pf0000387331>>.

50 Submission 27 (Federation of Community Legal Centres and Justice Connect). Consultation 31 (Victorian Equal Opportunity & Human Rights Commission).

51 The *Privacy and Data Protection Act 2014* (Vic) defines personal information as 'information or an opinion... that is recorded... about an individual whose identity is apparent, or can be reasonably be ascertained, from the information or opinion...': at s3. Sensitive information is defined under the Act as information or opinions including about an individual's origins, political opinions, group memberships, religious beliefs, philosophical beliefs, sexual preferences or criminal record: at sch 1.

52 'Artificial Intelligence and Privacy - Issues and Challenges', *Office of the Victorian Information Commissioner (OVIC)* (Web Page) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/artificial-intelligence-and-privacy-issues-and-challenges/>>.

53 Submission 10 (Castan Centre for Human Rights Law, Monash University).

54 Law Institute Victoria, *Ethical and Responsible Use of Artificial Intelligence Guideline* (Ethical Guideline, 13 August 2025) 3 <<https://www.liv.asn.au/download.aspx?DocumentVersionKey=69158983-87f3-4c1d-be99-8c300b5c7afd>>.

55 Ibid.

56 Consultation 17 (Digital Rights Watch).

to have breached Australians' privacy by collecting facial images and biometric data from social media sites, in order to build its facial recognition technology.⁵⁷

Examples of privacy breaches in courts and tribunals

- 5.47 While not specific to the use of AI, two recent examples of data breaches demonstrate privacy and data security risks in courts.
- 5.48 In 2024, a Court Services Victoria (CSV) managed audiovisual network was hacked, resulting in the possibility that recordings of some court hearings had been accessed.⁵⁸ Data hacking incidents involve a third-party gaining access to highly sensitive information, as CSV itself acknowledged in that case. To date, publication of the recordings on the internet has not been detected.⁵⁹ Following the incident, CSV published information about remedial action and some people who were affected were contacted.⁶⁰
- 5.49 In 2025, the NSW Online Registry website, administered by the NSW Department of Communities and Justice, was involved in a data breach. In this incident, 9,000 sensitive court files from criminal and civil cases, including domestic violence orders and affidavits, were downloaded from the Court's portal.⁶¹ Community legal centre representatives pointed out unauthorised access to private information could endanger victims of domestic violence and undermine confidence in the court process.⁶² No data from the breach had been published as of 10 April 2025.⁶³ The breach was reported to Cyber Security NSW and the NSW Police Cybercrime Squad.⁶⁴
- 5.50 These examples highlight how individuals may suffer real world impacts because of infringements of privacy within courts. The response of courts, tribunals and court administrators to such incidents is a critical factor in shaping and maintaining public trust in judicial institutions.

Victoria's privacy regulation regime

- 5.51 In Victoria, privacy is governed by the *Privacy and Data Protection Act 2014* (Vic) (PDP Act), section 13 of the Charter, and the *Privacy Act 1988* (Cth). These Acts are technology-neutral, meaning they are applicable irrespective of whether the protection of those privacy rights relates to different kinds of digital technology. The advent of AI was not anticipated when the legislation was drafted.

Privacy obligations under the Charter

- 5.52 The right to privacy under the Charter prohibits unlawful or arbitrary interference with a person's privacy, family, home or correspondence.⁶⁵ The Charter is intended to be interpreted consistently with existing information privacy frameworks in Victoria. This includes the PDP Act and the Information Privacy Principles discussed below.⁶⁶ The purpose of the right to privacy is to protect people from unjustified interference with their personal and social identity, and protect their right to physical and psychological integrity, including personal security.⁶⁷

57 Australian Government, 'Clearview AI Breached Australians' Privacy', *Office of the Australian Information Commissioner (OAIC)* (Web Page, 3 November 2021) <<https://www.oaic.gov.au/news/media-centre/clearview-ai-breached-australians-privacy>>.

58 'Cyber Incident Information', *Court Services Victoria* (Web Page, 18 January 2024) <<https://courts.vic.gov.au/news/court-services-victoria-cyber-incident>>.

59 Ibid.

60 Ibid.

61 Victoria Pengilly, 'NSW Court Website Hit by Major Data Breach, 9,000 Documents Downloaded', *ABC News* (online, 26 March 2025) <<https://www.abc.net.au/news/2025-03-26/nsw-court-website-major-data-breach-documents-leaked/105100678>>.

62 Ibid.

63 'Statement: NSW Online Registry Website Data Breach', *Department of Communities and Justice* (Web Page, 10 April 2025) <<https://dcj.nsw.gov.au/dcj/news-and-media/media-releases/2025/nsw-online-registry-website-data-breach.html>>.

64 Ibid.

65 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 13. The Victorian right to privacy was modelled on the right to privacy in the International Covenant on Civil and Political Rights (ICCPR). Victorian courts have held that there is no difference between the scope of Victoria's right to privacy and the ICCPR right to privacy. This means that international interpretations of privacy can be applied to the Victorian context. See eg, *Kracke v Mental Health Review Board* [2009] VCAT 646; (2009) 29 VAR 1, [591].

66 Explanatory Memorandum, *Charter of Human Rights and Responsibilities Bill 2006* (Vic) cl 13.

67 Judicial College of Victoria, *Charter of Human Rights Bench Book* (Online Manual, 1 September 2017) '6.7.2 Scope of the right' [4] n 651 <<https://resources.judicialcollege.vic.edu.au/article/1049904>> (27 June 2025) referencing *Kracke v Mental Health Review Board (General)* [2009] VCAT 646; (2009) 29 VAR 1, [619]–[620].

- 5.53 Particularly relevant to AI, a recent report to the UN Human Rights Council found that hacking, restrictions on encryption and surveillance of public places can infringe on the right to privacy.⁶⁸ The UN Special Rapporteur on the right to privacy noted that risks related to AI include data processing and the decision made as a result of processing.⁶⁹ The importance of having a sound ethical and legal basis for data processing was highlighted, particularly if processing leads to decisions affecting a person's rights.⁷⁰
- 5.54 The right to privacy can be limited where the limitation has a legitimate purpose, and the nature and extent of the limitation is proportionate, justifiable and reasonable.⁷¹ It can also be limited if interference with a person's privacy is lawful and not arbitrary.⁷² In practice, interference is lawful when it aligns with a regulatory framework, and will not be arbitrary where it is not capricious, unpredictable, unjust or unreasonable, and is proportionate to the legitimate aim sought.⁷³ When organisations such as courts and tribunals seek to limit the right to privacy, such limitations should be articulated in these terms.⁷⁴

Privacy and Data Protection Act

- 5.55 The *Privacy and Data Protection Act 2014* (Vic) requires public sector organisations to comply with Information Privacy Principles (IPPs) regarding the collection, use and disclosure of personal information. The principles set out:
- when and how organisations can collect personal information
 - when organisations can use and disclose personal information for a secondary purpose
 - how personal information should be handled
 - general transparency requirements to prepare and publish privacy policies and to be open with individuals about the personal information an organisation holds
 - when individuals can seek access to and correct their personal information
 - when an organisation can use unique identifiers
 - when an organisation must allow for anonymisation when an individual transacts with the organisation
 - when personal information can be transferred outside of Victoria
 - requirements for when sensitive information can be collected.⁷⁵
- 5.56 The PDP Act also sets out a framework for monitoring and assuring the security of public sector data.⁷⁶ Public sector data is information obtained, received or held by an agency that comes under the framework.⁷⁷
- 5.57 The Office of the Victorian Information Commissioner has also published guidance on AI use for public sector organisations. This includes guidance for Victorian Public Sector (VPS) organisations on use of:

68 Office of the United Nations High Commissioner for Human Rights, *The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/51/17 (4 August 2022) <<https://documents.un.org/doc/undoc/gen/g22/442/29/pdf/g2244229.pdf>>.

69 Joseph A. Cannataci, Special Rapporteur, *Artificial Intelligence and Privacy, and Children's Privacy: Report of the Special Rapporteur on the Right to Privacy*, Joseph A. Cannataci, UN Doc A/HRC/46/37 (25 January 2021) 3 [18] <<https://documents.un.org/doc/undoc/gen/g21/015/65/pdf/g2101565.pdf>>.

70 Ibid.

71 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

72 Ibid s 13. The UN Human Rights Committee has also accepted that where an interference with privacy is provided for by law, it is not unlawful. Eg, Human Rights Committee, Views 488/1992, 50th sess, UN Doc CCPR/C/50/D/488/1992 (31 March 1994) <<https://juris.ohchr.org/casedetails/702/en-US>> ('*Toonen v Australia*').

73 Judicial College of Victoria, *Charter of Human Rights Bench Book* (Online Manual, 1 September 2017) '6.7.2. Scope of the right' [35],[38] <<https://resources.judicialcollege.vic.edu.au/article/1049904>> (27 June 2025).

74 Victorian Equal Opportunity & Human Rights Commission, *The Charter of Human Rights and Responsibilities: A Guide for Victorian Public Sector Workers (3rd Edn)* (Report, Victorian Equal Opportunity & Human Rights Commission, January 2024) 16 <<https://www.humanrights.vic.gov.au/resources/https-resources-charter-guide-for-vps-2024/>>.

75 Office of the Victorian Information Commissioner (OVIC), *Guidelines to the Information Privacy Principles (IPP Guidelines)* (Report, 14 November 2019) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/guidelines-to-the-information-privacy-principles/>>.

76 *Privacy Data and Protection Act 2014* (Vic) pt 4.

77 Ibid s 3.

- enterprise GenAI tools—tools that are purchased by an organisation and operate within a public sector agency's secure information environment.⁷⁸ The guidance covers the minimum standards for VPS organisations to identify and mitigate risks in the existing environment before and during procurement, and following the roll out of any tools.⁷⁹
- publicly available General Purpose AI tools, such as ChatGPT.⁸⁰ The Office of the Victorian Information Commissioner considers that entering personal information into publicly available GenAI tools is likely to be a contravention of the PDP Act's IPPs and may cause harm to individuals. To align with the IPPs, it recommends that organisations limit entering public sector information into such tools.⁸¹

5.58 At the time of writing, the Office of the Victorian Information Commissioner was updating its general guidance on AI and privacy obligations.⁸²

5.59 The Office of the Victorian Information Commissioner regulates the Victorian Protective Data Security Standards under the PDP Act. The standards set out mandatory requirements, which includes reporting requirements which relevant organisations must follow.⁸³

How does privacy legislation apply to Victoria's courts and VCAT?

5.60 As discussed in the human rights section, the Charter obliges Victoria's courts and VCAT to apply human rights, and therefore the right to privacy, when interpreting laws.

5.61 The Charter also obliges judicial officers to consider the right to privacy when acting in an administrative capacity.⁸⁴ As discussed in paragraph [5.31], the application of the Charter to judicial functions is less clear. It has been accepted in relation to certain Charter rights relevant to court and tribunal proceedings, such as the right to equality in section 8(3) and the right to a fair hearing in section 24(1).⁸⁵ While uncertain, it is likely that the right to privacy sits outside this scope.

5.62 Victoria's courts and tribunals are exempt from the PDP Act, including from compliance with the IPPs, in respect of the collection, holding, management, use, disclosure or transfer of information:

- a) in relation to its or the holder's judicial or quasi-judicial functions, by—
 - (i) a court or tribunal; or
 - (ii) the holder of a judicial or quasi-judicial office or other office pertaining to a court or tribunal in their capacity as the holder of that office; or
- b) in relation to those matters which relate to the judicial or quasi-judicial functions of the court or tribunal, by—
 - (i) a registry or other office of a court or tribunal; or
 - (ii) the staff of such a registry or other office in their capacity as members of that staff.⁸⁶

78 Office of the Victorian Information Commissioner (OVIC), *Use of Enterprise Generative AI Tools in the Victorian Public Sector* (Report, March 2025) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/use-of-enterprise-generative-ai-tools-in-the-victorian-public-sector/>>.

79 Ibid 2–3.

80 Office of the Victorian Information Commissioner (OVIC), *Use of Personal Information with Publicly Available Generative AI Tools in the Victorian Public Sector* (Report, March 2025) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/use-of-personal-information-with-publicly-available-generative-ai-tools-in-the-victorian-public-sector/>>.

81 Ibid 2.

82 'Public Consultation on Artificial Intelligence Privacy Guidance', *Office of the Victorian Information Commissioner (OVIC)* (Web Page, August 2024) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/public-consultation-on-artificial-intelligence-privacy-guidance/>> as at June 2025. The Office of the Victorian Information Commissioner conducted consultations to update its online privacy guidance resource; Office of the Victorian Information Commissioner (OVIC), *Artificial Intelligence – Understanding Privacy Obligations* (Report, April 2021) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/artificial-intelligence-understanding-privacy-obligations/>>.

83 *Privacy Data and Protection Act 2014* (Vic) pt 4.

84 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 4, 38.

85 *Matsoukatidou v Yarra Ranges Council* [2017] VSC 61; (2017) 51 VR 624, [32]–[46].

86 *Privacy Data and Protection Act 2014* (Vic) s 10.

- 5.63 In practice, this exemption is interpreted broadly, and administrative functions executing or supporting the judicial function are treated as exempt. The Office of the Victorian Information Commissioner is limited in its ability to conciliate privacy complaints in Victoria's courts and VCAT because of the PDP Act exemption.⁸⁷ This includes complaints relating to the misuse of AI. It also includes exemption from the Victorian Protective Data Security Standards.⁸⁸
- 5.64 Even so, Victoria's courts' and VCAT's stated aims are to follow state and national privacy regimes, and to consider privacy and data security issues where they are not incompatible with other court obligations.⁸⁹

Stakeholder views on Victoria's privacy legislation and AI

- 5.65 Some stakeholders saw benefit in increased oversight or accountability mechanisms for AI use in Victoria's courts and VCAT in the context of privacy rights. The Castan Centre noted a 'difficult tension between the carve-out under the [PDP] Act and the obligations of courts and tribunals under the Victorian Charter'.⁹⁰
- 5.66 Other stakeholders held the view that Victoria's courts and VCAT should take measures to uphold the right to privacy in line with Office of the Victorian Information Commissioner guidance, the PDP Act and the Charter when using AI.⁹¹ Victoria's courts and VCAT could limit the use of public AI tools to safeguard privacy,⁹² and ensure AI systems adhere to privacy standards, including principles of data minimisation, anonymisation, and informed consent.⁹³
- 5.67 Another view was that privacy reform should occur at the national level, with reform to the *Privacy Act 1988* (Cth).⁹⁴

Proposal to narrow exemption of courts and tribunals from the PDP Act

- 5.68 The Office of the Victorian Information Commissioner proposed legislative amendments to narrow the existing judicial and quasi-judicial exemption. This would bring a broader range of court and tribunal functions under its conciliation powers for breaches of the IPPs.⁹⁵
- 5.69 It proposed:
- repealing the legislative carve-out for Victoria's courts and VCAT under the PDP Act (section 10)
 - inserting a new section into the PDP Act (section 15) stating Victoria's courts and VCAT are exempt from the IPPs only when they are acting in a judicial capacity. Based on existing section 15, it is likely that it would also require 'belief on reasonable grounds that noncompliance is necessary'.⁹⁶
 - amending section 84 of the Act to include courts and Court Services Victoria (CSV) as bodies to which Part Four applies, enlivening the application of the Victorian Protective Data Security Standards to CSV, courts and VCAT.⁹⁷

87 Submission 5 (Office of the Victorian Information Commissioner).

88 Ibid: *Privacy Data and Protection Act 2014* (Vic) pt 4.

89 See for example, 'PRIVACY: Privacy Statement for the Supreme Court of Victoria Website', *Supreme Court of Victoria* (Web Page) <<http://www.supremecourt.vic.gov.au/privacy>>; 'County Court of Victoria Privacy Statement', *County Court of Victoria* (Web Page, 16 August 2019) <<https://www.countycourt.vic.gov.au/privacy-statement>>; Submission 26 (Supreme Court of Victoria).

90 Submission 10 (Castan Centre for Human Rights Law, Monash University).

91 Submissions 5 (Office of the Victorian Information Commissioner), 15 (Human Rights Law Centre).

92 Submissions 7 (Dr Natalia Antolak-Saper), 27 (Federation of Community Legal Centres and Justice Connect).

93 Submissions 15 (Human Rights Law Centre), 27 (Federation of Community Legal Centres and Justice Connect).

94 Consultation 17 (Digital Rights Watch).

95 Submission 5 (Office of the Victorian Information Commissioner). Consultation 14 (Office of the Victorian Information Commissioner).

96 *Privacy Data and Protection Act 2014* (Vic) s 15.

97 Submission 5 (Office of the Victorian Information Commissioner).

- 5.70 The Office of the Victorian Information Commissioner's view is that the wording in section 10 of the PDP Act being, 'relates to' judicial and quasi-judicial decision-making allows for an overly broad interpretation that extends to administrative activity of Victoria's courts and VCAT⁹⁸ The Office of the Victorian Information Commissioner considers the wording of the PDP Act exemption to be more broadly worded than comparable privacy legislation in NSW, and notes that there is no equivalent exemption in the *Privacy Act 1988* (Cth).⁹⁹
- 5.71 The Office of the Victorian Information Commissioner seeks a functional approach to a new PDP Act exemption, that would only exempt a court or tribunal engaged in a judicial function. It considers that:
- a judicial function is where personal information is processed for judicial purposes, such as verdicts or decisions and civil and criminal proceedings
 - an administrative function is all other functions, such as registry officers dealing with personal information.¹⁰⁰
- 5.72 The Office of the Victorian Information Commissioner's proposal to amend section 84 is intended to cover all functions of Victoria's courts, not just administrative functions. It would require courts, tribunals and CSV to report to the Office of the Victorian Information Commissioner under the Victorian Protective Data Security Standards regulatory framework.¹⁰¹
- 5.73 In response to the Office of the Victorian Information Commissioner's proposal, CSV stated that the current exemption is appropriate and strikes 'a balance between protecting privacy and information security, judicial independence and enabling the efficient administration of justice in the context of open justice principles'.¹⁰²
- 5.74 CSV also noted that no sharp distinction can be made between judicial and administrative functions. It pointed to the uncertainty that the proposed reform to the exemption would create in the day-to-day practice of courts.¹⁰³ Registry staff would need to decide on a case-by-case basis whether the personal information was handled in an administrative or judicial capacity, creating further administrative burden for a significant volume of their work.¹⁰⁴ It would also be difficult for courts and registry staff to understand at what stage in the proceedings the narrowed carve-out would apply, whether the carve-out would depend on the identity of the person handling the information, and whether the carve-out applied sensibly to all IPPs.¹⁰⁵
- 5.75 CSV also expressed concern that the additional burden would have a flow-on effect to the principles of open justice, and that court media officers might no longer be able to provide timely and accurate information to media outlets for reporting of proceedings.¹⁰⁶
- 5.76 The Supreme Court and CSV considered the Office of the Victorian Information Commissioner's concern with the scope of section 10 was a general concern about privacy and the PDP Act, rather than an AI-specific one.¹⁰⁷ Any proposed legislative amendment should therefore be considered in a broader legislative review of privacy provisions.¹⁰⁸ CSV also noted that comparison with other jurisdictions 'is complex and requires greater analysis and consideration' but that a number of other jurisdictions similarly use language 'relates to' judicial functions.¹⁰⁹

98 Ibid; *Privacy Data and Protection Act 2014* (Vic) s 10.

99 Submission 5 (Office of the Victorian Information Commissioner); *Privacy Act 1988* (Cth); *Privacy and Personal Information Protection Act 1998* (NSW) s 6.

100 Submission 5 (Office of the Victorian Information Commissioner).

101 Note, VCAT already provides reporting to the Office of the Victorian Information Commissioner under Part 4 of the Victorian Protective Data Security Standards regime, as a 'special body' under the *Public Administration Act 2004* (Vic); *Privacy Data and Protection Act 2014* (Vic) s 84(1)(b); *Public Administration Act 2004* (Vic) s 6(1)(h).

102 Supplementary Submission 29 (Court Services Victoria) which the Supreme Court agreed with.

103 Ibid.

104 Ibid.

105 Ibid.

106 Ibid.

107 Consultation 32 (Supreme Court of Victoria); Supplementary Submission 29 (Court Services Victoria).

108 Supplementary Submission 29 (Court Services Victoria); Consultation 32 (Supreme Court of Victoria).

109 Supplementary Submission 29 (Court Services Victoria); *Information Privacy Act 2009* (Qld) sch 2 pt 2; *Privacy and Personal Information Protection Act 1998* (NSW) s 6(1); *Information Act 2022* (NT) ss 5(5)(a) and (b).

Broad scope of proposed reform

- 5.77 Privacy risks in relation to AI are significant. But the Office of the Victorian Information Commissioner's proposal is broad and not possible to implement only in relation to AI. It is therefore outside our terms of reference, which ask us to look for opportunities to build on existing legislation and regulations supporting the use of AI within Victoria's courts and tribunals. The scope of the impact on other organisations also extends beyond Victoria's courts and VCAT.¹¹⁰
- 5.78 A recent report by the Victorian Parliamentary Integrity and Oversight Committee was supportive of consideration of a similar recommendation by the Office of the Victorian Information Commissioner to extend the Victorian Protective Data Security Standards to additional organisations, including Victoria's courts and tribunals. However, the Committee said that it would 'be prudent to undertake further consultation and information gathering'.¹¹¹
- 5.79 The proposal requires substantive analysis of the points raised by the Office of the Victorian Information Commissioner, CSV and the Supreme Court. This includes:
- the impact on the administration of justice, open justice and judicial independence
 - practical implications of distinguishing between judicial and administrative functions
 - resourcing implications for Victoria's courts and VCAT
 - broader impacts, for instance the impact it would have on the health records regime, which contains a carve-out for Victoria's courts and VCAT, similar to that in the PDP Act.¹¹²

Balancing privacy and other principles of justice

- 5.80 The Office of the Victorian Information Commissioner's position reflects the social and legal importance of protecting the right to privacy. As AI tools are rapidly evolving, and their use is increasing, it is critical for courts to protect privacy rights. It is also important to safeguard the principles of open justice and judicial independence. The regulation of privacy in courts requires careful balancing of these principles. Finding the right balance can promote public confidence in the judiciary.
- 5.81 Open justice contributes to the maintenance of public trust in judicial institutions and the integrity and impartiality of courts.¹¹³ It involves a set of related principles and activities, including transparency about court processes and operations, accurate and truthful reporting of proceedings and public access to hearings.¹¹⁴ Open justice is not absolute, and courts' other duties and obligations might take precedence in some circumstances.¹¹⁵ The Federal Circuit and Family Court's privacy policy balances open justice with a family's right to privacy.¹¹⁶

110 The Office of the Victorian Information Commissioner interprets 'tribunals with quasi-judicial functions' to mean bodies that have an inquiry function concerning facts and law, apply the law and make determinations affecting the obligations and rights of involved parties Office of the Victorian Information Commissioner (OVIC), *Overview: Information Privacy Principles* (Guidelines, 3 December 2020) 10 [O.40] n9 <<https://ovic.vic.gov.au/book/overview-2/>> citing *Harrison v Victoria Building Authority* [2015] VCAT 1791 [23].

111 Integrity and Oversight Committee, Parliament of Victoria, *Performance of the Victorian Integrity Agencies 2022/23* (Report, May 2025) 57.

112 Supplementary Submission 29 (Court Services Victoria); *Health Records Act 2001* (Vic) s 14. CSV states section 14 contains a carve-out in relation to courts and tribunals in functionally identical terms to section 10 of the PDP Act.

113 *Open Courts Act 2013* (Vic) s 1 (aa).

114 Emma Cunliffe, 'Open Justice: Concepts and Judicial Approaches' (2012) 40 *Federal Law Review* 385, 388–389.

115 *Ibid* 389.

116 'The Courts and Your Privacy', *Federal Circuit and Family Court of Australia* (Web Page) <<https://www.fcfoa.gov.au/pubs/court-privacy>>.

- 5.82 Judicial independence is the judiciary's ability to make decisions without undue influence by the executive and legislature.¹¹⁷ More broadly, it requires that a judge be, and be seen to be, independent of all sources of power or influence in society.¹¹⁸ One reason for the judiciary to remain independent from government departments and agencies is because the judiciary plays an important role in 'reviewing the decisions and actions of government officials, agencies, and other public bodies'.¹¹⁹ The independence of courts allows for judges to undertake the important role of judicial review which enable individuals to challenge decisions of government bodies that affect their rights or interests.¹²⁰
- 5.83 Separation of powers requires that the judiciary and the court system operate independently from Parliament and the executive arm of government.¹²¹ If the boundary of judicial function is defined too narrowly, judicial independence could be compromised. A narrow definition could result in the Office of the Victorian Information Commissioner, as part of the executive arm of government, overseeing some judicial functions.
- 5.84 Amending section 84, as proposed by the Office of the Victorian Information Commissioner, would apply to all courts and tribunals, including judicial functions. While the Office of the Victorian Information Commissioner 'does not believe that extending coverage of Part 4 to courts and tribunals would challenge the independence of the judiciary in making decisions in its judicial capacity',¹²² this requires further analysis.

Challenges in defining 'administrative functions'

- 5.85 There are practical difficulties in defining administrative and judicial functions. Some processes such as mediation may not be defined as judicial work. Personal information may be handled by registries, officers and other court staff for a range of administrative purposes necessary for executing the court or tribunal's judicial or quasi-judicial functions.¹²³
- 5.86 In the case of *Kline v Official Secretary to the Governor-General*, the majority of the High Court held that documents of an administrative matter concern the management and administration of office resources,¹²⁴ or the 'apparatus' of administration that supports substantive judicial functions.¹²⁵ Documents used in processes and activities concerned with the exercise of substantive powers and judicial powers are not of an administrative nature.¹²⁶ While this case applied the law in the context of a Freedom of Information legislative regime, it is useful to consider the complexities in defining administrative and judicial functions.
- 5.87 Exploring how legislative carve-outs apply in other jurisdictions could inform whether the amendment is appropriate in the Victorian context. While no jurisdiction uses a directly comparable legislative carve-out to Victoria, several jurisdictions use similar phrasing of 'relates to' judicial and quasi-judicial information handling practices.¹²⁷
- 5.88 The NSW Administrative Decision Tribunal considered a complaint about the conduct of registry officers granting access to documents relating to a court file. It was found that the *Privacy and Personal Information Protection Act 1998* (NSW) did not apply because it 'relates to' the exercise by the Court of its judicial functions:

117 Australian Institute of Judicial Administration (AIJA), *Guide to Judicial Conduct, Third Edition (Revised)* (Guide, December 2023) 6 <https://aija.org.au/wp-content/uploads/2024/04/Judicial-Conduct-guide_revised-Dec-2023-formatting-edits-applied.pdf>.

118 Ibid 7.

119 Parliament of Victoria, *Parliament and the Courts: Separation of Powers Summary Notes* (Report, 2 March 2023) 12 <<https://www.parliament.vic.gov.au/49a853/globalassets/sections-shared/teach-and-learn/resource-pages/separation-of-powers-parliament-and-the-courts/summary-notes---separation-of-powers.pdf>>.

120 Ibid.

121 In Victoria, the separation of powers is reflected in the *Constitution Act 1975* (Vic).

122 Consultation 14 (Office of the Victorian Information Commissioner).

123 Supplementary Submission 29 (Court Services Victoria).

124 *Kline v Official Secretary to the Governor General* [2013] HCA 52; (2013) 304 CLR 116, [13], [41], [47].

125 Ibid [41], [71]-[77].

126 Ibid [34], [51].

127 *Information Privacy Act 2009* (Qld) sch 2 pt 2; *Personal Information Protection Act 2004* (Tas) ss 7(a)-(b), (g); *Information Act 2002* (NT) s 5(5); *Privacy and Personal Information Protection Act 1998* (NSW) s 6.

The efficient performance of judicial functions depends greatly on there being a system for the receipt and organisation of intended evidence in advance of the formal hearing of a matter. This system is commonly provided by a Registry under the direction of a Registrar. Decisions will frequently have to be taken by Registry officers as to the extent to which access is given to this material, ahead of hearing; or after the material has been dealt with at hearing, and has, possibly, become part of the evidence. The function of giving access to documents of that kind, and to the personal information they may contain, is one, I consider, that 'relates to' the exercise by the Court of its judicial functions.¹²⁸

Implementation implications

- 5.89 The number of organisations impacted by the proposal is undefined but likely to be relatively high. Care should be taken not to overburden the capacity of the regulator, and the capacity of Victoria's courts and tribunals to discharge obligations. The Office of the Victorian Information Commissioner recognised that there are many matters to attend to with the current legislative scheme and that 'if such reform were to occur then we would seek a staged implementation'.¹²⁹

Policy approaches could strengthen public trust about privacy risks

- 5.90 Courts and VCAT could manage privacy risks through policy approaches, in lieu of legislative reform. Such approaches could uphold rights to privacy and public trust in the use of AI.
- 5.91 Some court privacy policies refer to privacy principles and how the court collects, stores, uses and destroys information.¹³⁰ The Federal Court also publishes a data breach response plan, which states that the Court is responsible for ensuring that all reasonable steps are taken to handle personal information in accordance with Australian Privacy Principles.¹³¹
- 5.92 Some court websites provide contact details of privacy officers and information on processes for handling complaints. For example, the Federal Circuit and Family Court's privacy policy lists a point of contact for privacy complaints and states timeframes and process for acknowledging and responding to the complaint. The court will advise if an investigation is undertaken, and the outcome of that investigation as soon as practicable.¹³²
- 5.93 The Office of the Victorian Information Commissioner has developed a 'Privacy Officer Toolkit' that provides guidance on the role of a privacy officer and how they operate within the PDP Act regime.¹³³ It notes that privacy officers can handle privacy complaints directly, assist in the completion of privacy impact assessments, liaise with the Office of the Victorian Information Commissioner, and coordinate an organisation's response to data breaches, among others functions.

128 *NZ v Attorney General's Department* [2005] NSWADT 103, [18]; On appeal Justice Bell said 'There is no question of the PPIP Act applying to a court or the holder of an office relating to a court exercising the court's judicial functions. Once the actions of the registry staff were found to relate to the judicial functions of the court within the meaning of the PPIP Act, that was an end to the matter': *Budd v Director, Attorney Generals Department* [2006] NSWSC 1267, [20].

129 Consultation 14 (Office of the Victorian Information Commissioner).

130 See, for example, the High Court's Australian Privacy Principles Privacy Policy in relation to administrative matters: High Court of Australia, *High Court of Australia Australian Privacy Principles (APP) Privacy Policy* (Report, 24 July 2025) <<https://www.hcourt.gov.au/sites/default/files/resources/2025-07/High%20Court%20of%20Australia%20-%20Privacy%20Policy%20July%202025.pdf>>. Noting that the *Privacy Act 1988* (Cth) only applies to acts done and practices engaged in by federal courts in respect of a matter of an administrative nature: at s 7(1)(b).

131 'Data Breach Response Plan', *Federal Court of Australia* (Web Page, 31 July 2020) <<https://www.fedcourt.gov.au/privacy/data-breach-response-plan>>.

132 'Privacy Policy', *Federal Circuit and Family Court of Australia* (Web Page, May 2024) <<https://www.fcfoa.gov.au/policies-and-procedures/privacy>>.

133 'The Role of the Privacy Officer', *Office of the Victorian Information Commissioner (OVIC)* (Web Page) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/privacy-officer-toolkit/the-role-of-the-privacy-officer/>>.

- 5.94 In England and Wales, a Judicial Data Protection Panel considers complaints regarding all courts and tribunals. It has the jurisdiction to deal with complaints concerning processing of personal data by courts and tribunals acting judicially,¹³⁴ or individual judicial officers in their judicial capacity.¹³⁵ A Judicial Data Processing Complaints Handling Policy sets out the process of investigation and response by the panel.¹³⁶
- 5.95 Victoria's courts and VCAT could ensure that people affected by data breaches are able to submit their complaints free of charge, publicly outline processes and timeframes for responding to complaints, and possibly create referral to alternative dispute resolution mechanisms.¹³⁷ CSV has a privacy coordinator as a primary point of contact for privacy complaints but details about the role and processes are not published.
- 5.96 The Office of the Victorian Information Commissioner also undertakes consultation where it empowers agencies to implement information handling practices based on the requirements of the PDP Act and best practice.¹³⁸ Consultations involve providing advice and feedback on proposed projects, policies, procedures and guidelines, and in the 2023-2024 reporting period, specifically on AI.¹³⁹ Bodies that have consulted with the Office of the Victorian Information Commissioner include statutory authorities, local councils and private sector organisations.¹⁴⁰
- 5.97 The Commission recommends that privacy and AI policies for Victoria's courts and VCAT should refer to the Victorian Information Privacy Principles (IPPs) and demonstrate how they seek to act consistently with them. We note that the County Court privacy policy already outlines relevant IPPs. Development of the CSV AI Policy (discussed in Chapter 9) should incorporate consideration of the IPPs.
- 5.98 Courts should also consider data security standards and the potential for specified roles for ongoing management of data quality, data structuring, and organisational data infrastructures. They should also consider whether a privacy by design approach to court data would be beneficial to support implementation of AI tools (discussed in Chapter 3).¹⁴¹
- 5.99 Victoria's courts and VCAT could work with the Office of the Victorian Information Commissioner to implement information handling practices, policies and procedures.
- 5.100 Victoria's courts and VCAT should consider:
- publishing AI-related privacy and information handling policies and practices, including how they seek to act consistently with the Victorian Information Privacy Principles.
 - publishing details of privacy officers and processes for handling AI-related complaints and queries
 - proactively consulting with the Office of the Victorian Information Commissioner on privacy and information handling practices.

134 Judicial Data Protection Panel, *Judicial Data Processing Complaints Handling Policy* (Report, Courts and Tribunals Judiciary (UK), 4 June 2023) 2.

135 *Ibid* 3.

136 *Ibid* 6.

137 These measures draw on a report by the Special Rapporteur. See Joseph A. Cannataci, Special Rapporteur, *Artificial Intelligence and Privacy, and Children's Privacy: Report of the Special Rapporteur on the Right to Privacy*, Joseph A. Cannataci, UN Doc A/HRC/46/37 (25 January 2021) <<https://documents.un.org/doc/undoc/gen/g21/015/65/pdf/g2101565.pdf>>.

138 Integrity and Oversight Committee, Parliament of Victoria, *Performance of the Victorian Integrity Agencies 2022/23* (Report, May 2025) 63.

139 *Ibid* 61-64.

140 Office of the Victorian Information Commissioner (OVIC), *2023-24 Annual Report: Changes* (Report) 33.

141 For information on privacy by design see Office of the Victorian Information Commissioner (OVIC), *Privacy by Design* (Guidance No D21/24515, January 2022) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/privacy-by-design/>>.

Recommendation

2. Victoria's courts and VCAT should publicly state how their privacy and AI policies seek to be consistent with the Victorian Information Privacy Principles.

Evidence law and AI

- 5.101 As discussed in Chapter 2, AI evidence is likely to increasingly feature in court and tribunal hearings in different ways. AI evidence encompasses a wide range of media generated by AI, including text, audio or video evidence. AI can be used to:
- process evidence (for example by law firms for large-scale document discovery)
 - inform expert opinion and undertake analysis (for example, when preparing and presenting forensic evidence)
 - generate materials such as affidavits and character references.
- 5.102 The use of AI in evidence raises issues of accuracy, reliability and transparency. AI evidence is often the outcome of complex processes that are difficult to trace and understand.¹⁴² Concerns include how to detect whether evidence has been manipulated (for example, using deepfakes)¹⁴³ and whether AI evidence is based on biased data or a flawed algorithm.¹⁴⁴
- 5.103 For the adversarial court system to function as intended, evidence created, processed or analysed by AI must be able to be properly evaluated. The opaque nature of AI may obstruct a court or tribunal understanding the issues. This might be because of the complexity of the AI model, or chain of models and data sources through which output has been produced. AI developers may also be unwilling to explain how an AI system functions to protect the intellectual property of their technology.
- 5.104 Some of these challenges are being considered by the Artificial Intelligence for Law Enforcement and Community Safety Lab, based at Monash University, which is examining how the explainability of AI can best be pursued from an evidentiary perspective.¹⁴⁵

¹⁴² Paul W Grimm, Maura R Grossman and Gordon V Cormack, 'Artificial Intelligence as Evidence' (2021) 19(1) *Northwestern Journal of Technology and Intellectual Property* 9, 60–65.

¹⁴³ Riana Pfefferkorn, 'Deepfakes in the Courtroom' (2020) 29 *Public Interest Law Journal* 245, 250–251.

¹⁴⁴ Paul W Grimm, Maura R Grossman and Gordon V Cormack, 'Artificial Intelligence as Evidence' (2021) 19(1) *Northwestern Journal of Technology and Intellectual Property* 9, 42–48.

¹⁴⁵ Consultation 20 (AI for Law Enforcement and Community Safety Lab).

Evidence laws and procedures in Victoria

- 5.105 The *Evidence Act 2008 (Vic)* (Evidence Act)¹⁴⁶ introduced the Uniform Evidence Law in Victoria.¹⁴⁷ The Evidence Act is largely aligned with the Commonwealth, New South Wales, Tasmania, Australian Capital Territory and Northern Territory evidence laws. Western Australia has recently introduced the *Evidence Act 2025 (WA)* to align with the Uniform Evidence Law.¹⁴⁸ The Evidence Act applies to all proceedings commenced in a Victorian court and sets out rules relating to evidence.¹⁴⁹
- 5.106 The Supreme, County and Magistrates' Courts have also adopted statutory rules that set out an expert witness code of conduct.¹⁵⁰ This code is not identical to, but uniform with, expert requirements in other Uniform Evidence Law jurisdictions.
- 5.107 The Code of Conduct outlines an expert's duties to the court, such as conferring with other expert witnesses, providing joint reports when requested, and responding to court directions in a timely way. It also sets out the content required in reports, such as any qualifications to an opinion, and a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate. The court can also direct experts to have a conference.¹⁵¹
- 5.108 The Supreme and County Courts' Practice Note *Expert Evidence in Criminal Trials* was updated on 1 June 2025.¹⁵² We discuss the updates in paragraph [5.162]. The Practice Note applies to experts who give or prepare expert evidence in criminal trials in Victoria. It provides direction on:
- how consecutive or concurrent evidence should be given¹⁵³
 - directions on disclosure if an expert used AI to generate or support their opinion¹⁵⁴
 - additional information that experts should disclose on the validity and reliability of their methods¹⁵⁵
 - actions that parties should take to inform themselves of the scientific validity of the expert's evidence if they propose to lead expert evidence of a scientific, medical or technical nature.¹⁵⁶
- 5.109 VCAT *Practice Note – PNVCAT2 Expert Evidence* outlines what must be included in an expert report and mechanisms for regulating how expert evidence is given.¹⁵⁷ Similarly, the Coroners Court has a Code of Conduct for expert witnesses.¹⁵⁸

146 *Evidence Act 2008 (Vic)*.

147 In 1995, the Commonwealth and NSW each enacted an Evidence Act: *Evidence Act 1995 (Cth)*; *Evidence Act 1995 (NSW)*. Since then, Tasmania, Victoria, the ACT, and the Northern Territory have also joined the scheme, with varying degrees of uniformity with the original Commonwealth and NSW legislation: *Evidence Act 2001 (Tas)*; *Evidence Act 2008 (Vic)*; *Evidence Act 2011 (ACT)*; *Evidence (National Uniform Legislation) Act 2011 (NT)*. The Uniform Evidence Law (UEL) is a law that aims to create a harmonised framework for the admissibility of evidence in legal proceedings across Australia, based on the Commonwealth Act. South Australia and Queensland continue to use the common law and their respective jurisdiction's Evidence Acts.

148 *Evidence Act 2025 (WA)* s 3(4) note.

149 *Evidence Act 2008 (Vic)* s 4.; The Act applies to VCAT only to the extent that VCAT adopts the rules of evidence *Victorian Civil and Administrative Tribunal Act 1998 (Vic)* s 98(1)(b).

150 *Supreme Court (Chapter 1 Expert Witness Code Amendment) Rules 2016 (Vic)*; *County Court Civil Procedure Rules 2018 (Vic)* Form 44A; *Magistrates' Court General Civil Procedure Rules 2020 (Vic)* Form 44A.

151 *Supreme Court (Chapter 1 Expert Witness Code Amendment) Rules 2016 (Vic)*.

152 Supreme Court of Victoria, *SC CR 3 - Expert Evidence in Criminal Trials* (Practice Note, 1 June 2025) <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-3-expert-evidence-in-criminal-trials>>; County Court of Victoria, *Practice Note: Expert Evidence in Criminal Trials* (Practice Note No PNCR 1-2025, June 2025).

153 Supreme Court of Victoria, *SC CR 3 - Expert Evidence in Criminal Trials* (Practice Note, 1 June 2025) para 13 <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-3-expert-evidence-in-criminal-trials>>.

154 *Ibid* para 74.

155 *Ibid* para 6.3.

156 *Ibid* para 7A.

157 Victorian Civil and Administrative Tribunal (VCAT), *Practice Note - PNVCAT2 - Expert Evidence* (Practice Note, 8 December 2022) <<https://www.vcat.vic.gov.au/documents/practice-notes/practice-note-pnvcat2-expert-evidence>>.

158 Coroners Court of Victoria, *Coroners Court of Victoria Code of Conduct for Expert Witnesses* (Report).

Are reforms to evidence laws and procedures needed?

- 5.110 We heard from some stakeholders that the Evidence Act was generally flexible enough to address current risks of AI use in Victoria's courts.¹⁵⁹ Much of the Act's flexibility lies in the exclusion sections 135 and 137, which allow courts to exclude evidence if its probative value is outweighed by its prejudicial value.¹⁶⁰
- 5.111 We were advised that it is too early to identify whether legislative reform is needed. However, with increased use of AI in evidence, issues requiring reform may become more clearly defined.¹⁶¹
- 5.112 Stakeholders considered the Practice Note *Expert Evidence in Criminal Trials* and the *Expert Witness Code of Conduct* could be easily revised to keep up to date with changes in AI technology. This flexible approach would suit AI's rapid rate of evolution. Over time, reforms to the Evidence Act could also be considered.
- 5.113 Stakeholders acknowledged the significant complexity involved in reforming the Evidence Act, given it is part of the Uniform Evidence Law.¹⁶²

Deepfakes

- 5.114 GenAI can be used to create deepfakes that are difficult to authenticate, or to distinguish from non-manipulated material. Deepfakes are digital photos, videos or sound files that have been edited to create a convincingly realistic but false depiction. A person may be presented as doing or saying something they did not do or say.¹⁶³ The risk to court and tribunals is exacerbated by how easily and quickly manipulated content can be created and that it is increasingly difficult to detect.¹⁶⁴ The ability to create deepfakes has become increasingly easy:
- anyone with an internet connection can create a deepfake, as there are numerous websites and mobile applications that provide deepfake capabilities, in image video and audio format.¹⁶⁵
- 5.115 The use of this technology to create sexually explicit, manipulated images of people, particularly in school environments, has 'become an extremely serious social problem',¹⁶⁶ and led to reforms in criminal law. In 2022, Victoria introduced the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic). Amongst other things, it clarifies that the definition of 'produce' in relation to an intimate image includes digital creation, and therefore deepfakes.¹⁶⁷ NSW has recently announced the introduction of three bills to criminalise the creation and distribution of sexually explicit deepfakes and intimate images.¹⁶⁸ Australia has created new criminal offences relating to making and distributing sexually explicit deepfake images and videos.¹⁶⁹ Similar offences have been introduced in the United Kingdom.¹⁷⁰

159 Consultations 19 (Professor Ian Freckelton AO KC), 32 (Supreme Court of Victoria).

160 Consultation 19 (Professor Ian Freckelton AO KC).

161 Consultation 6 (Office of Public Prosecutions).

162 Ibid 4.

163 'Deepfake Trends and Challenges - Position Statement', *eSafety Commissioner* (Web Page, 1 September 2024) <<https://www.esafety.gov.au/industry/tech-trends-and-challenges/deepfakes>>.

164 Australian Human Rights Commission, *Adopting AI in Australia* (Submission No. 71 to Senate Select Committee on Adopting Artificial Intelligence (AI), 15 May 2024) 8 <<https://humanrights.gov.au/our-work/legal/submission/adopting-ai-australia>>; World Economic Forum, *The Global Risks Report 2024: Insight Report* (World Economic Forum, 19th ed, 2024) 18.

165 Venessa Ninovic, 'Deepfake Crime: Trends, Threats and Implications' (2024) 1(2) *International Journal of Contemporary Intelligence Issues* 41, 42.

166 Chief Justice Bell, 'Change at the Bar and the Great Challenge of Gen AI' (Speech, Address to the Australian Bar Association, Sydney, 29 August 2025) 10 <<https://inbrief.nswbar.asn.au/posts/13dbc1d59f076b32283b003eb800f0de/attachment/BellCJ-ABA-20250829.pdf>>.

167 Explanatory Memorandum, Justice Legislation Amendment (Sexual Offences and Other Matters) Bill 2022 (Vic) cl 22.

168 Crimes Amendment (Deepfake Sexual Material) Bill 2025 (NSW); Crimes Amendment (Intimate Image and Audio Material) Bill 2025 (NSW); Victims Rights and Victims of Crime Commissioner Bill 2025 (NSW).

169 *Criminal Code Amendment (Deepfake Sexual Material) Act 2024* (Cth).

170 *Sexual Offences Act 2003* (UK) ss 66A, 66B introduced offences for the sending and sharing of intimate images.

5.116 There are many circumstances where deepfakes could be submitted as evidence. For example, we heard there is a risk AI could be used by perpetrators of family violence to manipulate media such as audio recordings.¹⁷¹ Technology facilitated abuse is 'becoming increasingly common worldwide, with the proliferation of smart phones, smart appliances within the home, and the availability of hidden cameras'.¹⁷² One stakeholder specialising in family and gender-based violence told us that they had heard about the use of AI voice tools by perpetrators: 'It looks like AI is now enabling assisted technology abuse by imitating the voice of the victim survivor. It is being used to do all kinds of things, even locking fridges.'¹⁷³

Deepfake material as evidence

5.117 As noted in our consultation paper, there is a risk that deepfakes submitted as evidence, and claims of deepfake evidence in proceedings, will proliferate. This might lead to suspicion of authentic evidence and may undermine public trust in the judicial process.¹⁷⁴ It might also prolong proceedings, creating increased pressure on court resources. At this stage in AI's evolution, the extent of the problems that deepfake technology may cause in courts is uncertain.

5.118 The question raised is whether the existing provisions of the Evidence Act are adequate to deal with the challenges of deepfake material. For example, courts can use existing sections 58 and 183 of the Evidence Act to 'draw inferences from documents themselves as to their authenticity or identity'.¹⁷⁵ The view of some stakeholders was that deepfake issues are similar to common issues that courts grapple with, such as forgeries.¹⁷⁶ There are many occasions where technology is ahead of the legal system, and evidence law has already demonstrated its flexibility and adaptability to address technological developments.¹⁷⁷ It may be that there is no legislative solution to deepfake issues and they will be dealt with through the existing means of calling expert evidence and cross examination.¹⁷⁸

5.119 Deepfakes might present a greater challenge in proceedings with self-represented litigants, who can face difficulties with technical, procedural and legal aspects of the court system.¹⁷⁹ It has been recognised that a judge is obliged under section 24(1) of the Charter to provide to self-represented litigants 'certain advice and assistance to ensure that they effectively participated in the hearing'.¹⁸⁰ But to what extent should a judicial officer assist a self-represented litigant when, for example, an allegation of 'deepfake' evidence is raised, particularly where a party lacks resources to prove or disprove its authenticity? This is an issue that courts should continue to monitor and assess, noting that the judge must maintain neutrality and not become an advocate of the self-represented litigant.¹⁸¹

171 Consultation 16 (Maria Dimopoulos AM and Eva Hussain). Family Violence is defined in the *Family Violence Protection Act 2008* (Vic) s 5 to include a wide range of abusive, threatening and coercive behaviours by someone towards a family member, or acts that cause a child to be exposed to such behaviours.

172 Venessa Ninovic, 'Deepfake Crime: Trends, Threats and Implications' (2024) 1(2) *International Journal of Contemporary Intelligence Issues* 41, 48.

173 Consultation 16 (Maria Dimopoulos AM and Eva Hussain).

174 Venessa Ninovic, 'Deepfake Crime: Trends, Threats and Implications' (2024) 1(2) *International Journal of Contemporary Intelligence Issues* 41, 43.

175 Allie Umoff and Stephanie Lo, 'Artificial Intelligence, Real Problems: Evidence in the Age of AI' [2025] *The Bulletin* <https://bulletin.lawsociety.asn.au/Bulletin/Bulletin/Content/Articles/2025/June/Artificial_Intelligence_Real_Problems_Evidence_in_the_Age_of_AI.aspx>.

176 Consultation 6 (Office of Public Prosecutions).

177 Consultations 6 (Office of Public Prosecutions), 19 (Professor Ian Freckelton AO KC).

178 Ibid.

179 Submission 10 (Castan Centre for Human Rights Law, Monash University).

180 *Matsoukratidou v Yarra Ranges Council* [2017] VSC 61; (2017) 51 VR 624, [186].

181 Judicial College of Victoria, *Charter of Human Rights Bench Book* (Online Manual, 1 September 2017) '6.18.2 Scope of the right' [70] <<https://resources.judicialcollege.vic.edu.au/article/1049904>> (4 January 2023).

Authenticating alleged deepfake evidence

5.120 Stakeholders raised concerns that it is becoming increasingly difficult to detect deepfakes.¹⁸² Some stakeholders considered that in the race between deepfake generation technology and deepfake detection technology, detection technology would ultimately fail.¹⁸³ Rather, authenticating a document through, for example, digital forensics would be the way forward.¹⁸⁴ Other measures might include the use of watermarks by AI model developers.¹⁸⁵ However, the increased costs and complexity of authentication could have broader impacts on genuine evidence. Robert Chesney and Danielle Citron have warned of 'the liar's dividend,' noting that as 'the public becomes more aware of the idea that video and audio can be convincingly faked, some will try to escape the accountability for their actions by denouncing authentic video and audio as deep fakes'.¹⁸⁶ It has been observed that:

Deepfakes' authentication difficulties are twofold. One problem is how to show a video is fake. The other is how to show it isn't. As deepfakes become increasingly common and realistic, their very existence will undermine the reliability of genuine evidence, creating headaches for the proponents of authentic videos.¹⁸⁷

5.121 Such impacts are already apparent in courts. In a recent NSW Civil and Administrative Tribunal case, an applicant sought the release of bodycam footage by the NSW Police of interactions between himself and a police officer. The NSW Police unsuccessfully argued against the release of the video footage based on public interest reasons. It was argued that if released, the footage or meta-data could be manipulated given the rise 'of artificial intelligence and "deep fake" technology'.¹⁸⁸

5.122 In an aggravated assault case before the Ontario Superior Court of Justice in Canada, a defendant attempted to challenge the authenticity of a surveillance video of the incident, claiming it was faked. The judge found the video was authentic, despite there being some acknowledged issues with the evidence, including gaps in the chain of custody. He noted that:

The fact that gaps in the evidence leave open the *possibility* of a faked or altered video being produced does not necessarily render that possibility a *reasonable* one absent some evidence tending to make that inference more than a reasonable or far-fetched one.¹⁸⁹

5.123 If video and other media are increasingly subject to authentication challenges, this would have implications for access to justice and the time and resources involved in challenging authentication.

Are further reforms needed to deal with the challenges of deepfakes?

5.124 Some stakeholders told us that courts are currently capable of working with the issues raised by deepfakes, and that reforms to the Evidence Act were not necessary.¹⁹⁰ There are also concerns that amending rules of evidence to provide additional requirements in response to deepfakes could lead to increased litigation costs and potentially impact access to justice.¹⁹¹

182 Consultation 20 (AI for Law Enforcement and Community Safety Lab).

183 Ibid.

184 Ibid.

185 'AI watermarking' is defined in the Australian Government's AI Technical Standard as 'Information embedded into digital content, either perceptibly or imperceptibly by humans, that can serve a variety of purposes, such as establishing digital content provenance or informing stakeholders that the contents are AI-generated or significantly modified.' Digital Transformation Agency (Cth), *Australian Government's AI Technical Standard (Version 1, July 2025)* 3 <<https://www.digital.gov.au/policy/ai/AI-technical-standard>>. See also, Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia Consultation: Australian Government's Interim Response* (Report, 2024) 20.

186 Robert Chesney and Danielle K Citron, 'Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security' (2019) 107 *California Law Review* 1753, 1785 <<https://www.californialawreview.org/print/deep-fakes-a-looming-challenge-for-privacy-democracy-and-national-security>>.

187 Riana Pfefferkorn, 'Deepfakes in the Courtroom' (2020) 29 *Public Interest Law Journal* 245, 267.

188 *Higgins v Commissioner of Police, NSW Police Force* [2024] NSWCATAD 175, [23].

189 *R v Gallerno* [2025] ONSC 236, [13].

190 Consultation 20 (AI for Law Enforcement and Community Safety Lab).

191 Yvonne Apolo and Katina Michael, 'Beyond A Reasonable Doubt? Audiovisual Evidence, AI Manipulation, Deepfakes, and the Law' (2024) 5(2) *IEEE Transactions on Technology and Society* 156, 163 <<https://ieeexplore.ieee.org/document/10632877?arnumber=10632877>>; Riana Pfefferkorn, 'Deepfakes in the Courtroom' (2020) 29 *Public Interest Law Journal* 245, 271–3.

- 5.125 Given the challenges raised by deepfakes, Victoria's courts should monitor how issues relating to deepfakes are managed within existing evidence laws. This requires consideration of issues emerging from other jurisdictions.
- 5.126 Most stakeholders that commented on AI in relation to evidence said that authenticity could likely be established through existing rules of evidence.¹⁹² However, care must be taken to ensure AI is distinguished from other technologies like email and social media. Courts have indicated a tendency to accept these technologies,¹⁹³ and this could exacerbate the risks presented by deepfakes.
- 5.127 As with privacy law, identifying, authenticating and addressing deepfakes in Victoria's courts and VCAT intersects with national and international regulatory and legislative regimes. This includes the consideration of mandatory guardrails by the Australian Government (discussed in Chapter 4).

Approaches to deepfakes in the United States

- 5.128 In the US, the issue of deepfakes and evidence has been discussed in academic debate and judicial circles.¹⁹⁴ Since 2023, the Federal Advisory Committee on Evidence Rules (the Advisory Committee) has considered adopting a rule to address deepfakes.¹⁹⁵ The Advisory Committee acknowledges deepfakes are similar to forgeries but are distinguished by the sophistication of the AI tool's output and the difficulty faced in detecting them.¹⁹⁶
- 5.129 The core issue of debate for the Advisory Committee is whether existing federal rules of evidence are a strong enough safeguard against courts finding fake evidence to be authentic.¹⁹⁷
- 5.130 The Advisory Committee has taken an incrementalist approach to the question of reform of rules. It states:
- You should not upset the apple cart with bold changes absent a showing that the existing rules really cannot address the problem adequately. Moreover, you only have to look at the various iterations of how you can authenticate ... to see that we always have had special rules for special kinds of evidence.¹⁹⁸
- 5.131 In June 2025, the Advisory Committee agreed that deepfakes are an important issue but is 'not sure that it requires a rule amendment at this time'.¹⁹⁹ However, the Committee states that 'it should take steps to develop an amendment it could consider in the event that courts are suddenly confronted with significant deepfake problems that the existing tools cannot adequately address'.²⁰⁰
- 5.132 The Advisory Committee has developed a working draft of a proposed rule:
- (1) A party challenging the authenticity of an item of evidence on the ground that it has been fabricated, in whole or in part, by generative artificial intelligence must present evidence sufficient to support a finding of such fabrication to warrant an inquiry by the court ...

192 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

193 Ibid.

194 See for example Riana Pfefferkorn, "Deepfakes" in the Courtroom' (2020) 29 *Public Interest Law Journal* 245; Paul W Grimm, Maura R Grossman and Gordon V Cormack, 'Artificial Intelligence as Evidence' (2021) 19(1) *Northwestern Journal of Technology and Intellectual Property* 9; Advisory Committee on Evidence Rules, *Advisory Committee on Evidence Rules Agenda Book* (Report, Judicial Conference of the United States, 27 October 2023) <https://www.uscourts.gov/sites/default/files/2023-10_evidence_rules_agenda_book_final_10-5.pdf>.

195 This is a sub-committee of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

196 Advisory Committee on Evidence Rules, *Advisory Committee on Evidence Rules Agenda Book* (Report, Judicial Conference of the United States, 27 October 2023) 85 <https://www.uscourts.gov/sites/default/files/2023-10_evidence_rules_agenda_book_final_10-5.pdf>.

197 Ibid.

198 Advisory Committee on Evidence Rules, *Advisory Committee on Evidence Rules Agenda Book* (Report, Judicial Conference of the United States, 19 April 2024) 23 <https://www.uscourts.gov/sites/default/files/2024-04_agenda_book_for_evidence_rules_meeting_final_updated_5-8-2024.pdf>.

199 Judicial Conference of the United States, *Committee on Rules of Practice and Procedure - Agenda Papers June 2025* (Report, 10 June 2025) <<https://www.uscourts.gov/sites/default/files/document/2025-06-standing-agenda-book.pdf.pdf>>.

200 Ibid.

(2) If the opponent meets the requirement of (1), the item of evidence will be admissible only if the proponent demonstrates to the court that it is more likely than not authentic.²⁰¹

- 5.133 The proposed approach would first place the burden on the opponent of evidence to show that a reasonable person could find that the evidence is fabricated. The burden would then shift to the proponent to show the evidence is more likely than not authentic.
- 5.134 The Advisory Committee intends to 'continue to monitor the case law and commentary to determine whether a new rule is necessary to treat the deepfake problem and refine and discuss a potential rule'.²⁰²

Areas of the Evidence Act that may require clarification

- 5.135 Some stakeholders told us that there were areas of the Evidence Act dealing with technology that may require clarification.

Proof of voluminous or complex documents

- 5.136 One issue considered by stakeholders was the potential application of section 50 of the Evidence Act to summaries created by AI.²⁰³ Section 50 allows a judge to order a summary of the contents of voluminous documents and requires the name and address of the person who prepared the summary to be produced.²⁰⁴ GenAI outputs can be understood as being created by a model, not a person, which might lead to a lack of clarity if a strict or literal legislative interpretation is applied.
- 5.137 From a practice perspective this is unlikely to create significant hurdles to the continued application of the section. Real persons will generate summaries using AI tools and their details can be used to fulfil the requirements of section 50.²⁰⁵ It is also unlikely an AI tool will independently generate summaries of voluminous content in the immediate future. However, this may change if the use of agentic AI becomes widespread, and may require future legislative reform.²⁰⁶

Evidence produced by processes, machines and other devices

- 5.138 It was suggested that sections 146 and 147 of the Evidence Act might require legislative reform.²⁰⁷ These sections apply to a document or thing tendered that has been produced by a process or device. The sections create a presumption that:
- if the device or process is one that, if properly used, ordinarily produces that outcome
 - it is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that, in producing the document or thing, the device or process produced that outcome.
- 5.139 Section 147 applies the presumption to documents produced in the course of business, while section 146 applies to documents produced generally. Sections 146 and 147 were drafted with the intention to simplify the admission of faithful reproductions or mechanically produced outputs, such as photocopies, to lighten the burden of proof.²⁰⁸ The party tendering evidence is not required to call evidence that the process or device is working to prove the inference.

201 Ibid 60.

202 Ibid 62.

203 Submission 23 (Victorian Bar Association). Consultations 5 (Victorian Bar Association), 6 (Office of Public Prosecutions).

204 *Evidence Act 2008* (Vic) s 50.

205 Consultation 19 (Professor Ian Freckelton AO KC).

206 For further discussion of agentic AI, see Chapter 3 on risks and opportunities of use.

207 Consultations 19 (Professor Ian Freckelton AO KC), 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses); Yvonne Apolo and Katina Michael, 'Beyond A Reasonable Doubt? Audiovisual Evidence, AI Manipulation, Deepfakes, and the Law' (2024) 5(2) *IEEE Transactions on Technology and Society* 156, 162 <<https://ieeexplore.ieee.org/document/10632877?arnumber=10632877>>.

208 Australian Law Reform Commission, NSW Law Reform Commission and Victorian Law Reform Commission, *Uniform Evidence Law* (Final Report No 102, December 2005) [6.15]-[6.16].

- 5.140 Whether these sections should be amended to impose a more rigorous requirement for the presumption of reliability and accuracy of computer-produced evidence was considered by the Australian Law Reform Commission, NSW Law Reform Commission and this Commission in 2005.²⁰⁹ At the time, the conclusion was that reform was not warranted. However, what constitutes 'processes, machines and other devices' has changed substantially since 2005, particularly with the development of AI.
- 5.141 England and Wales are undertaking calls for evidence to explore possible reform of the common law presumption that 'the computer is operating correctly'.²¹⁰ While this is different from the presumption in sections 146 and 147, both might result in a false reliance on the outputs of technology. This was at issue in the Post Office Horizon scandal, where evidence based on a faulty software system led to wrongful convictions.²¹¹
- 5.142 The primary concern is that AI output may be ambiguous, biased or hallucinated. Sections 146 and 147 do not require the accuracy or functionality of the device, machine or process to be proved.
- 5.143 However, there is a question whether section 146 and 147 presumptions would apply to AI-generated material in the first place. GenAI tools are built on predictive models, which cannot create replicable results, so an AI tool may not be able to demonstrate that it 'ordinarily produces the outcome'.²¹²
- 5.144 For some uses, it may be accepted that AI tools can produce consistent outcomes and therefore attract the presumption under sections 146 and 147. More recently it has been used to facilitate the admission into evidence of timestamps created by social media platforms.²¹³
- 5.145 The question as to whether sections 146 and 147 might be applied to an AI tool was considered in *Gujic v Arterbury*.²¹⁴ In this case, the appellant sought to include text message evidence produced by Google Translate. Google Translate leverages AI deep learning and neural networks to translate text.²¹⁵
- 5.146 The Federal Circuit and Family Court decided the section 146 presumption could not apply to the appellant's Google Translate documentation because the appellant did not lead evidence as to what Google Translate ordinarily produces.²¹⁶ The Court therefore could not know what Google Translate did with any level of specificity. For example, did Google Translate produce literal or figurative translations? Or was it a form of approximate translation? The court therefore could not evaluate the probability of the existence of the relevant facts.²¹⁷
- 5.147 Commentary on this case noted that court staff, legal representatives and court users use Google Translate widely in the family law context to translate affidavits, draft applications to court and prepare cases for trial because of ease, cost and convenience of use.²¹⁸ There may come a time where adducing evidence about AI translation tools becomes unnecessary because their output and purposes have become common and reliable knowledge.²¹⁹ However, it is worth noting that in another case involving presumed AI translation, the judge stated that it was 'undesirable' for a character reference to be written using an AI translation tool because:

209 Ibid [6.15]–[6.42].

210 Ministry of Justice (UK), 'Use of Evidence Generated by Software in Criminal Proceedings: Call for Evidence', *GOV.UK* (Web Page, 21 January 2025) <<https://www.gov.uk/government/calls-for-evidence/use-of-evidence-generated-by-software-in-criminal-proceedings/use-of-evidence-generated-by-software-in-criminal-proceedings-call-for-evidence>>.

211 Ibid.

212 *Evidence Act 2008* (Vic) ss 146–7.

213 Consultation 19 (Professor Ian Freckelton AO KC); *Colin Stevenson (a pseudonym) v The Queen* [2020] VSCA 27; (2020) 61 VR 624.

214 *Gujic v Arterbury* [2024] FedCFamC1A 48.

215 Quoc V. Lee and Mike Schuster, 'A Neural Network for Machine Translation, at Production Scale', *Google Research* (Web Page, 27 September 2016) <<https://research.google/blog/a-neural-network-for-machine-translation-at-production-scale/>>.

216 *Gujic v Arterbury* [2024] FedCFamC1A 48, [52].

217 Ibid [51]–[56].

218 Prue McDonald and Hawa Q Mohammad, 'Google Translate and the Evidence Act 1995 (Cth): *Gujic v Arterbury* [2024] FedCFamC1A 48' (2024) 98(11) *Australian Law Journal* 919, 920.

219 Prue McDonald and Hawa Q Mohammad, 'Google Translate and the Evidence Act 1995 (Cth): *Gujic v Arterbury* [2024] FedCFamC1A 48' (2024) 98(11) *Australian Law Journal* 919. This could then come under the judicial notice provision of s144 of the Evidence Act 2008 (Vic).

the subtleties of the use of language, which will be significant in assessing the content of the reference, will not necessarily be accurately reflected in the automated translation.²²⁰

- 5.148 Sections 146 and 147 of the Evidence Act should be monitored to assess how case law develops in applying the presumption to AI evidence.
- 5.149 The presumption of reliability for sections 146 and 147 should not be conflated with discussion about a reliability standard for expert evidence, discussed below.

Courts must be able to evaluate AI evidence

- 5.150 As discussed in Chapter 3, AI presents several risks and challenges for courts and tribunals, including lack of explainability, bias in AI data or systems, and inaccuracy (such as hallucinations). An issue facing Victoria's courts and VCAT is how AI evidence (meaning evidence that is generated, processed or analysed by AI) can be assessed and excluded if it is biased, incorrect or misleading.
- 5.151 The quality of evidence is a matter of probative weight or value.²²¹ Flaws in evidence reduce the weight given to it by the factfinder, whether judge or jury. Evidentiary flaws are usually explored in cross-examination.²²² The Uniform Evidence Law relies heavily on sections 135 and 137 to exclude evidence that is prejudicial or misleading. We heard that these sections could be used to respond to issues relating to AI.²²³
- 5.152 Assessing AI evidence is complicated by factors which can hinder a court or tribunal's ability to assess the quality of evidence and parties' ability to challenge evidence. One problem is the lack of transparency. An AI model may be very complex to explain to a court.²²⁴ Information about how the AI system works and the data it is based on might not be available or might not be disclosed.²²⁵
- 5.153 The United Nations Special Rapporteur on the independence of judges and lawyers discussed these challenges in the context of criminal justice, recommending that:
- Prosecutors should avoid relying on AI evidence as the foundation for their pursuit of convictions, unless confident that the evidence is rigorously tested, not discriminatory and can be meaningfully challenged by the defence after mandatory prosecutorial disclosure ...
- Rules of evidence should provide no carve-out from admissibility requirements for privately owned AI tools and ... the standard for admitting AI-produced evidence should be the same as for traditional forensic methods.²²⁶
- 5.154 Another problem is lack of reliability. It may be difficult to determine the probative value of AI evidence when two experts or parties use different AI tools that produce conflicting results. Risks discussed in Chapter 3, such as inaccuracy and bias, will also impact reliability of evidence.
- 5.155 The relation between transparency and reliability in AI evidence has been discussed in academic literature. It has been commented that 'when an AI system is not transparent or explainable, then ensuring its validity and reliability increase in importance'.²²⁷

220 *Director of Public Prosecutions (ACT) v Khan* [2024] ACTSC 19, [43].

221 *Evidence Act 2008* (Vic) Dictionary pt 1 (definition of 'probative value'). Probative value of evidence means the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue.

222 Consultations 19 (Professor Ian Freckelton AO KC), 32 (Supreme Court of Victoria).

223 Consultation 6 (Office of Public Prosecutions). In *IMM v The Queen* [2016] HCA 14; (2016) 257 CLR 300, [52] it was held that issues of reliability were not relevant to the assessment of probative value for the purposes of s 137.

224 For example, in *Trivago NV v Australian Consumer and Competition Commission* there was extensive expert evidence from computer science experts regarding the algorithm and underlying content and computation of data: *Trivago NV v Australian Consumer and Competition Commission* [2020] FCAFC 185; (2020) 384 ALR 496, [65].

225 *State of Wisconsin v Loomis* 371 Wis.2d 235 (2016). Notably, in this case the Wisconsin Supreme Court held that the trial judge's use of COMPAS - a risk assessment algorithm used in sentencing - did not violate the defendant's right to due process, even though the methodology was not able to be disclosed to the court, nor the defendant.

226 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 20 <<https://docs.un.org/en/A/80/169>>.

227 Paul W Grimm, Maura R Grossman and Gordon V Cormack, 'Artificial Intelligence as Evidence' (2021) 19(1) *Northwestern Journal of Technology and Intellectual Property* 9, 63.

Does AI evidence require the development of a reliability test for expert evidence?

- 5.156 In Australian law, admitting expert evidence is a matter of weight. Professor Ian Freckelton AO KC told us that:
- If there is something flawed in the evidence, the unreliability or flaw will go to the probative value of the evidence or the weight given to it by the judicial officer. This is the general approach in the Evidence Act and it is the same at common law.
- If black box evidence emerges and cannot be contested or discerned in terms of key aspects of its reasoning, forensic consequences should follow. If the probative value of expert evidence cannot be tested, courts would then question whether the evidence is relevant at all, as well as whether it is more prejudicial than probative.²²⁸
- 5.157 Unlike jurisdictions such as the United States, England and Wales, Canada, India and New Zealand, Australian law does not make reliability a requirement for the admission of expert evidence.²²⁹
- 5.158 Some stakeholders saw some merit in Australia adopting a reliability standard for expert evidence.²³⁰ These issues were raised in a broader context than AI. But these considerations are also relevant as AI is introduced, and the complexity of such evidence continues to increase. A reliability standard would enable judicial officers to assess the reliability of expert evidence in determining admissibility.
- 5.159 The United Nations Special Rapporteur on the independence of judges and lawyers recommended that in criminal justice systems: 'Judges and prosecutors should act as gatekeepers and only submit and admit reliable AI-generated evidence in criminal trials.'²³¹
- 5.160 The United States Supreme Court adopted a test with five indicia of reliability in *Daubert v Merrell-Dow Pharmaceuticals Inc*, commonly referred to as the 'Daubert test'.²³² Under the Daubert test, the judge, not the jury, determines that the expert's evidence is based on scientific knowledge. In doing so, judges must consider the following factors:
- a) whether the technique or theory in question can be, and has been tested
 - b) whether it has been subjected to publication and peer review
 - c) the technique's known or potential error rate
 - d) the existence and maintenance of standards controlling its operation
 - e) whether it has attracted widespread acceptance within a relevant scientific community.²³³
- 5.161 England and Wales have adopted a Practice Direction for expert evidence in criminal proceedings.²³⁴ Considerations for judges include:
- a) the extent and quality of the data on which the expert opinion is based
 - b) the validity of the methodology employed by the expert
 - c) if the expert's opinion relies on an inference from any findings, whether the opinion properly explains how safe or unsafe the inference is (whether by reference to statistical significance or in other appropriate terms)

228 Consultation 19 (Professor Ian Freckelton AO KC).
229 *Honeysett v The Queen* [2014] HCA 29; *IMM v The Queen* [2016] HCA 14; (2016) 257 CLR 300; *Lang v The Queen* [2023] HCA 29; (2023) 278 CLR 323; *R v Tang* [2006] NSWCCA 357; (2006) 65 NSWLR 681; *Lundy v The Queen* [2014] UKPC 28; (2014) 2 NZLR 273; *Lundy v The Queen* [2018] NZCA 410; Thomson Reuters, *Expert Evidence* (online at 28 September 2025) 'Reliability of evidence' [12.05.30].

230 Consultation 19 (Professor Ian Freckelton AO KC); Confidential consultation.
231 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 20 <<https://docs.un.org/en/A/80/169>>.

232 *Daubert v Merrell Dow Pharmaceuticals Inc*, 509 US 579 (1993).
233 *Ibid* 593–595.
234 Courts and Tribunals Judiciary (UK), *Criminal Practice Directions 2023* (Report, July 2024) CrimPRC(23)90(b), PD 7 <<https://www.judiciary.uk/wp-content/uploads/2025/03/Criminal-Practice-Directions-2023-as-amended-July-2024-260325.pdf>>.

- d) if the expert's opinion relies on the results of the use of any method (for instance, a test, measurement or survey), whether the opinion takes proper account of matters, such as the degree of precision or margin of uncertainty, affecting the accuracy or reliability of those results
- e) the extent to which any material upon which the expert's opinion is based has been reviewed by others with relevant expertise, and the views of those others on that material
- f) the extent to which the expert's opinion is based on material falling outside the expert's own field of expertise
- g) the completeness of the information, which was available to the expert and whether the expert took account of all relevant information
- h) if there is a range of expert opinion on the matter in question, where in the range the expert's own opinion lies and whether the expert's preference has been properly explained
- i) whether the expert's methods followed established practice in the field and, if they did not, whether the reason for the divergence has been properly explained.²³⁵
- 5.162 In Victoria, the Supreme Court's Practice Note *Expert Evidence in Criminal Trials* has been updated to provide standards for the validity of scientific methods used by experts and new requirements for the submission and consideration of expert evidence.²³⁶ This provides some options to enable courts to explore issues of reliability and question the intricacies of expert evidence on AI tools.
- 5.163 The Practice Note requires disclosure from experts who have used AI to generate or express their expert opinions, and to identify possible biases.²³⁷
- 5.164 For parties and experts wishing to tender evidence that is scientific, medical or technical, it also requires experts to explain the validity of their method by disclosing:
- the method used by the expert
 - whether the method has been reviewed by others
 - whether the method followed established practice, and the reasons for any divergence
 - whether the expert has proficiency in the use of the method
 - details of any test or survey that were used to formulate the expert opinion and the margin of uncertainty and reproducibility of results
 - the steps taken to limit the impact of extraneous information
 - whether the opinion was peer-reviewed.²³⁸
- 5.165 In terms of the scientific validity of expert evidence when a party proposes to lead expert evidence of a scientific, medical or technical nature, it provides standards for the scientific validity of expert evidence:
- results must be repeatable, reproducible and accurate
 - the expert must have demonstrated proficiency in the application of the method.²³⁹
- 5.166 These requirements comprise some aspects of both the Criminal Practice Note used in England and Wales and the US Daubert test.

235 Ibid PD 71.2.

236 Supreme Court of Victoria, *SC CR 3 - Expert Evidence in Criminal Trials* (Practice Note, 1 June 2025) <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-3-expert-evidence-in-criminal-trials>>.

237 Ibid para 74.

238 Ibid para 6.3.

239 Ibid paras 7A.3-7A.4.

- 5.167 A reliability standard for evaluating expert evidence could be adopted for Australian courts, including in Victoria. Reforms to enable judicial assessment of reliability of expert evidence have been raised previously regarding forensic science.²⁴⁰ However, this would require thorough consideration of how experts use AI tools and interpret their outputs.²⁴¹ The potential scope would also require detailed consideration, as any changes to section 79 of the Evidence Act would impact expert evidence broadly.
- 5.168 Any consideration of a reliability standard should be dealt with across Uniform Evidence Law jurisdictions, rather than in Victoria's courts and VCAT alone. The cross-jurisdictional nature of the issue, coupled with the fact that a reliability standard would cover more than issues of AI evidence, puts this issue beyond the scope of this reference.
- 5.169 Most stakeholders were of the view that the reliability of AI evidence could be managed with existing rules. Introducing a reliability standard would have broader implications than AI evidence alone. However, the Commission recommends this issue should continue to be monitored by a court-led expert working group, as outlined in Recommendation 3.

AI-generated opinion evidence

- 5.170 Under the Uniform Evidence Law there is a general rule that 'evidence of an opinion is not admissible to prove the existence of a fact'.²⁴² However there are exceptions to the opinion rule. Section 79 of the Evidence Act creates an exception that if a person has 'specialised knowledge' based on their 'training, study or experience' they can provide an opinion that is 'wholly or substantially based on that knowledge'.²⁴³ Litigants may seek to rely on experts with specialised knowledge to give opinion evidence in a proceeding.
- 5.171 As AI develops litigants may seek to rely on opinions in proceedings which have been generated by AI. This issue arose in the case of *Cosette v Pennisi*.²⁴⁴ This case involved a dispute about the purchase of a luxury bag.
- 5.172 In this case, the buyer of a luxury bag became concerned that it was fake. She had the bag checked by submitting photographs to a third-party authentication service, which concluded the bag was not authentic. The seller refused to refund the purchase price of the bag.
- 5.173 In the hearing at first instance, the buyer had the onus of demonstrating the bag's lack of authenticity. She relied on two reports from authentication services, at least one of which appeared to have been generated by AI.²⁴⁵
- 5.174 The Tribunal, quoted by the Appeal Panel, stated that:

Opinions in legal proceedings may only be given by those having specialised knowledge based on the person's training, study or experience and their opinion must be wholly or substantially based on that knowledge.

The Tribunal is not aware of the training, study or experience of whoever it is that is giving the two opinions. Indeed, it appears to be the case that, in the case of *Entrupy*, the opinion is the result of artificial intelligence based on *Entrupy's* algorithms...

I accept that there is some reasoning for the opinions expressed in the two certificates. However, there is no expert or other person giving those opinions.²⁴⁶

240 Gary Edmond, 'Regulating Forensic Science and Medicine Evidence at Trial: It's Time for a Wall, a Gate and Some Gatekeeping' (2020) 94 *Australian Law Journal* 427; Chris Maxwell, 'Preventing Miscarriages of Justice: The Reliability of Forensic Evidence and the Role of the Trial Judge as Gatekeeper' (2019) 93(8) *Australian Law Journal* 642; Alastair Ross, 'The Reliability and Validity of Expert Evidence: Law, Science and Medicine in Summit. The Rapporteur's View.' (2020) 52(3) *Australian Journal of Forensic Sciences* 246, 248 <<https://doi.org/10.1080/00450618.2019.1711183>>.

241 Consultation 19 (Professor Ian Freckelton AO KC).

242 *Evidence Act 2008* (Vic) s 76.

243 *Ibid* s 79.

244 *My Fashion Republic Pty Ltd t/as Cosette v Pennisi* [2024] NSWCATAP 187.

245 *Ibid* [81].

246 *Ibid*.

- 5.175 While this case did not directly consider section 79 of the Evidence Act, it demonstrates challenges in seeking to rely on AI to provide opinion evidence. Without an expert to give the opinion, there is no opportunity to evaluate the basis for the opinion through cross-examination.
- 5.176 As AI develops it will be necessary to further consider whether courts and tribunals should allow AI generated opinions to be submitted as evidence and whether legislative reform is required.

Proposed US reforms regarding reliability of AI evidence

- 5.177 How AI generated materials, including opinions, may be submitted as evidence is being considered internationally. In the US the Advisory Committee on Evidence Rules (Advisory Committee) has developed a formal proposal for establishing standards for machine-generated evidence tendered by litigants, in recognition of a gap that exists in the Federal Rules of Evidence.²⁴⁷
- 5.178 Under Rule 702 of the US Federal Rules of Evidence, expert witnesses must establish that their evidence is based on sufficient facts or data, is the product of reliable principles and methods, and their methods are reliably applied to the facts of the case.²⁴⁸ This rule was amended following Daubert (discussed in paragraph [5.160]).
- 5.179 However, Rule 702 does not apply where AI-generated material is presented by litigants without an expert. Allowing courts and litigants to develop ad hoc approaches to ensuring the reliability of trial evidence is an undesirable outcome, and the Advisory Committee developed a new Rule 707 on the machine-generated evidence:
- When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of Rule 702 (a)-(d). This rule does not apply to the output of basic scientific instruments.²⁴⁹
- 5.180 The adoption of this rule might require parties to demonstrate that training data used in the model avoided bias and its output is accurate.²⁵⁰ Through this process, parties would be able to show that the material tendered reflects a reliable application of the principles and methods, and that the AI program used reliable principles and methods. The Committee on Rules of Practice and Procedure approved that the draft rule be published for public comment.²⁵¹
- 5.181 Some other jurisdictions are grappling with issues of reliability in AI evidence. A Bill currently before the New York State Assembly²⁵² seeks to amend both the civil and criminal procedure state laws to deal with these issues of the reliability of AI evidence and the 'black box' problem.²⁵³
- 5.182 According to the memo accompanying the New York Bill:
- The crux of the black box problem is that no one, not even the AI's programmers, can precisely understand how the AI reaches its conclusions from the data. This ambiguity introduces an issue with evidence created or processed entirely or partially by AI; we cannot discern how the AI arrived at a specific conclusion. However, through rigorous testing, we can verify whether those conclusions are accurate and reliable.²⁵⁴

247 Judicial Conference of the United States, *Committee on Rules of Practice and Procedure - Agenda Papers June 2025* (Report, 10 June 2025) 75 <<https://www.uscourts.gov/sites/default/files/document/2025-06-standing-agenda-book.pdf.pdf>>.

248 Fed. R. Evid. 702(a)-(d).

249 Judicial Conference of the United States, *Committee on Rules of Practice and Procedure - Agenda Papers June 2025* (Report, 10 June 2025) 75 <<https://www.uscourts.gov/sites/default/files/document/2025-06-standing-agenda-book.pdf.pdf>>.

250 Advisory Committee on Evidence Rules, *Advisory Committee on Evidence Rule Agenda Book* (Report, Judicial Conference of the United States, 2 May 2025) 17 <https://www.uscourts.gov/sites/default/files/document/2025-05_evidence_rules_committee_agenda_book_final.pdf>.

251 Judicial Conference of the United States, *Committee on Rules of Practice and Procedure - Agenda Papers June 2025* (Report, 10 June 2025) 97 <<https://www.uscourts.gov/sites/default/files/document/2025-06-standing-agenda-book.pdf.pdf>>.

252 Unlike federal US law and other US states, New York State has not adopted the Daubert test and continues to rely on the Frye standard when determining the reliability of expert witness evidence. The Frye test relies on general acceptance within the scientific community to determine admissibility. The Frye test has been applied by some Australian courts. See *Frye v United States* 293 Fed. 1013 (1923); LexisNexis, *Bender's New York Evidence* (online at 25 July 2025) 'Daubert Standard' §140.01.

253 An Act to Amend the Criminal Procedure Law and the Civil Practice Law and Rules, in Relation to the Admissibility of Evidence Created or Processed by Artificial Intelligence, N.Y. Legis. Assemb. A01338, Reg. Sess. 2025-26 (2025).

254 Memorandum in Support of Legislation, N.Y. Legis. Assemb. A01338, Reg. Sess. 2025-26 (2025), 'Justification'.

- 5.183 This approach appears to reflect the important relationship between transparency and reliability in AI evidence, as discussed above in paragraph [5.155].²⁵⁵
- 5.184 The Bill differentiates between 'created' and 'processed' AI evidence. Evidence 'created' by AI is defined as when AI generates 'new information'.²⁵⁶ The Bill contains strict requirements on when this evidence may be admitted:
- Evidence created, in whole or in part, by artificial intelligence shall not be received into evidence in a criminal proceeding unless the evidence is substantially supported by independent and admissible evidence and the proponent of the evidence establishes the reliability and accuracy of the specific use of the artificial intelligence in creating the evidence.²⁵⁷
- 5.185 Evidence 'processed' by AI is defined as where a 'conclusion' or 'interpretation' was generated by AI, based on information that already exists.²⁵⁸ The admissibility requirements for this kind of AI evidence are not as strict as AI 'created' evidence, but require 'the proponent of the evidence [to establish] the reliability and accuracy of the specific use of the artificial intelligence in processing the evidence'.²⁵⁹
- 5.186 The memo explains that the level of accuracy required should be considered 'on a case-by-case basis,' taking the weight of the evidence into account.²⁶⁰
- 5.187 The Bill also enables the court to limit the disclosure of trade secrets or similar sensitive information introduced by expert evidence.²⁶¹ This seems to be directed at preventing the outcome in *Loomis*,²⁶² or similar cases, where AI providers have refused to disclose information about data and algorithms to protect the commercial value of their product.²⁶³
- 5.188 The laws of evidence in the US are different to the Uniform Evidence Law which operates in Victoria. However, these examples show how international jurisdictions are beginning to respond to the challenges AI presents to existing rules and laws of evidence.

Processes to assist assessment of AI evidence

- 5.189 In assessing AI evidence, judicial officers have powers under the *Civil Procedure Act 2010* (Vic) to enable court-appointed experts,²⁶⁴ a single joint expert (an expert witness engaged jointly by both parties),²⁶⁵ or concurrent evidence (where experts can be questioned jointly and the judge and counsel for either party can ask questions).²⁶⁶
- 5.190 As discussed in our consultation paper, the *Trivago NV v Australian Consumer and Competition Commission* case used some of the above mechanisms to come to a decision on an algorithm's output.²⁶⁷ The parties called expert witnesses, and the experts gave evidence to identify the relative importance of algorithmic factors. Each of the parties' experts submitted reports, with the experts subsequently conferring to provide a joint report structured around the ACCC's questions.²⁶⁸ The experts then delivered their evidence concurrently in a closed court session.²⁶⁹

255 Paul W Grimm, Maura R Grossman and Gordon V Cormack, 'Artificial Intelligence as Evidence' (2021) 19(1) *Northwestern Journal of Technology and Intellectual Property* 9, 63.

256 An Act to Amend the Criminal Procedure Law and the Civil Practice Law and Rules, in Relation to the Admissibility of Evidence Created or Processed by Artificial Intelligence, N.Y. Legis. Assemb. A01338. Reg. Sess. 2025-26 (2025), s 1.3.

257 Ibid s 1.1. The Bill also contained the same proposed amendment to the civil practice law.

258 Ibid s 1.4.

259 Ibid s 1.2.

260 Memorandum in Support of Legislation, N.Y. Legis. Assemb. A01338. Reg. Sess. 2025-26 (2025), 'Summary of specific provisions' s 60.80(7)(a).

261 An Act to Amend the Criminal Procedure Law and the Civil Practice Law and Rules, in Relation to the Admissibility of Evidence Created or Processed by Artificial Intelligence, N.Y. Legis. Assemb. A01338. Reg. Sess. 2025-26 (2025), s 1.8.

262 *State of Wisconsin v Loomis* 371 Wis.2d 235 (2016).

263 Paul W Grimm, Maura R Grossman and Gordon V Cormack, 'Artificial Intelligence as Evidence' (2021) 19(1) *Northwestern Journal of Technology and Intellectual Property* 9, 63-65.

264 *Civil Procedure Act 2010* (Vic) s 65M.

265 Ibid s 65L.

266 Ibid s 65K; See also *Criminal Procedure Act 2009* (Vic) s 232A.

267 *Trivago NV v Australian Consumer and Competition Commission* [2020] FCAFC 185; (2020) 384 ALR 496.

268 Ibid [65]-[69].

269 Ibid [69].

- 5.191 This case indicates how existing mechanisms can be used to assist the assessment of AI-generated evidence.²⁷⁰ The Supreme Court noted that in addition to court appointed experts, single joint experts, and concurrent evidence, courts have a range of express powers to:
- direct expert witnesses to hold a conference of experts or prepare a joint experts report²⁷¹
 - refer a question to a special referee²⁷²
 - call in the assistance of one or more specifically-qualified assessors.²⁷³
- 5.192 We note that courts and tribunals with high volume caseloads, such as VCAT and the Magistrates' Court, may be constrained in using these powers due to time and resources.

Education for courts and lawyers

- 5.193 The Trivago case suggests judges and lawyers do not need to be AI experts to effectively consider matters relating to AI. However, they must be supported to ask the right questions about AI models so the adversarial system can function effectively.²⁷⁴
- 5.194 Judges and lawyers need to understand relevant aspects of AI systems. This may include how the model has been fine-tuned or trained, whether the AI program used reliable principles and methods, whether the resulting output is valid,²⁷⁵ and how the system has been prompted. Enabling judicial officers to question experts who provide evidence informed by AI will become increasingly important.
- 5.195 A tool for judicial officers, similar to the Judicial College of Victoria's *A Practical Guide to Weighing Evidence* could be one option.²⁷⁶ This resource could detail the kinds of assistance judges can ask for in relation to AI and include a set of general questions judicial officers could use to ask about the algorithm and its training data.
- 5.196 Courts and tribunals could also make use of other mechanisms to assess technical or specific questions about AI technology and evaluate probative weight. Stakeholders suggested that the following supports might be useful in determining the probative weight of AI evidence:
- an expert panel or a register of court experts with expertise regarding AI use cases²⁷⁷
 - authoritative summaries on limitations and complexities of AI and algorithms, similar to primers published in relation to scientific evidence for judges in England and Wales.²⁷⁸ In the US, the National Centre for State Courts developed bench cards outlining considerations for judges in evaluating AI-generated evidence. This includes separate considerations for acknowledged²⁷⁹ and unacknowledged use of AI.²⁸⁰

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- 270 Henry Fraser, Rhyle Simcock and Aaron J Snoswell, 'AI Opacity and Explainability in Tort Litigation' (Conference Paper, FAccT '22: 2022 ACM Conference on Fairness, Accountability, and Transparency, 21-24 June 2022) 187-188 [3.4] <<https://dl.acm.org/doi/10.1145/3531146.3533084>>.
- 271 Submission 26 (Supreme Court of Victoria); *Civil Procedure Act 2010* (Vic) s 65l; *Supreme Court (General Civil Procedure) Rules 2025* (Vic) ord 44.06; *Victorian Civil and Administrative Tribunal Act 1998* (Vic) sch 3.
- 272 Submission 26 (Supreme Court of Victoria); *Supreme Court (General Civil Procedure) Rules 2025* (Vic) ord 50.01; *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 95.
- 273 Submission 26 (Supreme Court of Victoria); *Supreme Court Act 1986* (Vic) s 77.
- 274 Consultation 20 (AI for Law Enforcement and Community Safety Lab).
- 275 Advisory Committee on Evidence Rules, *Advisory Committee on Evidence Rule Agenda Book* (Report, Judicial Conference of the United States, 2 May 2025) <https://www.uscourts.gov/sites/default/files/document/2025-05_evidence_rules_committee_agenda_book_final.pdf>.
- 276 Judicial College Victoria, *A Practical Guide to Weighing Evidence* (Guide, 2024) <<https://judicialcollege.vic.edu.au/resources/evidence-essentials-practical-guide-weighing-evidence>>.
- 277 Confidential consultation.
- 278 'Science and the Law', *The Royal Society* (Web Page, 2025) <<https://royalsociety.org/about-us/what-we-do/science-and-law/>>.
- 279 National Centre for State Courts (NCSC) and Thomson Reuters Institute, *Bench Card: Evaluating Acknowledged AI-Generated Evidence* (Guidance, 17 April 2025) <<https://nationalcenterforstatecourts.app.box.com/s/s5n5x046hfv7n16habigg553mpman5>>.
- 280 Acknowledged AI evidence is disclosed and often used to enhance understanding, such as creating 3D models or enhancing audio.
- 280 National Centre for State Courts (NCSC) and Thomson Reuters Institute, *Bench Card: Evaluating Unacknowledged AI-Generated Evidence* (Guidance, 17 April 2025) <<https://nationalcenterforstatecourts.app.box.com/s/bz0sb4x8wjnjp34gworvdzpw0qnlpr>>.
- Unacknowledged AI evidence involves potential manipulation or fabrication without disclosure.

- a set of considerations to determine the reliability of AI-generated materials.²⁸¹ This could include some of the considerations that the UK has established in its criminal practice directions.

Continued monitoring of the suitability of the Evidence Act

- 5.197 The law of evidence is of central importance to the functioning of Victoria's courts and tribunals.
- 5.198 We heard from stakeholders that the rapid pace of AI's evolution makes legislative reform challenging. While sections 50, 146 and 147 of the Evidence Act were raised as possible areas for reform, no specific issues or problems were identified during consultations. At this stage there are no compelling reasons to undertake legislative reform of the Evidence Act in relation to AI. Addressing issues such as reliability would also have broader implications for expert evidence. It is possible that the rules of evidence are flexible enough to adapt to the increasing use of AI evidence in courts.
- 5.199 However, AI evidence presents challenges, such as the rise of deepfakes, and issues of reliability, explainability and transparency. Reliable and robust evidence is integral to the fairness of the justice system. The use of AI evidence in courts and tribunals raises difficulties in understanding what technology is used, how it works and whether it is reliable. Constant monitoring of legislation and court rules in relation to the use of AI evidence in courts and tribunals is therefore essential. Courts are best placed to undertake this monitoring and assessment.
- 5.200 The court-led Forensic Evidence Working Group convened judges, scientists, prosecutors and defence lawyers to develop the Practice Note *Expert Evidence in Criminal Trials*.²⁸² It is recommended that a similar court-led expert working group monitor issues arising in relation to AI and identify any areas of the Evidence Act requiring reform. The impact of AI evidence and any issues with existing evidence laws is still emerging. A working group with representatives across courts and the broader justice system will help to identify and inform issues that arise in practice and enable collaborative consideration of potential law reform. The group should report annually to the Chief Justice of Victoria.
- 5.201 Given the cross-jurisdictional nature of the Uniform Evidence Law, any consideration of future reforms would likely require a national approach and could be considered by the Standing Council of Attorneys-General.

Recommendation

3. A court-led expert working group should monitor the suitability of the *Evidence Act 2008* (Vic) to address emerging AI-related evidence issues, and report annually to the Chief Justice of Victoria.

Administrative law

5.202 The use of AI systems for government automated decision-making is likely to increase in the future.²⁸³ The number of people contesting such decisions will also increase, requiring Victoria's courts and VCAT to determine whether they are able to conduct judicial review.²⁸⁴ It is important that Victoria's courts and VCAT have clarity on whether they can conduct judicial review of these types of decisions.

Can courts review automated decisions?

- 5.203 In the Commonwealth system, 'decision' is defined in legislation such as the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* (ADJR Act),²⁸⁵ the *Acts Interpretation Act 1901 (Cth)* (*Acts Interpretation Act*),²⁸⁶ and the *Administrative Appeals Tribunal Act 1975 (Cth)* (AAT Act).²⁸⁷ The ADJR Act and AAT Act enable decisions to be reviewed by federal courts and tribunals.
- 5.204 In Victoria, a 'decision' for which review can be sought under the *Administrative Law Act 1978 (Vic)* (AL Act) is defined in that Act.²⁸⁸ The *Victorian Civil and Administrative Tribunal Act 1998 (Vic)* (VCAT Act) defines a decision for the purposes of that Act in sections 4 and 5.²⁸⁹
- 5.205 As discussed in our consultation paper, legal uncertainty remains as to whether automated decisions are 'decisions' for the purposes of judicial review. This stems from the decision in *Pintarich v Federal Commissioner of Taxation* (Pintarich),²⁹⁰ which suggests fully automated decisions made under the Commonwealth ADJR Act may not be reviewable.
- 5.206 In *Pintarich*, the majority held that an automated letter from the Australian Tax Office to a taxpayer was not a reviewable decision for the purposes of ADJR Act, because the machine producing the output did not engage in a 'mental process'.²⁹¹
- 5.207 In his dissent in *Pintarich*, Justice Kerr considered whether a decision has been made depends on the context, and should be flexibly evaluated in line with advances in technology, stating that:
- The legal conception of what constitutes a decision cannot be static; it must comprehend that technology has altered how decisions are in fact made and that aspects of, or the entirety of, decision making, can occur independently of human mental input.²⁹²
- 5.208 Justice Kerr also noted that several government departments already rely on automated systems for bulk decision-making and that some legislation delegates decision-making authority to computer programs.²⁹³

283 Yee-Fui Ng and Maria O'Sullivan, 'Deliberation and Automation – When Is a Decision a "Decision"?' (2019) 26 *Australian Journal of Administrative Law* 21, 22; Kimberlee Weatherall et al, *Automated Decision-Making in New South Wales: Mapping and Analysis of the Use of ADM Systems by State and Local Governments* (Research Report, ARC Centre of Excellence on Automated Decision-Making and Society (ADM+S), 8 March 2024) 111 <<https://apo.org.au/node/325901>>.

284 Judicial review is when a court decides whether a decision made by a government department is lawful. The purpose of judicial review is for the court to decide if the decision was legal, the government had the power to make decision, and the decision was made without bias and took all relevant information into account. If a court determines a decision was unlawful, the government will overturn the initial decision, and the government will re-make the decision according to the law.

285 *Administrative Decisions (Judicial Review) Act 1977* (Cth) s 3.

286 *Acts Interpretation Act 1901* (Cth) s 25D.

287 *Administrative Appeals Tribunal Act 1975* (Cth) s 3.

288 *Administrative Law Act 1978* (Vic) ss 2, 3.

289 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) ss 4, 48.

290 *Pintarich v Federal Commissioner of Taxation* [2018] FCAFC 79; (2018) 262 FCR 41.

291 *Ibid* [140].

292 *Ibid* [49].

293 *Ibid* [47].

5.209 The majority's view of what constitutes a 'decision' in *Pintarich* has been criticised by academics and organisations with an interest in AI and automated decision-making. The Human Technology Institute stated:

a rigid articulation of what constitutes a 'decision' is inappropriate, because it does not account for the 'variability and complexity of [automated decision making]', nor the reality of the rapid uptake of [automated decision making] systems to automate decision-making processes with consequential outcomes for individuals, in virtually every government context.²⁹⁴

Do decisions made by AI require reasons?

5.210 There is no common law right to reasons for administrative decisions. However, the Acts Interpretation Act, ADJR Act and AAT Act contain provisions that require reasons for decisions to be provided to a person in certain circumstances.²⁹⁵ In Victoria, the VCAT Act provides that a person may request a statement of reasons for a decision, which the decision maker must provide within 28 days.²⁹⁶ Additionally, under the AL Act, parties are entitled to reasons for decisions of a tribunal.²⁹⁷

5.211 Explainability and transparency of decision making by AI systems are of great importance in this context. As the Australian Human Rights Commission explains, a 'failure to provide reasons for an administrative decision can make it difficult, or even impossible, to know whether the decision was fair, reasonable, accurate or even lawful'.²⁹⁸

5.212 Yet, as discussed in Chapter 3, AI models are often too complex to easily explain. As Samuel White describes:

The current system of human decision-making can often be perplexing, but you are able to find the individual and unpick their logic. It is much harder to unpick the logic of hundreds of lines of computer code ... who do you hold to account for a decision that was created by an algorithm?²⁹⁹

5.213 Additionally, as discussed in Chapter 2, AI systems can perpetuate bias either because of the data used, or problems with the system itself.³⁰⁰ This can lead to decisions made by AI that are unfair or discriminatory.³⁰¹

5.214 Despite the developments in 'Explainable AI',³⁰² such tools may have limited value in an administrative law context. Even where AI systems can provide apparent reasons, these might not genuinely reflect the process that led to its decision. Professor Lyria Bennett Moses explains that:

the problem is not that ChatGPT "lies"; the problem is that output reasons are not a genuine reflection of the nature of its own operations. While it is likely that [large language model] explanations will, over time, *appear* more genuine to readers, the complexity of the system makes *genuine* explainability unlikely.³⁰³

294 Sarah Sacher and Edward Santow, *Use of Automated Decision-Making by Government* (Submission No.1071994347 to the Attorney-General's Department Consultation on Automated Decision Making Reform, Human Technology Institute, 28 January 2025) 15 <<https://www.uts.edu.au/globalassets/sites/default/files/2025-01/HTI-submission-Use-of-ADM-by-Government.pdf>>.

295 *Administrative Decisions (Judicial Review) Act 1977* (Cth) s 13; *Administrative Appeals Tribunal Act 1975* (Cth) s 28; *Acts Interpretation Act 1901* (Cth) s 25D.

296 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) ss 45–46.

297 *Administrative Law Act 1978* (Vic) s 8.

298 Sophie Farthing et al, *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 66 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>.

299 Samuel White, 'Authorisation and Accountability of Automated Government Decisions under Australian Administrative Law' (2021) 102 *Australian Institute of Administrative Law Forum* 84, 90 <<https://www.austlii.edu.au/au/journals/AlAdminLawF/2021/12.pdf>>.

300 Sophie Farthing et al, *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 106–107 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>.

301 *Ibid* 105–108.

302 'What Is Explainable AI (XAI)?', *IBM Think* (Web Page, 29 March 2023) <<https://www.ibm.com/think/topics/explainable-ai>>.

303 Lyria Bennett Moses, 'Stochastic Judges: The Limits of Large Language Models' (2024) 98(9) *Australian Law Journal* 640, 652.

5.215 Representatives of the Human Technology Institute considered that such issues may be addressed through good design of AI systems, and by enabling affected parties to be provided with technical reasons for an AI-generated automated decision.³⁰⁴ We heard that:

The problem is not only the inability to provide reasons a layperson can understand, but also the inability to provide technical reasons in the event that someone forms a view that the reasons given for a decision don't match with true rationale for the decision.³⁰⁵

5.216 However, the inscrutability of AI systems is not the only issue. A separate, yet related, concern is that AI processes are 'nonintuitive'.³⁰⁶ Even a technical explanation, capable of being understood by someone with relevant expertise, might not be sufficient to provide 'reasons' as understood in an administrative law context.

5.217 The UNSW Centre for the Future of the Legal Profession told us that Explainable AI's purpose is:

distinct from the concept of explanation or reason-giving as used in law, which is justificatory ... Building in an 'explanation' to [machine learning] systems may not enable justification as the explanation may depend on correlations in data rather than the patterns of causality.³⁰⁷

5.218 When considering AI systems that provide 'reasons', it is important to consider that: 'As with other areas where law and computer science intersect, the word might be the same, but the way the disciplines understand the word and its implications varies in important ways'.³⁰⁸

Is reform needed to address uncertainty introduced by Pinarich?

5.219 The majority's decision in Pinarich has been criticised as 'flawed',³⁰⁹ or as taking an overly 'narrow' approach to the meaning of decision in the context of modern technology.³¹⁰ Some expect the case will be distinguished, or departed from, by later judgments.³¹¹

5.220 Some stakeholders considered Pinarich would continue to be influential in the Australian legal system until it is overturned or overcome with legislative reform.³¹² The definition of decision in Pinarich sits at odds with the increased use of deep learning and AI systems that cannot provide reasons.

5.221 The Pinarich decision has created uncertainty and may have the 'perverse outcome' that governments are incentivised to adopt automated decision-making processes as a means of avoiding judicial scrutiny.³¹³

304 Consultation 34 (Human Technology Institute).

305 Ibid.

306 Andrew D Selbst and Solon Barocas, 'The Intuitive Appeal of Explainable Machines' (2018) 87 *Fordham Law Review* 1085, 1096–1099 <<https://ir.lawnet.fordham.edu/flr/vol87/iss3/11/>>.

307 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

308 Deven R Desai and Mark Riedl, *Responsible AI Agents* (Georgia Tech Scheller College of Business Research Paper No 5147666 (preprint), 20 February 2025) 7 <<https://papers.ssrn.com/abstract=5147666>>.

309 Margaret Allars, 'Automated Decision Making and Review of Administration Decisions' (2024) 58(3) *Georgia Law Review* 1145, 1167 <<https://digitalcommons.law.uga.edu/glr/vol58/iss3/8/>>.

310 Yee-Fui Ng and Maria O'Sullivan, 'Deliberation and Automation – When Is a Decision a "Decision"?' (2019) 26 *Australian Journal of Administrative Law* 21, 32.

311 Margaret Allars, 'Automated Decision Making and Review of Administration Decisions' (2024) 58(3) *Georgia Law Review* 1145, 1167 <<https://digitalcommons.law.uga.edu/glr/vol58/iss3/8/>>; Samuel White, 'Authorisation and Accountability of Automated Government Decisions under Australian Administrative Law' (2021) 102 *Australian Institute of Administrative Law Forum* 84, 91 <<https://www.austlii.edu.au/au/journals/AIAdminLawF/2021/12.pdf>>.

312 Consultations 28 (Monash University Digital Law Group), 34 (Human Technology Institute).

313 Sarah Sacher and Edward Santow, *Use of Automated Decision-Making by Government* (Submission No.1071994347 to the Attorney-General's Department Consultation on Automated Decision Making Reform, Human Technology Institute, 28 January 2025) 15 <<https://www.uts.edu.au/globalassets/sites/default/files/2025-01/HTI-submission-Use-of-ADM-by-Government.pdf>>.

- 5.222 More broadly, it has the potential to affect public trust and confidence in the courts and government decision-making.³¹⁴ Individuals must continue to be enabled to challenge government decision-making so that there is not a zone of AI decision-making that is shielded from scrutiny by courts and tribunals.
- 5.223 Anna Huggins considers that the decision leaves a regulatory gap, as Pintarich suggests 'administrative decision-making in Australia is "still regarded as an inherently human process", yet there are currently no legislative safeguards to ensure that human decision-makers do in fact oversee and review automated outputs'.³¹⁵
- 5.224 The Australian Human Rights Commission considered that reform is needed to 'ensure similar rights of review are available for people affected by AI-informed administrative decisions'.³¹⁶ It recommended amending section 25D of the Acts Interpretation Act to make it clear that, 'where a person has a legal entitlement to reasons for a decision, this entitlement exists regardless of how the decision is made'.³¹⁷ It also recommended that the content of the reasons should include a 'technical explanation of the decision, in a form that could be assessed and validated by a person with relevant technical expertise'.³¹⁸
- 5.225 The Human Technology Institute similarly recommended that relevant legislation, including section 25D of the Acts Interpretation Act, should be amended. It recommended section 25D be amended to provide that for the avoidance of doubt, the use of automation is not a factor weighing against an action being considered a 'decision' within the meaning of administrative law.³¹⁹

Is reform needed in Victorian law?

- 5.226 It is not yet clear what effect Pintarich will have on automated decisions outside of the ADJR, or under Victorian administrative law. However, consideration should be given to whether legislative reform is required in Victorian law to clarify:
- that automated decisions made by AI are capable of review
 - that reasons should be made available for people seeking to challenge decisions made by AI.
- 5.227 There should not be unequal access to judicial review based on whether a decision was made by a person or a machine. Neither should there be an incentive to use AI to cause an administrative decision to be more opaque,³²⁰ or to avoid judicial review altogether.
- 5.228 The possible legislative approaches require further consideration. One approach would be to insert deeming provisions into section 3 of the AL Act and section 4 of the VCAT Act. This would clarify that automated decisions generated by AI tools are considered 'decisions' for the purpose of judicial review. One issue with section 4 of the VCAT Act is that it contemplates a 'person' will be making a decision.³²¹
- 5.229 As discussed above, another possible reform could ensure the right to reasons for a decision, including technical explanations. However, this approach may be limited by the inherent lack of explainability of more complex AI systems.

314 Consultation 34 (Human Technology Institute); Anna Huggins, 'Automated Processes and Administrative Law: The Case of Pintarich', *AusPubLaw: Australian Public Law* (Web Page, 14 November 2018) <<https://www.auspublaw.org/blog/2018/11/the-case-of-pintarich>>.

315 Anna Huggins, 'Addressing Disconnection: Automated Decision-Making, Administrative Law and Regulatory Reform' (2021) 44(3) *University of New South Wales Law Journal* 1048, 1074 <<https://corrigan.austlii.edu.au/au/journals/UNSWLawJL/2021/37.html>>.

316 Sophie Farthing et al, *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 71 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>.

317 *Ibid* 62 Rec 6.

318 *Ibid*.

319 *Ibid*.

320 *Ibid* 66.

321 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 4.

- 5.230 There has been some criticism of the effectiveness of deeming provisions to address the concerns raised by Pintarich.³²² Certain Australian laws have provisions which deem decisions made by a computer to have been made by the relevant minister or executive.³²³ However, such an approach entails risks, including a 'lack of clear accountability for automated decisions'.³²⁴ Also, as Ng and O'Sullivan raise, 'deeper consideration should be given to the lawful and ethical remit of AI: are there certain areas of decision-making which should *not* be subject to AI?'³²⁵
- 5.231 Some have suggested that rather than deeming provisions, an alternative approach would be to legislate that a human is responsible for independently justifying a decision made by AI.³²⁶ This would provide a 'check and balance' against AI systems, as well as an opportunity for transparency.³²⁷
- 5.232 While we do not recommend administrative law reform in Victoria at this stage, our view is that the complex issues raised above require detailed consideration and ongoing monitoring.

Legal Profession Uniform Law

- 5.233 The Legal Profession Uniform Law (Uniform Law)³²⁸ and its associated Uniform Rules outline ethical and professional standards required of lawyers in Victoria, New South Wales and Western Australia.³²⁹ Breaches of the Uniform Law may constitute professional misconduct and lawyers could face disciplinary action. The Victorian Legal Services Board and Commissioner (VLSB+C) is responsible for ensuring that the Legal Profession Uniform Law is implemented effectively in Victoria.³³⁰
- 5.234 The Uniform Law and associated rules adopt a technology-neutral framework, meaning that the Uniform Law avoids prescribing specific technologies or methods for legal practice.³³¹ As a result, the Uniform Law's rules and obligations remain consistent regardless of whether traditional methods or AI are used by lawyers in their legal practice.³³² A statement by the VLSB+C and other state based regulatory bodies emphasises the ethical standards required of lawyers while using AI.³³³
- 5.235 The following professional obligations are relevant for lawyers using AI, as outlined in the Solicitors and Barrister Rules:
- duties to the court and to the administration of justice³³⁴
 - duties to deliver legal services competently and diligently³³⁵

322 Yee-Fui Ng and Maria O'Sullivan, 'Deliberation and Automation – When Is a Decision a "Decision"?' (2019) 26 *Australian Journal of Administrative Law* 21, 31.

323 Samuel White, 'Authorisation and Accountability of Automated Government Decisions under Australian Administrative Law' (2021) 102 *Australian Institute of Administrative Law Forum* 84, 92–93 <<https://www.austlii.edu.au/au/journals/AIAdminLawF/2021/12.pdf>> For example the *Social Security (Administration) Act 1999* (Cth) s 6A, deems certain computer-generated decisions to be made by the Secretary.

324 Ibid 95.

325 Yee-Fui Ng and Maria O'Sullivan, 'Deliberation and Automation – When Is a Decision a "Decision"?' (2019) 26 *Australian Journal of Administrative Law* 21, 34.

326 Samuel White, 'Authorisation and Accountability of Automated Government Decisions under Australian Administrative Law' (2021) 102 *Australian Institute of Administrative Law Forum* 84, 96 <<https://www.austlii.edu.au/au/journals/AIAdminLawF/2021/12.pdf>>; 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, 445 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2230.12412>>.

327 Samuel White, 'Authorisation and Accountability of Automated Government Decisions under Australian Administrative Law' (2021) 102 *Australian Institute of Administrative Law Forum* 84, 96 <<https://www.austlii.edu.au/au/journals/AIAdminLawF/2021/12.pdf>>.

328 Applied as a law of Victoria by the *Legal Profession Uniform Law Application Act 2014* s 4.

329 *Legal Profession Uniform Law Application Act 2014*. These rules are supported by the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* and *Legal Profession Uniform Conduct (Barristers) Rules 2015*.

330 'About the Board and Commissioner', *Victorian Legal Services Board and Commissioner* (Web Page, 31 July 2025) <<https://lsbc.vic.gov.au/about-us/board-and-commissioner/about-board-and-commissioner>>.

331 Submission 6 (Victorian Legal Services Board and Commissioner), Consultation 5 (Victorian Bar Association).

332 For an analysis of the concept of technology neutrality in law see Lyria Bennett Moses, 'Recurring Dilemmas: The Law's Race to Keep Up With Technological Change' [2007] *University of New South Wales Faculty of Law Research Series* 21 <<https://www5.austlii.edu.au/au/journals/UNSWLRS/2007/21.html>>.

333 The Law Society of NSW, Legal Practice Board of Western Australia, and Victorian Legal Services Board and Commissioner, *Statement on the Use of Artificial Intelligence in Australian Legal Practice* (Statement, 26 March 2025) <<https://lsbc.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

334 *Legal Profession Uniform Conduct (Barristers) Rules 2015* r 4(a); *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* r 3.

335 *Legal Profession Uniform Conduct (Barristers) Rules 2015* r 4(c); *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* r 4.1.3.

- duties to not engage in conduct which is either prejudicial or likely to diminish public confidence in the administration of justice³³⁶
 - duties not to engage in conduct that will bring the legal profession into disrepute or diminish public confidence in the legal profession³³⁷
 - duties to not knowingly or recklessly mislead the court³³⁸
 - duties to promote and protect the client's best interests to the best of a lawyer's skill and diligence.³³⁹
- 5.236 The ethical duties of solicitors in relation to AI use was considered in *Re Dayal*. In this case a Victorian lawyer was found to have tendered a false list of cases without disclosing the source, and without verifying its accuracy. The lawyer claimed he did not intentionally mislead the Federal Circuit and Family Court after providing incorrect written submissions created by an AI tool.³⁴⁰ Judge Humphries found it appropriate to refer the lawyer to the VLSB+C for further investigation.³⁴¹
- 5.237 In August 2025 the VLSB+C varied the practising certificate of the lawyer.³⁴² The variation meant that, among other restrictions, he would be unable to act as a principal lawyer and must undertake supervised legal practice for two years.³⁴³ The VLSB+C stated that this response demonstrates their 'commitment to ensuring legal practitioners who choose to use AI in their legal practice do so in a responsible way that is consistent with their obligations.'³⁴⁴
- 5.238 Internationally, courts in Canada, England and Wales and the United States, have taken a mix of approaches when hallucinated or incorrect materials have been filed in court documents as a result of AI use, ranging from warnings to parties to the ordering of costs.³⁴⁵

Are professional obligations sufficient for AI risks?

- 5.239 Existing professional obligations were generally considered broad enough to manage ethical issues arising from the use of AI by lawyers. Representatives of the Victorian Bar Association suggested that existing rules cover the improper use of AI, including obligations in relation to client data and informed consent.³⁴⁶ The Law Institute of Victoria (LIV) stated:

The LIV agrees that 'lawyers must continue to maintain high ethical standards and comply with their professional obligations'. Nonetheless, in the LIV's view it is possible to envisage a broader role for the use of AI in legal practice than that envisaged by the [VLSB+C] Statement, whilst simultaneously ensuring that lawyers continue to meet high ethical standards and comply with their professional obligations.³⁴⁷

336 *Legal Profession Uniform Conduct (Barristers) Rules 2015* r 8(b) and 8(c); *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* r 5.1.2.

337 *Legal Profession Uniform Conduct (Barristers) Rules 2015* r 8(c); *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* r 5.1.2.

338 *Legal Profession Uniform Conduct (Barristers) Rules 2015* r 24; *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* r 19.1.

339 *Legal Profession Uniform Conduct (Barristers) Rules 2015* r 35; *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* r 4.1.

340 *Dayal* [2024] FedCFamC2F 1166, [8].

341 *Ibid* [21]; See also *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95, [38], in which the lawyer was referred to the Office of the NSW Legal Services Commissioner, having provided the court with non-existent AI generated citations and authorities.

342 'Statement on the "Mr Dayal" Matter', *Victorian Legal Services Board and Commissioner* (Web Page, 2 September 2025) <<https://www.lsbv.vic.gov.au/news-updates/news/statement-mr-dayal-matter>>.

343 *Ibid*.

344 *Ibid*.

345 Some examples include *Hussein v Canada (Immigration, Refugees and Citizenship)* [2025] FC 1060 (CanLII), [34]-[43]; *Ko v Li* [2025] ONSC 2766 (CanLII), [2]-[32]; *Ayinde v London Borough of Haringey* [2025] EWHC 1040, [58]-[72]; *Mata v Avianca, Inc.* 678 F.Supp.3d 443 (2023), [43]; *Loyer v Wayne County Michigan*, (ED Mich, 21-12589, 21 March 2025) slip op 3, n 2.

346 Consultation 5 (Victorian Bar Association).

347 Submission 16 (Law Institute Victoria) citing The Law Society of NSW, Legal Practice Board of Western Australia, and Victorian Legal Services Board and Commissioner, *Statement on the Use of Artificial Intelligence in Australian Legal Practice* (Statement, 26 March 2025) <<https://lsbc.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

- 5.240 In our consultation paper, we asked whether lawyers should have a specific obligation to be competent with the use of technology. The American Bar Association Model Rules were changed in 2012 to require competency with relevant technology. Comment on rule 1.1 states that 'to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology'.³⁴⁸ The American Bar Association released an opinion in 2024 that lawyers and law firms using AI tools must 'fully consider their applicable ethical obligations, including their duty to provide competent legal representation, to protect client information, to communicate with clients ... and to charge reasonable fees'.³⁴⁹
- 5.241 Representatives of Victoria Legal Aid noted that there is scope for the Uniform Law rules and commentary to address AI.³⁵⁰
- 5.242 The VLSB+C stated legislative changes to either the Solicitors or Barristers Rules were unnecessary:
- In our view, the current conduct rules for both solicitors and barristers already accommodate AI-related risks and misconduct, as a result of their broad and technology-neutral application. While each set of rules could certainly be improved, we do not believe any changes are needed to specifically address lawyers' use of AI. However, further work can and must occur to ensure that lawyers understand how the conduct rules apply to the use of AI (and other technology) in the course of legal practice.³⁵¹
- 5.243 Some stakeholders emphasised that while the rules may not need amendment, they should be supplemented with comprehensive training and that links between professional obligations and AI risks need to be better understood and communicated.³⁵² Representatives of the Victorian Bar Association stated:
- Practitioners are already under an obligation to understand the tools. Just because some people do not understand them is not a reason for more rules as opposed to better enforcement and education.³⁵³
- 5.244 Representatives from Law Firms Australia shared this view:
- From a broad perspective the existing professional conduct rules cover a lot of the issues. The professional conduct rules offer flexibility because they are principles based, which is useful. But work could be done to flesh out the commentary on how the conduct rules for solicitors and barristers can be applied in the context of using AI.³⁵⁴
- 5.245 If changes are introduced, the VLSB+C and the Victorian Bar Association insisted the Uniform Law should remain principles-based, rather than refer to particular technologies.³⁵⁵ A representative of the VLSB+C stated:
- In terms of legal professional obligations, the rules of professional conduct could be amended so that they are more principles-based but, as they are now, they are technology-neutral and capable of dealing with AI. There could be better guidance on their applicability to AI use. I do not think amending the Rules or the Uniform Law is necessary to address AI.³⁵⁶
- 5.246 Representatives of the VLSB+C also suggested that the Uniform Law should remain focused on the existing professional responsibilities of lawyers:

348 'Rule 1.1 Competence - Comment', *American Bar Association* (Web Page, 2025) <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1.1_competence/comment_on_rule_1.1/>.

349 American Bar Association, Standing Committee on Ethics and Professional Responsibility, *Formal Opinion 512: Generative Artificial Intelligence Tools* (Report, 29 July 2024) 1 <https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf>.

350 Consultation 35 (Victoria Legal Aid).

351 Submission 6 (Victorian Legal Services Board and Commissioner).

352 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice). Consultations 12 (County Court of Victoria), 23 (Dr Fabian Horton).

353 Consultation 5 (Victorian Bar Association).

354 Consultation 33 (Law Firms Australia).

355 Submissions 6 (Victorian Legal Services Board and Commissioner), 23 (Victorian Bar Association). Consultation 4 (Victorian Legal Services Board and Commissioner).

356 Consultation 4 (Victorian Legal Services Board and Commissioner).

Ultimately, the professional rules remain intact, and you remain responsible for the quality of your output. It's a reminder for people to think about whether they are competent and capable of delivering that output. Using AI without checking the output is not much different from having a human do the work for you, not checking it before sending it to a court or the other side and having something be wrong in the document. The VLSB+C would tie the responsibility for the error back to the person with the practicing certificate in both scenarios.³⁵⁷

5.247 The Uniform Law ensures that lawyers are responsible for their output and therefore recognises AI tools are simply tools like any other. As stated by the Victorian Bar Association:

Every aspect of the court or tribunal process is structured around the production, filing or publication of documents by individuals who have responsibility to attest to the accuracy, relevance or authenticity of the contents of those documents. The Bar considers that these existing obligations, duties and responsibilities apply regardless of the tools used to produce the document and whether the document has been produced with the assistance of another person or with the assistance of a technological tool, platform or system (AI or otherwise).³⁵⁸

5.248 The professional obligations outlined in the current Uniform Law remain appropriate for the regulation of AI use by lawyers. The use of AI does not fundamentally alter the responsibility of lawyers to act ethically, and in accordance with existing principles of professional conduct. However, the continuing effectiveness of these rules depends upon supplementary guidance and ongoing professional development. The role of legal professional guidance is explored in Chapter 7. The role of education and awareness-raising among lawyers is considered in Chapter 10.

Reforms to the regulation of legal practice

5.249 The increasing use of AI to provide legal services raises questions about the regulation of unqualified legal practice. The Uniform Law prevents unqualified entities from practising law, and makes it an offence to engage in unqualified legal practice in Victoria.³⁵⁹ The VLSB+C is responsible for investigating instances of unqualified legal practice in Victoria.³⁶⁰

5.250 Unauthorised practice of law rules have 'restricted the ability of courts and other organisations, whether commercial or in the third sector, from providing tailored legal advice to consumers other than through the services or under the supervision of a qualified lawyer'.³⁶¹

5.251 This issue was raised in a submission by Dr Natalia Antolak-Saper, who stated that if AI tools are to provide legal advice, this raises a foundational question of:

what constitutes the provision of legal advice and how this definition extends to AI systems. Traditional legal advice is predicated on the expertise of qualified professionals who possess the training, ethical obligations and accountability mechanisms to ensure their advice is contextually appropriate and legally sound. In contrast, AI tools operate within parameters defined by algorithms and datasets, often developed by individuals without legal qualification.³⁶²

357 Ibid: This position was also put forward by representatives of Microsoft: Consultation 25 (Microsoft).

358 Submission 23 (Victorian Bar Association).

359 *Legal Profession Uniform Law Application Act 2014* ss 9–10.

360 'Unqualified Legal Practice', *Victorian Legal Services Board and Commissioner* (Web Page, 2 August 2022) <<https://lsbc.vic.gov.au/consumers/registers-lawyers/unqualified-legal-practice>>.

361 Vivi Tan, Jeannie Paterson and Julian Webb, 'Generative AI in Small Value Consumer Disputes: Reviving Not Resolving Challenges of Design and Governance in Online Dispute Resolution' (2025) 48(4) *University of New South Wales Law Journal* (forthcoming) 14 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5313052> See generally, Gino Dal Pont, 'Unauthorised Practice of Law' (2018) 45 *Australian Bar Review* 224 <https://figshare.utas.edu.au/articles/journal_contribution/Unauthorised_practice_of_law/22973501/1>. See also, Mia Bonardi and L Karl Branting, 'Certifying Legal Assistants for Unrepresented Litigants: A Global Survey of Access to Civil Justice, Unauthorised Practice of Law' (2025) 26(1) *The Columbia Science & Technology Law Review* 34 <<https://doi.org/10.52214/stlr.v26i1.13336>>.

362 Submission 7 (Dr Natalia Antolak-Saper).

- 5.252 The use of AI to provide legal services raises complicated questions such as who will be responsible for legal outputs provided by AI systems, especially if those outputs are inaccurate and are relied on to the detriment of litigants.³⁶³ Antolak-Saper considered that one solution may be to bring AI tools which provide legal advice within the scope of legal professional regulations.³⁶⁴
- 5.253 Different international approaches are emerging in relation to permitting AI tools to provide legal services and coverage by legal service regulators. In Chapter 2, we discussed that the Solicitors Regulation Authority in England and Wales recently approved an AI-based firm, Garfield Law, to provide legal advice to court users.³⁶⁵ However, this would not be possible in Victoria without future law reform.
- 5.254 While beyond the scope of this report, this issue is addressed in a recent paper published by the AI Policy Consortium for Law and Courts in the United States. It argues for reforms to the 'patchwork' of unauthorised practice of law regulations across various states.³⁶⁶ It sees such reforms as responding to the crisis of access to justice.³⁶⁷ It calls for regulatory reform to:
- revise unauthorised practice of law rules to allow for use of vetted AI tools, with appropriate safeguards around disclosure, data security and transparency
 - establish regulatory sandboxes for testing of AI tools performing legal services
 - revise definitions of unauthorised practice of law in US states.³⁶⁸

Relevant national legislation under review

- 5.255 Other areas of law that intersect with AI that Victoria's courts and VCAT may encounter with increasing regularity are:
- copyright and patents
 - competition and consumer law.
- 5.256 These issues were not covered extensively in consultations with stakeholders and include large bodies of law that could conceivably form discrete references.
- 5.257 These areas of law are largely administered under Commonwealth laws. For example, disputes about copyright are governed by the *Copyright Act 1968* (Cth).
- 5.258 We understand that the Australian Government is currently reviewing several of these frameworks to consider challenges posed by AI. It released a discussion paper seeking input on whether amendments are needed to the *Copyright Act 1968* (Cth) to respond to AI transparency issues.³⁶⁹ A discussion paper seeking feedback on whether the Australian Consumer Law needs reform to address AI-related harms across a broad range of economic settings was also released in October 2024.³⁷⁰
- 5.259 Given the Commonwealth controls these areas of law, they fall outside the scope of our reference and we have not canvassed them in this report.
- 5.260 The Commission suggests that the Attorney-General maintains awareness of these topics in the context of AI.

363 Ibid.

364 Ibid.

365 Solicitors Regulation Authority (UK), *SRA Approves First AI-Driven Law Firm* (News Release, 6 May 2025) <<https://www.sra.org.uk/sra/news/press/garfield-ai-authorized/>>.

366 AI Policy Consortium for Law & Courts, *Modernizing Unauthorized Practice of Law Regulations to Embrace AI-Driven Solutions and Improve Access to Justice* (White Paper, National Center for State Courts and Thomson Reuters Institute, August 2025) 2 <https://www.ncsc.org/sites/default/files/media/document/AI_UPL_WhitePaper.pdf>.

367 Ibid 5–6.

368 Ibid 5.

369 Attorney-General's Department (Cth), *Copyright and AI Reference Group – Transparency* (Discussion Paper, September 2024) <<https://www.ag.gov.au/rights-and-protections/publications/copyright-and-ai-transparency-discussion-paper>>.

370 The Treasury (Cth), *Review of AI and the Australian Consumer Law: Discussion Paper* (Discussion Paper, Australian Government, October 2024) <<https://treasury.gov.au/sites/default/files/2024-10/c2024-584560-dp.pdf>>.

Future reform considerations

- 5.261 In this chapter we discuss potential areas for legislative reform in relation to foreseeable uses of AI in courts and tribunals. However, the rapid expansion of AI and its broad use across society is continuing to evolve. This will have future implications for courts and tribunals that may require broader consideration of legislative reform.
- 5.262 As the use of AI increases, this will give rise to new offences. In Australia, new offences have been proposed and introduced in relation to deepfakes.³⁷¹ The use of AI will also have implications for causes of action such as:
- breach of privacy
 - discrimination
 - copyright infringement
 - malicious use, such as defamation
 - cyber breaches
 - employment-related issues.³⁷²
- 5.263 The Law Commission of England and Wales discuss how increasing autonomy of AI systems could lead to 'liability gaps' where 'no natural or legal person is responsible for the harm caused by, or the other conduct of, an AI system'.³⁷³ The Law Commission also discusses how the disconnect between autonomous systems and the person using the system might interact with established legal concepts such as establishing causation.³⁷⁴ Because it can be hard to know how an AI tool produced an output, it may be difficult to demonstrate that harm caused was reasonably foreseeable. Similarly, AI may raise challenges in establishing the mental element of an offence or legal cause of action as it may not be possible to demonstrate AI held the required state of mind.³⁷⁵ In considering these potential gaps, the Law Commission raises the 'potentially radical option for AI law reform: granting some form of legal personality to AI systems'.³⁷⁶
- 5.264 At this stage it is difficult to predict the broad impacts of AI and its implications for courts and tribunals. Some issues could be managed within the existing system, others may require substantive reform. While the use of AI gives rise to a range of possible issues, it is challenging to assess where, or if, these legal gaps will arise.³⁷⁷ The issues raised by AI are large and complex, requiring ongoing attention and further consideration of possible reforms across a range of areas.

371 Crimes Amendment (Deepfake Sexual Material) Bill 2025 (NSW); Criminal Code Amendment (Deepfake Sexual Material) Bill 2024 (Cth).

372 New York State Bar Association Task Force on Artificial Intelligence, *Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence* (Report, April 2024) 49.

373 Law Commission, *Artificial Intelligence and the Law: A Discussion Paper* (Report, 31 July 2025) 9 <<https://lawcom.gov.uk/publication/artificial-intelligence-and-the-law-a-discussion-paper/>>.

374 Ibid 10.

375 Ibid 11–12.

376 Ibid 4.

377 Ibid 9. The Law Commission discusses: 'While the autonomy and adaptiveness of AI raises the possibility of liability gaps, it does not guarantee they will crystallise. With the many varied potential uses for AI in future, it is difficult to assess where such liability gaps may in fact arise, though they are more likely to occur in connection with highly autonomous and adaptive systems, given that other systems are likely to be more predictable and easier to control'.

CHAPTER
06

Principles to guide the safe use of AI in courts and tribunals

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6. Principles to guide the safe use of AI in courts and tribunals

Overview

- There is broad support for principles to be used to guide the safe use of AI in Victoria's courts and VCAT.
- We propose principles to guide safe use of AI in Victoria's courts and VCAT, drawing on principles relating to AI, justice and human rights.
- Principles for Victoria's courts and VCAT should include:
 - impartiality and fairness
 - accountability and independence
 - transparency and open justice
 - contestability and procedural fairness
 - privacy and data security
 - access to justice
 - efficiency and effectiveness
 - human oversight and monitoring.

Developing AI principles for courts and VCAT

- 6.1 Our terms of reference ask us to develop principles to guide the safe use of AI in Victoria's courts and tribunals.
- 6.2 We put forward eight draft principles for regulating AI in our consultation paper. The draft principles were drawn from:
- common AI regulatory principles based on Australian and international sources¹
 - core principles of justice relevant to courts and tribunals based on the judicial values outlined in *AI Decision Making and the Courts*.²

1 Some examples include: 'Australia's AI Ethics Principles', *Department of Industry, Science and Resources* (Web Page, 11 October 2024) <<https://www.industry.gov.au/publications/australias-artificial-intelligence-ethics-principles/australias-ai-ethics-principles>>; AI Forum New Zealand, *Trustworthy AI in Aotearoa: AI Principles* (Report, March 2020) <<https://aiforum.org.nz/wp-content/uploads/2020/03/Trustworthy-AI-in-Aotearoa-March-2020.pdf>>; AI Verify, 'AI Verify: AI Governance Testing Framework and Toolkit', *Personal Data Protection Commission, Singapore* (Web Page, 25 May 2022) <<https://www.pdpc.gov.sg/news-and-events/announcements/2022/05/launch-of-ai-verify---an-ai-governance-testing-framework-and-toolkit>>; Council of Europe, *Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law*, opened for signature 5 September 2024, CETS No. 225 <<https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence>>.

2 Felicity Bell et al, *AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* (Report, Australasian Institute of Judicial Administration, December 2023) 30–40.

- 6.3 International courts and tribunals have also developed a range of AI guidelines and policies that incorporate principles specific to the justice system. While each set of principles is unique, there are some common elements in the principles adopted across various courts and tribunals. Appendix D contains examples of principles that have been used to regulate AI in society broadly and in courts and tribunals.

Stakeholder views on the draft principles

- 6.4 The principles proposed in our consultation paper enjoyed broad support amongst stakeholders:
- no-one expressed a view against the adoption of the proposed principles
 - many stakeholders supported the principles with no change³
 - some others agreed that the principles were a good starting point but suggested additions or clarifications.⁴
- 6.5 We consistently heard that the flexibility of principles is helpful for responding to the rapid pace of change in AI's evolution. The Victorian Bar Association considered principles would be useful as a starting point for developing guidelines, practice notes and rules.⁵
- 6.6 We heard that the principles are high level enough to assist in shaping the thinking of courts and tribunals.⁶ While nuanced, they are not overly restrictive.⁷
- 6.7 This approach contrasts with a legislation-based approach, which may take time to amend and would inevitably lag behind technology, as discussed in Chapter 5. Legislation can also become obsolete where technologies and the policy environment are quickly changing.⁸ While a principle-based approach to AI in courts and tribunals received broad support, there was very little support for an AI-specific legislative approach for Victoria's courts and VCAT.⁹
- 6.8 Some stakeholders supported the principles but suggested modifications to promote reliable governance practices and inform assessment of AI tools.¹⁰ Suggestions for change centred on:
- inserting a human rights lens and prioritising public interest¹¹
 - accounting for the environmental cost of AI use¹²

3 Submissions 4 (Coroners Court of Victoria), 5 (Office of the Victorian Information Commissioner), 12 (Victoria Legal Aid), 16 (Law Institute Victoria), 17 (Office of Public Prosecutions), 23 (Victorian Bar Association), 26 (Supreme Court of Victoria). Consultations 2 (Coroners Court of Victoria), 5 (Victorian Bar Association), 7 (Judicial College of Victoria), 10 (Coronial Council of Victoria), 13 (Federal Circuit and Family Court of Australia), 15 (Magistrates' Court of Victoria), 32 (Supreme Court of Victoria).

4 Submissions 10 (Castan Centre for Human Rights Law, Monash University), 27 (Federation of Community Legal Centres and Justice Connect). Confidential submission 26. Consultations 4 (Victorian Legal Services Board and Commissioner), 8 (Federation of Community Legal Centres Workshop), 22 (Court Services Victoria), 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses).

5 Submission 23 (Victorian Bar Association). Consultation 23 (Dr Fabian Horton).

6 Consultation 32 (Supreme Court of Victoria).

7 Submission 16 (Law Institute Victoria).

8 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

9 Except for one stakeholder who considered legislation could play a role in future in clearly articulating rules about permissible and prohibited uses of AI by the judiciary: Consultation 34 (Human Technology Institute).

10 Submissions 10 (Castan Centre for Human Rights Law, Monash University), 27 (Federation of Community Legal Centres and Justice Connect).

11 Submissions 10 (Castan Centre for Human Rights Law, Monash University), 15 (Human Rights Law Centre), 18 (Northern Community Legal Centre), 27 (Federation of Community Legal Centres and Justice Connect). Consultations 31 (Victorian Equal Opportunity & Human Rights Commission), 35 (Victoria Legal Aid).

12 Submission 27 (Federation of Community Legal Centres and Justice Connect). Consultation 8 (Federation of Community Legal Centres Workshop) 7. This aligns with the approach of submissions to the Commonwealth Department of Industry, Science and Resources' consultation on 'Introducing mandatory guardrails for AI in high-risk settings'. See, for example, submissions from the National Environmental Law Association, Human Technology Law Centre (School of Law, Queensland University of Technology), and ARC Centre of Excellence on Automated Decision-Making and Society: 'Introducing Mandatory Guardrails for AI in High-Risk Settings: Proposals Paper - Published Responses', *Department of Industry, Science and Resources (Cth)* (Web Page) <<https://consult.industry.gov.au/ai-mandatory-guardrails/submission/list>>.

- incorporating an Indigenous Data Sovereignty perspective¹³
 - broadening the concept of efficiency beyond cost savings, to encompass improved outcomes and access to justice for court users.¹⁴
- 6.9 We also heard public trust was an important anchoring concept for the principles. Some considered it an additional principle to capture issues that do not fit easily with the other principles.¹⁵
- 6.10 Others viewed public trust as an overarching concept that was the product of the principles.¹⁶ We have adopted that view in this chapter.
- 6.11 Public trust is fundamental to maintaining confidence that courts and tribunals are operating fairly. Where feasible, Victoria's courts and VCAT should incorporate the principles when engaging with AI tools. This will provide a foundation for maintaining public trust and confidence in courts and VCAT, which is fundamental to the rule of law.
- 6.12 We heard from stakeholders that the combined principles were important to maintain the rule of law. The use of AI in Victoria's courts and VCAT, including by judicial officers, must be consistent with 'upholding the rule of law' and the rights and freedoms of individuals.¹⁷ Contestability and procedural fairness were identified as crucial mechanisms to maintain the rule of law.¹⁸
- 6.13 While there was strong support for the principles, we also heard that to be useful, principles must be implementable. Some terms used are complex and have different technical and legal meanings.¹⁹ Others are so broad that, without further guidance, they may be meaningless.
- 6.14 The Supreme Court highlighted that the relevance of each principle may apply differently to:
- functions relating to the administration of courts
 - administrative functions that are connected or adjacent to judicial functions
 - judicial functions.²⁰
- 6.15 Principles alone may not be effective in influencing or changing people's behaviour.²¹ We heard that principles need to be enlivened with practical examples.²² While this chapter sets out overarching principles, we discuss in later chapters how to give effect to principles in practical guidelines and governance processes.

13 Consultations 4 (Victorian Legal Services Board and Commissioner), 8 (Federation of Community Legal Centres Workshop). See also submissions from First Nations Digital Inclusion Advisory Group, DLC Legal, Australian Securities and Investments Commission, Human Technology Institute, CSIRO, and AI Asia Pacific Institute to the Department of Industry, Science and Resources' consultation 'Introducing Mandatory Guardrails for AI in High-Risk Settings: Proposals Paper - Published Responses', *Department of Industry, Science and Resources (Cth)* (Web Page) <<https://consult.industry.gov.au/ai-mandatory-guardrails/submission/list>>.

14 Submission 6 (Victorian Legal Services Board and Commissioner).

15 Ibid. Consultation 4 (Victorian Legal Services Board and Commissioner).

16 Consultations 2 (Coroners Court of Victoria), 9 (Victorian Civil and Administrative Tribunal), 11 (Law Institute of Victoria), 13 (Federal Circuit and Family Court of Australia), 31 (Victorian Equal Opportunity & Human Rights Commission).

17 Submission 12 (Victoria Legal Aid), Consultation 28 (Monash University Digital Law Group).

18 Submission 20 (Deakin Law Clinic).

19 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

20 Submission 26 (Supreme Court of Victoria).

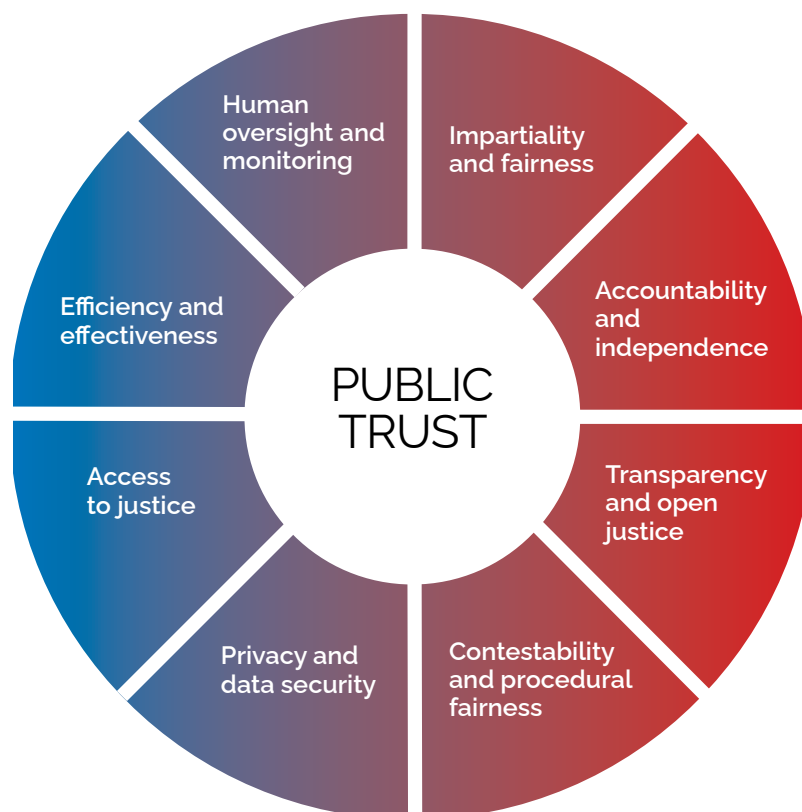
21 Consultation 34 (Human Technology Institute).

22 Consultation 22 (Court Services Victoria).

Principles to guide AI use in courts and tribunals

- 6.16 The Commission recommends the following principles outlined in Figure 6 to guide the use of AI in courts and tribunals.
- 6.17 We discuss how the principles have been updated since our consultation paper was released to reflect feedback and the rationale behind updating each principle.

Figure 6. Principles to guide AI use in Victoria's courts and tribunals



Principle 1: Impartiality and fairness

The use of AI should not undermine applicable human rights, including the right to equality before the law and the right to a fair hearing before an impartial decision maker. Reasonable steps should be taken throughout the lifecycle of AI systems to ensure they do not create, reproduce or exacerbate bias or discrimination and that they support procedural fairness.

- 6.18 Following our consultation paper, stakeholders identified opportunities to clarify the principle of impartiality and fairness. The Centre for the Future of the Legal Profession and UNSW Law and Justice raised concerns that, 'While most people would agree that any AI tools should be "fair" the precise content of fairness is challenging to define.'²³

- 6.19 One way to address this uncertainty is to clearly align this principle with existing human rights.²⁴ We heard from stakeholders that the regulation of AI in Victoria's courts and VCAT could be supported by establishing clear links to human rights.²⁵ Human rights are featured in several existing AI ethical frameworks.²⁶ The *Australia New Zealand Responsible and Ethical Artificial Intelligence Framework* states that, 'Police organisations should design and/or use AI systems in a way that respects equality, fairness and human rights.'²⁷
- 6.20 Principle 1 has been updated to capture the importance of ensuring the use of AI does not infringe the right to a fair hearing and to equality before the law.
- 6.21 The right to a fair hearing is protected by the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter).²⁸ Section 24 of the Charter establishes that:
- A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.²⁹
- 6.22 The Charter also recognises an individual's right to equality before the law. Section 8 of the Charter states:
- Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.³⁰
- 6.23 Victoria's courts and VCAT have obligations under the Charter to consider and act compatibly with these rights. The right to equality before the law and a fair hearing is also protected in international law such as Article 14 of the *International Covenant on Civil and Political Rights*.³¹
- 6.24 In line with recommendations from the Australian Human Rights Commission, the proposed principle is intended to complement existing laws and rights.³² It is not an alternative to existing rights to a fair hearing and equality before the law.
- 6.25 Several stakeholders were cautious that the use of AI in Victoria's courts and VCAT could result in bias and discrimination, which may infringe the right to a fair hearing. Representatives of the Coronial Council noted:

24 For an analysis of AI and international human rights norms, see Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) [6]-[11] <<https://docs.un.org/en/A/80/169>>.

25 Submission 10 (Castan Centre for Human Rights Law, Monash University).

26 European Commission for the Efficiency of Justice (CEPEJ), *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (2019, adopted at the 31st plenary meeting of the CEPEJ, Strasbourg, 3-4 December 2018); United Nations Educational, Scientific and Cultural Organization (UNESCO), *Draft Guidelines for the Use of AI Systems in Courts and Tribunals* (Guidelines, May 2025) 12 <<https://unesdoc.unesco.org/ark:/48223/pf0000393682>>; 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>; Minister of the Presidency, Justice and Relations with the Courts (Spain), *Policy on the Use of Artificial Intelligence in the Administration of Justice* (Policy, 2024) 4 <https://www.mjusticia.gob.es/es/JusticiaEspana/ProyectosTransformacionJusticia/Documents/Spains_Policy_on_the_use_of_AI_in_the_Justice_Administration.pdf>; Victoria Police, *Victoria Police Artificial Intelligence Ethics Framework* (Policy, 20 March 2024) <<https://www.police.vic.gov.au/victoria-police-artificial-intelligence-ethics-framework>>.

27 Australia New Zealand Policing Advisory Agency (ANZPAA), *Australia New Zealand Responsible and Ethical Artificial Intelligence Framework* (Report, 22 July 2025) 3 <<https://www.anzpa.org.au/products/products/australia-new-zealand-responsible-and-ethical-artificial-intelligence-framework>>.

28 *Charter of Human Rights and Responsibilities Act 2006* (Vic).

29 *Ibid* s 24(1).

30 *Ibid* s 8(3).

31 United Nations, *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI) (23 March 1976, adopted and opened for signature 16 December 1966) art 14 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>.

32 Sophie Farthing et al, *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 88 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>.

What sits behind the technology and its potential to perpetuate marginalisation and to reflect cultural bias is a concern. It is something we need to be incredibly careful about—ensuring there is not a perpetuation of bias.³³

- 6.26 As discussed in Chapter 3, the use of AI in courts and tribunals can create bias that can lead to direct or indirect discrimination. The Northern Community Legal Centre was concerned that existing data held by courts is likely to reflect a history of legal and social inequality.³⁴ It warned that using this data for automated decision making could 'replicate discriminatory practices rather than moving towards a more equal society'.³⁵
- 6.27 AI tools can reproduce, reinforce and exacerbate bias, such as racial inequalities.³⁶
- 6.28 Even where discrimination is not intended, it has been documented that AI systems can lead to indirect discrimination because:
- seemingly neutral data points that indirectly correlate with protected characteristics can lead to discriminatory outcomes. For example, the use of proxies like postal codes or spending habits, which may seem neutral but indirectly reflect characteristics such as ethnicity or socio-economic status, may result in biased decisions.³⁷
- 6.29 Monash University's Castan Centre highlighted that courts and judicial officers should consider access to justice and equality obligations under the Charter when implementing AI for court users, especially for self-represented litigants. Judges have an obligation to ensure self-represented parties, particularly those with a protected attribute such as a disability, can participate in a fair hearing. The Castan Centre said this includes being aware of the 'risks of automation bias ... for court users with protected attributes in respect of whom particular obligations around equality and non-discrimination arise'.³⁸
- 6.30 The Australian Human Rights Commission raised similar concerns about the risks of automation bias 'for individuals from a consumer to a government level'.³⁹ It stated that 'Algorithmic decision-making may also impede on independent decision making due to a tendency to over rely on the outcomes produced by AI'.⁴⁰
- 6.31 It may be difficult to detect bias due to challenges explaining or understanding how an AI system operates ('black box' phenomena), coupled with a lack of transparency. If judges do not, or cannot, know how an AI system functions, this can impact their judicial role, and their duty to be impartial and unbiased.⁴¹

33 Consultation 10 (Coronial Council of Victoria).

34 Submission 18 (Northern Community Legal Centre).

35 Ibid.

36 Tendayi Achiume, Special Rapporteur, *Racial Discrimination and Emerging Digital Technologies: A Human Rights Analysis: Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, UN Doc A/HRC/44/57 (18 June 2020) [7], [28] <<https://documents.un.org/doc/undoc/gen/g20/151/06/pdf/g2015106.pdf>>.

37 Council of Europe Steering Committee for Human Rights (CDDH) and Drafting Group on Human Rights and Artificial Intelligence (CDDH-IA), *[DRAFT] Handbook on Human Rights and Artificial Intelligence: Chapters I and III* (CDDH-IA(2025)1, 17 January 2024) 11.

38 Submission 10 (Castan Centre for Human Rights Law, Monash University).

39 Australian Human Rights Commission, *Adopting AI in Australia* (Submission No. 71 to Senate Select Committee on Adopting Artificial Intelligence (AI), 15 May 2024) 7 <<https://humanrights.gov.au/our-work/legal/submission/adopting-ai-australia>>.

40 Ibid.

41 Monika Zalnieriute, *Technology and the Courts: Artificial Intelligence and Judicial Impartiality* (Submission No. 3 to Australian Law Reform Commission Review of Judicial Impartiality, June 2021) 5–6 <<https://www.alrc.gov.au/wp-content/uploads/2021/06/3--Monika-Zalnieriute-Public.pdf>>.

- 6.32 To address these risks, stakeholders recommended that when procuring, developing, implementing, or using AI systems, Victoria's courts and VCAT should:
- understand the risk of bias and aim to ensure any data used to train AI systems is ethically sourced, relevant and free from discriminatory patterns that could lead to unfair or unjust outcomes⁴²
 - consider jurisdictional relevance and ask whether data is relevant to the Victorian context⁴³
 - co-design and develop automated decision-making systems with court users from marginalised backgrounds and the services who work with them⁴⁴
 - where relevant, trial AI tools with people with strong to moderate intellectual disabilities⁴⁵
 - take reasonable steps to mitigate any identified bias⁴⁶
 - prohibit AI systems that perpetuate systemic biases or discriminatory outcomes.⁴⁷
- 6.33 Recommendations directed to court users included that:
- lawyers and experts using AI should be aware of potential bias and ensure AI systems are not used in legal matters where this could lead to discriminatory outcomes⁴⁸
 - lawyers should undertake training on ethics, disclosure requirements, and potential biases in AI tools.⁴⁹
- 6.34 Increasingly, international human rights bodies are focused on mechanisms to protect individuals from biased and discriminatory applications of AI. Bias and discrimination should be addressed by:
- promoting AI systems that advance, protect and preserve linguistic and cultural diversity, taking into account multilingualism in their training data and throughout the lifecycle of the AI system, particularly for large language models⁵⁰
 - analysing and mitigating bias encoded in datasets and combating algorithmic discrimination and bias⁵¹
 - taking reasonable efforts to minimise and avoid AI systems that reinforce or perpetuate discriminatory or biased applications and outcomes⁵²
 - ensuring AI systems are available and accessible to all, taking into consideration specific needs in relation to age, culture, language, disabilities, gender, and people who may be disadvantaged or marginalised.⁵³
- 6.35 To respond to this feedback, Principle 1 has been updated to highlight that users of AI should take reasonable steps to minimise and avoid discriminatory or biased outcomes. Details on how this principle could be implemented are set out in Chapter 7 for court users, Chapter 8 for judicial officers and Chapter 9 for courts and VCAT.

42 Submission 27 (Federation of Community Legal Centres and Justice Connect).

43 Consultation 31 (Victorian Equal Opportunity & Human Rights Commission).

44 Submission 18 (Northern Community Legal Centre).

45 Consultation 24 (Victorian Advocacy League for Individuals with Disability).

46 Submission 6 (Victorian Legal Services Board and Commissioner).

47 Submission 15 (Human Rights Law Centre).

48 Submission 27 (Federation of Community Legal Centres and Justice Connect).

49 Submission 20 (Deakin Law Clinic).

50 United Nations, *Seizing the Opportunities of Safe, Secure and Trustworthy Artificial Intelligence Systems for Sustainable Development*, UN Doc A/78/L.49 (11 March 2024) 6 [6(m)] <<https://docs.un.org/A/78/L.49>>.

51 Ibid [6(h)].

52 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Recommendation on the Ethics of Artificial Intelligence* (2022, adopted on 23 Nov 2021) 20 <<https://unesdoc.unesco.org/ark:/48223/pf0000381137>>.

53 Ibid.

Principle 2: Accountability and independence

The use of AI by courts and tribunals must not compromise judicial independence and the right to be heard by an independent and impartial court or tribunal. Courts and tribunals should document clear lines of accountability for the development and use of AI.

Users of AI in courts and tribunals remain responsible for their work and should take reasonable steps to independently verify the accuracy and suitability of information provided by an AI system before relying upon it. This includes court users, judicial officers and court and tribunal staff.

Accountability

6.36 Stakeholder feedback on this principle highlighted a need to capture accountability for Victoria's courts and VCAT in their use of AI in court processes and decision making. Stakeholders stated court and tribunal users should be accountable for their own uses of AI.⁵⁴

6.37 Stakeholder feedback strongly supported the proposition that Victoria's courts and VCAT need to be accountable to maintain trust in the integrity of the administration of justice.⁵⁵ The Supreme Court acknowledged that:

Governance and accountability are important considerations when implementing new technologies in courts ... The court sees benefit in a governance and accountability structure that is capable of being applied to a breadth of AI technologies.⁵⁶

6.38 The need for reliable governance and accountability processes was highlighted as critical throughout the development and use of AI systems.⁵⁷ Some stakeholders suggested that that one aspect of accountability was the process for choosing (or not choosing) a specific AI tool. The Victorian Equal Opportunity and Human Rights Commission stated it may be worth thinking about the process for holding people accountable for choosing one tool over another.⁵⁸ Similarly, the Supreme Court asserted that the principles should consider:

risks associated with not adopting the technology, such as existing risks of human error and bias, cybersecurity risks if new technologies are not adopted, and risks in terms of access to justice if potential efficiencies are not realised.⁵⁹

6.39 A key theme from consultations was that Victoria's courts and VCAT should establish clear lines of accountability for decision making on the use of AI as part of governance arrangements. Accountability is a feature of international court and tribunal guidance. The Scottish Courts and Tribunals Service identifies accountability as a guiding principle for their use of AI and commits to having 'appropriate governance in place to demonstrate the importance we place on our use of AI—considering its wider impacts and effects. The approval of new systems, ownership of live systems and accountability for their performance is clear'.⁶⁰

6.40 Principle 2 has been updated to refer to accountability by courts and tribunals. Methods to support governance of the use of AI by Victoria's courts and VCAT, such as documenting accountability for decision making, is discussed in Chapter 9. Accountability is supported by the principles of transparency and contestability, as well as oversight and monitoring throughout the AI lifecycle. This is discussed further below.

54 Submission 27 (Federation of Community Legal Centres and Justice Connect).

55 Submissions 5 (Office of the Victorian Information Commissioner), 27 (Federation of Community Legal Centres and Justice Connect).

56 Submission 26 (Supreme Court of Victoria).

57 Submission 15 (Human Rights Law Centre).

58 Consultation 31 (Victorian Equal Opportunity & Human Rights Commission).

59 Submission 26 (Supreme Court of Victoria).

60 Scottish Courts and Tribunals Service, *Scottish Courts and Tribunals Service: Our Approach to the Development of Services Using Artificial Intelligence* (Policy, April 2025) 3 <<https://www.scotcourts.gov.uk/media/xalno3ff/scts-ai-policy.pdf>>.

- 6.41 The principle also highlights that individuals must take reasonable steps to verify the accuracy and suitability of any AI-generated information relied on for use in courts or tribunals. Accuracy considerations to help users verify AI outputs are considered in Chapter 7 for court users, Chapter 8 for judicial officers and Chapter 9 for court and tribunal staff.

Judicial independence

- 6.42 Judicial independence is tied to the right to a fair hearing, as people have the right to have their matter decided by a 'competent, independent and impartial court or tribunal'.⁶¹ Judicial independence requires 'that a judge be, and be seen to be, independent of all sources of power or influence in society'.⁶²
- 6.43 Several stakeholders highlighted that AI must not infringe upon judicial independence.⁶³ The Human Rights Law Centre recommended that 'judicial officers must retain ultimate authority and discretion over AI system decisions'.⁶⁴ Additionally, the Federation of Community Legal Centres and Justice Connect recommended that the principle be updated to reflect that:
- Courts and tribunals retain their judicial independence and ultimate decision-making authority. AI can assist, but the responsibility for final rulings remains with judges, magistrates and tribunal members, who are accountable for their decisions.⁶⁵
- 6.44 There is also concern that if courts and tribunals use AI tools, particularly for decision-making, this may 'introduce significant threats to judicial independence, both institutional and personal'.⁶⁶ Courts and tribunals internationally have identified judicial independence in principles for managing AI. The Federal Court of Canada states: 'The Court will ensure its uses of AI do not undermine judicial independence'.⁶⁷
- 6.45 To protect judicial independence, stakeholders recommended that the use of AI for judicial decision-making should be prohibited. How this prohibition could be framed is discussed in Chapter 8.
- 6.46 Principle 2 has been updated to reflect stakeholder feedback to include the importance of maintaining judicial independence.⁶⁸

Principle 3: Transparency and open justice

The use of AI by courts and tribunals must be consistent with open justice.

Courts and tribunals should be transparent about their use of AI and ensure relevant information about AI systems is accessible.

Court users should be prepared to disclose their use of AI if asked to do so by a court or tribunal.

- 6.47 Transparency on the use of AI by Victoria's courts and VCAT is critical to upholding the principle of open justice and can support public trust in the administration of justice.

61 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 24.

62 Australian Institute of Judicial Administration (AIJA), *Guide to Judicial Conduct, Third Edition (Revised)* (Guide, December 2023) 7 <https://aija.org.au/wp-content/uploads/2024/04/Judicial-Conduct-guide_revised-Dec-2023-formatting-edits-applied.pdf>.

63 Submission 15 (Human Rights Law Centre).

64 Ibid.

65 Submission 27 (Federation of Community Legal Centres and Justice Connect).

66 Daniel Escott, *FJIT: Integrating Judicial Independence and Technology* (Manuscript, Osgoode Hall Law School, York University, 2025) 8.

67 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 2 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

68 Submission 24 (County Court of Victoria).

- 6.48 As discussed in Chapter 3, transparency is one of the most common principles contained in national and international AI regulatory approaches. It is also captured in the Australian Government's AI Ethics Principles.⁶⁹
- 6.49 The *Open Courts Act 2013* (Vic) requires Victoria's courts and VCAT to operate openly and transparently in alignment with the principle of open justice unless there are specific circumstances justifying displacement of this principle.
- 6.50 Transparency was identified as 'essential to ensuring that judicial AI systems comply with human rights standards'.⁷⁰ International human rights bodies have outlined that transparency is an essential precondition to respect and protect human rights.⁷¹ The benefits of transparency include an increase in public scrutiny that 'can decrease corruption and discrimination, and can also help detect and prevent negative impacts on human rights'.⁷²
- 6.51 There was strong support from stakeholders for this principle. Victoria Legal Aid commented:
- We are particularly supportive of principle 3 which addressed the need for transparency and disclosure of AI use to those who may be affected by a decision reached using AI. This proposed principle ensures consistency with the fundamental common law principle of open justice and supports meaningful oversight and explainability.⁷³
- 6.52 To support transparency, stakeholders recommended that Victoria's courts and VCAT consult on and disclose their use of AI.⁷⁴ The principle of transparency is common across several international AI guidelines and policies.⁷⁵ The Scottish Courts and Tribunals Service has a principle of transparency and states that it will 'communicate clearly whenever AI is used and be publicly transparent about the purpose, capabilities and limitations of any AI systems we develop or use. We will provide clear information on how systems have been developed'.⁷⁶
- 6.53 In Chapter 9, we discuss how Victoria's courts and VCAT can adopt processes to uphold transparency and open justice. Mechanisms considered include community consultation and the publication of an inventory of AI tools developed, purchased or deployed by Victoria's courts and VCAT.
- 6.54 However, the Centre for the Future of the Legal Profession and UNSW Law and Justice highlighted that because of the complexity of AI systems, transparency alone may be insufficient. They identified a need for 'interpretable, trustworthy or explainable AI'.⁷⁷ Explainability is also important for contestability and procedural fairness discussed below.

69 'Australia's AI Ethics Principles', *Department of Industry, Science and Resources* (Web Page, 11 October 2024) <<https://www.industry.gov.au/publications/australias-artificial-intelligence-ethics-principles/australias-ai-ethics-principles>>; See also Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council on Artificial Intelligence*, OECD/LEGAL/0449, 3 May 2024, 8–9 <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>>.

70 Submission 15 (Human Rights Law Centre).

71 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Recommendation on the Ethics of Artificial Intelligence* (2022, adopted on 23 Nov 2021) 22 <<https://unesdoc.unesco.org/ark:/48223/pf0000381137>>.

72 Ibid.

73 Submission 12 (Victoria Legal Aid).

74 Submissions 12 (Victoria Legal Aid), 15 (Human Rights Law Centre), 16 (Law Institute Victoria); Submission 18 (Northern Community Legal Centre).

75 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>; European Commission for the Efficiency of Justice (CEPEJ), *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (2019, adopted at the 31st plenary meeting of the CEPEJ, Strasbourg, 3–4 December 2018) 59–61; 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 2 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>; Minister of the Presidency, Justice and Relations with the Courts (Spain), *Policy on the Use of Artificial Intelligence in the Administration of Justice* (Policy, 2024) 4 <https://www.mjusticia.gob.es/es/JusticiaEspana/ProyectosTransformacionJusticia/Documents/Spains_Policy_on_the_use_of_AI_in_the_Justice_Administration.pdf>; United Nations Educational, Scientific and Cultural Organization (UNESCO), *Draft Guidelines for the Use of AI Systems in Courts and Tribunals* (Guidelines, May 2025) 18 <<https://unesdoc.unesco.org/ark:/48223/pf0000393682>>.

76 Scottish Courts and Tribunals Service, *Scottish Courts and Tribunals Service: Our Approach to the Development of Services Using Artificial Intelligence* (Policy, April 2025) 2 <<https://www.scotcourts.gov.uk/media/xalno3ff/scts-ai-policy.pdf>>.

77 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

6.55 We also heard mixed views about whether court users should be encouraged or required to disclose their use of AI to prepare materials for Victoria's courts and VCAT. In Chapter 7 we discuss the opportunities and challenges of disclosure for court users when using AI to prepare court documents.

Principle 4: Contestability and procedural fairness

The use of AI to make or materially influence decisions by courts and tribunals should not undermine people's rights to challenge decisions. If courts and tribunals use AI to make or materially influence a decision they should notify anyone whose rights are significantly affected by that decision. Notification should include clear information to enable a person to understand the decision. Courts and tribunals should provide processes to enable human oversight of decisions made or materially influenced by AI.

The use of AI in courts and tribunals should be consistent with the right to procedural fairness. Courts and tribunals should uphold people's right to assess and challenge AI evidence or outputs.

AI decision making by courts and tribunals

6.56 This principle aims to ensure that the use of AI by courts and tribunals does not undermine people's rights to challenge decisions. As noted in the principle of contestability in Australia's *AI Ethics Principles*, 'Knowing that redress for harm is possible, when things go wrong, is key to ensuring public trust in AI.'⁷⁸ To maintain public trust, courts and tribunals should ensure the incorporation of AI does not prevent people from exercising their rights to challenge decisions that significantly affect them.

6.57 In Chapter 8, it is recommended that AI should not be used for judicial decision-making. Because of the risks of bias and lack of explainability associated with AI tools (discussed in Chapter 3), courts and tribunals should exercise caution when considering using AI for decisions about administrative matters, such as automated case listings. In Chapter 2 we provided an example of an AI powered case allocation system used in Poland which has faced legal challenge due to concerns around opacity, errors and the potential for manipulation.⁷⁹

6.58 There are a range of existing ways people can challenge decisions by courts and tribunals.⁸⁰

6.59 However, courts and tribunals should be cautious that introducing AI could negatively impact people's ability to challenge decisions. People's ability to challenge a decision could be harder if:

- people do not know AI was used to make or materially influence a decision
- there is no ability to understand how an AI tool has arrived at a decision (due to the complexity or opacity of the AI tool, or because the AI provider refuses to disclose information about its data or algorithms)
- there is no human oversight of a decision.

78 'Australia's AI Ethics Principles', *Department of Industry, Science and Resources* (Web Page, 11 October 2024) <<https://www.industry.gov.au/publications/australias-artificial-intelligence-ethics-principles/australias-ai-ethics-principles>>.

79 See for example Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 12 <<https://docs.un.org/en/A/80/169>>.

80 For example, the Supreme Court has a common law and statutory jurisdiction to undertake judicial review of administrative decisions. *Administrative Law Act 1978* (Vic) ss 3, 7; *Supreme Court (General Civil Procedure) Rules 2015* (Vic) ord 56.

- 6.60 When considering how courts and tribunals could safely incorporate AI decision-making tools we heard from stakeholders that:
- Courts or tribunals should not use AI systems which are unable to provide explanation or where the providers of such systems resist doing so for commercial purposes.⁸¹
 - Courts and tribunals should explain how AI systems are used in ways that court users can understand, using simple terms to explain its capabilities and limitations.⁸²
 - Anyone affected by a decision should have a readily accessible means of obtaining sufficient information to enable them to query or challenge that decision.⁸³
 - Courts and tribunals should incorporate human oversight over AI-driven decision-making processes.⁸⁴
- 6.61 To respond to stakeholder feedback, Principle 4 has been updated to reflect that Victoria's courts and VCAT should ensure people's rights to challenge decisions are not undermined by:
- a) notifying people whose rights are significantly affected by a decision made or materially influenced by AI. Notification should include clear and understandable information to allow people to understand the decision.
 - b) ensuring there is human oversight of decisions made or materially influenced by AI. The extent of oversight will depend on the context.
- 6.62 In Chapter 9 we discuss how Principle 4 can be implemented by Victoria's courts and VCAT in governance processes.

Assessing and contesting AI evidence

- 6.63 Procedural fairness, or natural justice, is commonly understood to involve:
- the right to a decision free of bias
 - an appropriate opportunity to be heard.⁸⁵
- 6.64 Procedural fairness may also involve an opportunity for parties to challenge evidence against them.⁸⁶
- 6.65 The risk of bias, lack of robust testing and validation and a lack of transparency because of complexity and proprietary interests may hinder a court, tribunal or parties' ability to assess or contest evidence.⁸⁷
- 6.66 The Law Commission of Ontario has provided examples of the complex statistical, technical and legal issues associated with AI tools which people may need to consider. This includes:
- data used to train the AI system and whether it is biased, accurate, reliable or valid
 - variables and whether they are weighed and calculated appropriately
 - the code
 - operations or outputs and whether they are understandable
 - the accuracy of the system and whether testing and validation of the system has occurred and is appropriate.⁸⁸

81 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

82 Submission 27 (Federation of Community Legal Centres and Justice Connect).

83 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

84 Submissions 15 (Human Rights Law Centre), 27 (Federation of Community Legal Centres and Justice Connect).

85 *Plaintiff S157/2002 v Commonwealth* [2003] HCA 2; (2003) 211 CLR 476, [25].

86 Felicity Bell et al, *AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* (Report, Australasian Institute of Judicial Administration, December 2023) 54.

87 Paul W Grimm, Maura R Grossman and Gordon V Cormack, 'Artificial Intelligence as Evidence' (2021) 19(1) *Northwestern Journal of Technology and Intellectual Property* 9, 94, 98.

88 Law Commission of Ontario, *Accountable AI* (LCO Final Report, June 2022) 38 <<https://www.lco-cdo.org/wp-content/uploads/2022/06/Accountable-AI-reduced-size.pdf>>.

- 6.67 The Law Commission of Ontario notes that being able to understand and challenge the above considerations would create significant difficulties even for the best resourced litigants, and these issues would be significantly worse for under- or unrepresented litigants.⁸⁹
- 6.68 Principle 4 has been updated to reflect that courts and tribunals must uphold people's right to assess and challenge AI evidence or outputs.
- 6.69 In Chapter 5 we discussed methods that could be used to support the assessment of evidence generated by AI tools. This included:
- the Supreme Court's Practice Note *Expert Evidence in Criminal Trials* which provides some options to enable courts to explore issues of reliability and question the intricacies of expert evidence on AI tools
 - resources for judicial officers to support them to question AI evidence
 - court powers to enable court appointed experts, single joint experts, and concurrent evidence⁹⁰ and to:
 - direct expert witnesses to hold a conference of experts and/or prepare a joint experts report⁹¹
 - refer a question to a special referee⁹²
 - call in the assistance of one or more specially qualified assessors.⁹³

Principle 5: Privacy and data security

AI systems should be developed and used in courts and tribunals with respect for people's privacy rights. This requires careful collection, use, storage and disposal of data. It also requires appropriate data protection, governance and management throughout the lifecycle of any AI used by courts and tribunals.

To protect privacy and data security, non-public information should not be entered into public AI tools by courts and tribunals.

- 6.70 Public trust requires confidence that Victoria's courts and VCAT will protect privacy rights in their use of AI tools.
- 6.71 Many stakeholders raised privacy and information security concerns about the use of AI in Victoria's courts and VCAT.⁹⁴ In Chapter 3 we discuss these risks and outline how different types of AI systems can carry different privacy and information security risks.
- 6.72 In Australia, the legal system operates in various ways to protect confidentiality and privacy. This includes through general law principles, contractual rights and legislation such as the *Privacy Act 1988* (Cth). In Victoria, privacy rights are further protected by the Charter,⁹⁵ and the *Privacy and Data Protection Act 2014* (Vic). The protection of privacy rights in Victorian legislation is consistent with the recognition of privacy rights at international law.⁹⁶

89 Ibid.

90 *Civil Procedure Act 2010* (Vic) ss 65K, 65L, 65M.

91 Ibid s 65I; *Supreme Court (General Civil Procedure) Rules 2025* (Vic) ord 44.06; *Victorian Civil and Administrative Tribunal Act 1998* (Vic) sch 3; Submission 26 (Supreme Court of Victoria).

92 *Supreme Court (General Civil Procedure) Rules 2025* (Vic) ord 50.01; *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 95; Submission 26 (Supreme Court of Victoria).

93 *Supreme Court Act 1986* (Vic) s 77; Submission 26 (Supreme Court of Victoria).

94 Submissions 2 (Assoc Prof Marcus Smith), 7 (Dr Natalia Antolak-Saper), 10 (Castan Centre for Human Rights Law, Monash University), 15 (Human Rights Law Centre), 27 (Federation of Community Legal Centres and Justice Connect). Consultation 31 (Victorian Equal Opportunity & Human Rights Commission).

95 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 13.

96 United Nations, *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI) (23 March 1976, adopted and opened for signature 16 December 1966) art 17 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>.

- 6.73 In Chapter 5 we discuss how privacy rights apply to Victoria's courts and VCAT. While Victoria's courts and tribunals are exempt from some privacy obligations, we were told they aim to follow state and national privacy regimes, and consider data security issues, where they are not incompatible with other court obligations.
- 6.74 Stakeholders recommended a range of options to support the protection of privacy where AI systems are used by Victoria's courts and VCAT. Options and processes to protect privacy rights could include:
- prohibiting non-public information from being entered into public AI tools⁹⁷
 - undertaking due diligence when procuring an AI tool to ask questions about the foundation model used and training data, (for example: Was data lawfully obtained? What has been done to treat the training data? Has personal information been removed?)⁹⁸
 - undertaking privacy impact assessments to understand how closed AI tools will be used and consider risks and mitigations⁹⁹
 - assessing AI tools for data security risks before use, ensuring compliance with Australian privacy laws¹⁰⁰
 - developing and implementing clear guidance and training on the use of AI tools¹⁰¹
 - acting consistently with Victorian and Australian Government guidance on the use of AI, unless a deviation is demonstrated as necessary¹⁰²
 - implementing strong data governance frameworks, anonymisation techniques, data minimisation and robust consent protocols¹⁰³
 - implementing data protection measures to comply with privacy laws and safeguard sensitive legal information¹⁰⁴
 - developing an incident response plan for dealing with inadvertent disclosures or misuse of information.¹⁰⁵
- 6.75 AI systems used by Victoria's courts and tribunals will require ongoing surveillance and contract management to ensure continuing compliance with these protections.
- 6.76 International human rights bodies have developed guidance on the risks AI poses to privacy rights. The United Nations Human Rights Council has recognised that the use of emerging technologies can have considerable adverse effects to individuals' privacy rights.¹⁰⁶ To address these risks, UNESCO has recommended that 'privacy should be respected, protected and promoted throughout the lifecycle of AI systems' through a range of mechanisms including privacy by design principles, privacy impact assessments and the establishment of appropriate data security safeguards and policies.¹⁰⁷
- 6.77 Courts and tribunals internationally have embedded data security and privacy into their AI guidelines and policies. The Federal Court of Canada has a principle of cybersecurity which states that: 'The Court will store and manage its data in a secure technological environment that protects the confidentiality, privacy, provenance, and purpose of the data managed.'¹⁰⁸

97 Submissions 5 (Office of the Victorian Information Commissioner), 7 (Dr Natalia Antolak-Saper), 27 (Federation of Community Legal Centres and Justice Connect).

98 Submission 5 (Office of the Victorian Information Commissioner).

99 Ibid; Consultation 25 (Microsoft).

100 Submissions 5 (Office of the Victorian Information Commissioner), 27 (Federation of Community Legal Centres and Justice Connect).

101 Submission 5 (Office of the Victorian Information Commissioner).

102 Ibid.

103 Submission 15 (Human Rights Law Centre).

104 Submission 27 (Federation of Community Legal Centres and Justice Connect).

105 Submission 5 (Office of the Victorian Information Commissioner).

106 Ana Brian Nougreres, Special Rapporteur, *Legal Safeguards for Personal Data Protection and Privacy in the Digital Age: Report of the Special Rapporteur on the Right to Privacy*, Ana Brian Nougreres, UN Doc A/HRC/55/46 (18 January 2024) [76] <<https://docs.un.org/en/A/HRC/55/46>>.

107 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Recommendation on the Ethics of Artificial Intelligence* (2022, adopted on 23 Nov 2021) 29 <<https://unesdoc.unesco.org/ark:/48223/pf0000381137>>.

108 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 2 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

- 6.78 In Chapter 5, we considered policy approaches to support privacy and data governance in Victoria's courts and VCAT. Principle 5 has been updated to refer to privacy rights and describes the need for limited uses of public AI systems, which should not be used for inputting sensitive information.
- 6.79 More generally, lawyers and other court users need to consider privacy and data security when using AI systems. For lawyers, particular caution is needed to ensure confidential client data is protected.

Principle 6: Access to justice

The use of AI by courts and tribunals should support access to justice. Courts and tribunals should ensure the use of AI does not create or exacerbate barriers or inequalities, such as a lack of access to technology.

Courts and tribunals should use tools that are accessible to all individuals and do not exclude those from marginalised and disadvantaged backgrounds.

The use of AI systems by courts and tribunals should complement and not replace the option for court users to access human supports pathways.

The use of AI by courts and tribunals should be consistent with Indigenous Data Sovereignty rights.

- 6.80 Stakeholders recognised that the use of AI in Victoria's courts and VCAT presents both opportunities and risks for people's access to justice. These benefits and risks are considered in Chapter 3. Access to justice is inherently tied to the human right to equality before the law, as discussed above in Principle 1: impartiality and fairness.¹⁰⁹
- 6.81 We heard that Victoria's courts and VCAT should consider how AI can be used to enhance the accessibility of justice services.¹¹⁰ The Federation of Community Legal Centres and Justice Connect recommended that AI implementation projects should be resourced 'to support Victorian courts, tribunals and legal services to develop and deploy AI tools that will improve user access to information and justice'.¹¹¹
- 6.82 Stakeholders highlighted that it was important for courts to consider the impact on access to justice when implementing AI systems. Stakeholders also made recommendations to expand on Principle 6 by:
- recognising that AI can create new inequalities and contribute to the digital divide¹¹²
 - incorporating considerations of Indigenous Data Sovereignty¹¹³
 - recognising risks if new technologies are not adopted, and risks if potential efficiencies are not realised.¹¹⁴
- 6.83 In Chapter 3 we discuss how the use of AI by Victoria's courts and VCAT can create and intensify access to justice challenges for individuals with limited access to technology or lower digital literacy. This is often referred to as the 'digital divide'. Suggestions were made by stakeholders to address this risk by:
- clearly disclosing use of AI systems and ensuring there is always a choice to interact with a human¹¹⁵

109 See also Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 4–5 <<https://docs.un.org/en/A/80/169>>.

110 Submission 17 (Office of Public Prosecutions).

111 Submission 27 (Federation of Community Legal Centres and Justice Connect).

112 Consultation 31 (Victorian Equal Opportunity & Human Rights Commission).

113 Consultations 8 (Federation of Community Legal Centres Workshop), 35 (Victoria Legal Aid).

114 Submission 26 (Supreme Court of Victoria).

115 Consultation 30 (Eastern Community Legal Centre).

- providing training and accessible resources to help individuals develop the digital skills needed to use AI-powered legal tools effectively.¹¹⁶
- 6.84 We heard that AI should be used in Victoria's courts and VCAT in a way that complements, rather than replaces, human supports. This recourse to court support staff is a vital point of connection where people are unable to access or use technology.
- 6.85 Access to justice has been incorporated into international AI approaches by courts and tribunals. Spain's *Policy on the use of artificial intelligence in the administration of justice* has a principle of equity and universal access which requires that:
- AI in the Administration of Justice must be used to guarantee equitable access to judicial systems, regardless of location, socioeconomic status or any other demographic characteristic. This involves developing solutions that remove barriers and ensure that all citizens have the same opportunity to assert their rights before the law.¹¹⁷
- 6.86 Principle 6 has been updated to recognise that Victoria's courts and VCAT should be aware of and seek to avoid creating or exacerbating access to technology barriers amongst courts users. The principle reflects that court users should retain an option to interact with a human. This ensures courts and tribunal services remain accessible to everyone. Opportunities for public education and training are considered in Chapter 10.
- 6.87 Principle 6 has also been updated to reference Indigenous Data Sovereignty, as recommended by representatives of community legal centres who stated:
- The Victorian Government is committed to implementing Indigenous data governance and sovereignty through the Yoorrook treaty process. The discussion of principles should include considerations of Indigenous Data Sovereignty.¹¹⁸
- 6.88 The Victorian Government has committed to embedding Indigenous Data Sovereignty principles.¹¹⁹ Indigenous Data Sovereignty has been defined by the Maïam nayri Wingara Indigenous Data Sovereignty Collective as:
- The right of Indigenous people to exercise ownership over Indigenous Data. Ownership of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination and reuse of Indigenous Data.¹²⁰
- 6.89 Indigenous Data Governance is defined as:
- The right of Indigenous peoples to autonomously decide what, how and why Indigenous Data are collected, accessed and used. It ensures that data on or about Indigenous peoples reflects our priorities, values, cultures, worldviews and diversity.¹²¹
- 6.90 The Australian Government's *Framework for Governance of Indigenous Data* relies on the definitions and principles for Indigenous Data Sovereignty developed by the Maïam nayri Wingara Indigenous Data Sovereignty Collective.¹²² Indigenous data includes information and knowledge 'which is about and may affect Indigenous peoples both collectively and individually'.¹²³
- 6.91 The CSIRO provided feedback to the Australian Government that, when considering how AI is to be regulated, 'understanding about how First Nations data and knowledge can be used to train AI systems is required'.¹²⁴ The CSIRO said that 'the development of Indigenous Data Protocols is essential for the ethical use of data and creation of AI'.¹²⁵

116 Submission 27 (Federation of Community Legal Centres and Justice Connect).

117 Minister of the Presidency, Justice and Relations with the Courts (Spain), *Policy on the Use of Artificial Intelligence in the Administration of Justice* (Policy, 2024) 5 <https://www.mjusticia.gob.es/es/JusticiaEspana/ProyectosTransformacionJusticia/Documents/Spains_Policy_on_the_use_of_AI_in_the_Justice_Administration.pdf>.

118 Consultation 8 (Federation of Community Legal Centres Workshop).

119 Victorian Government, *Aboriginal Affairs Report 2023* (Report, 2024) 7, 25 <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2024-07/VIC-GOV_Aboriginal-Affairs-Report_2023.pdf>.

120 'Definitions', *Maïam Nayri Wingara* (Web Page) 'Indigenous Data Sovereignty' <<https://www.maïamnayriwingara.org/definitions>>.

121 Ibid 'Indigenous Data Governance'.

122 Australian Government, *Framework for Governance of Indigenous Data: Practical Guidance for the Australian Public Service* (Report, May 2024) 7.

123 'Definitions', *Maïam Nayri Wingara* (Web Page) 'Indigenous Data' <<https://www.maïamnayriwingara.org/definitions>>.

124 CSIRO, *Introducing Mandatory Guardrails for AI in High-Risk Settings: Proposals Paper* (Submission to the Department of Industry, Science and Resources Introducing Mandatory Guardrails for AI in High-Risk Settings: Proposals Paper, October 2024) <<https://consult.industry.gov.au/ai-mandatory-guardrails/submission/view/41>>.

125 Ibid.

6.92 It is important for Victoria's courts and VCAT to consider Indigenous Data Sovereignty rights when developing data governance and management frameworks for any AI system. This could include seeking indigenous expertise and leadership to guide, test and validate potential AI systems. Representatives from Victoria Legal Aid told us that:

The principles of Indigenous Data Sovereignty and self-determination should be at the centre of any initiative that involves data about First Nations people, communities, or cultural practices. These aren't just theoretical concepts. They reflect the fundamental right of First Nations people to control how their data is collected, used, interpreted, and shared ... This is especially critical in a justice context. There's a long and painful history of data being used in ways that have harmed, misrepresented, and disempowered First Nations people ... We can't ignore that history.¹²⁶

Principle 7: Efficiency and effectiveness

The use of AI by courts and tribunals should contribute to improved and increased provision of court and tribunal services. The use of AI can support efficient, timely and cost-effective administration of justice but must not detract from fundamental objectives of a just and fair process.

Effective AI tools should contribute to improved processes, services or outcomes for individuals interacting with the justice system.

Assessments of efficiency should consider direct and indirect societal and environmental impacts, across the AI lifecycle.

6.93 Victoria's courts and VCAT have existing legislative obligations to operate in a 'just, efficient, timely and cost-effective' manner in civil matters.¹²⁷ The right to timely justice in criminal matters is protected under the Charter as people have the right to have criminal matters heard without 'unreasonable delay'.¹²⁸

6.94 Greater efficiency can assist in minimising delays and improving timely access to justice. AI could provide efficiency benefits for Victoria's courts and court users, given performance data indicates that Victoria has court backlogs in some areas.¹²⁹ The Canadian Judicial Council stated that:

Backlogs in court scheduling represent a significant access to justice problem. Canadian courts are investigating and will be experimenting with the use of AI to improve efficiency in case management, alternative dispute resolution and other internal and public-facing areas. However, potential efficiencies require a broad analysis and need to be balanced with other considerations.¹³⁰

126 Consultation 35 (Victoria Legal Aid).

127 *Civil Procedure Act 2010* (Vic) s 7(1).

128 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 25(2)(c).

129 For example, the 2025 Report on Government Services, looking at data for the 2023-24 period, indicates that the backlog for criminal matters in the Supreme and County courts are relatively high compared to most other jurisdictions, for matters more than 12 months old (noting that court backlog and timeliness of case processing can be affected by a number of factors, some of which may not be due to court delay) Steering Committee for the Review of Government Service Provision, *Report on Government Services 2025: Justice (Part C)* (Report, Productivity Commission, 2025) 73.

130 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 8 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

- 6.95 We heard that as part of expanding Principle 7, efficiency should incorporate consideration of the broader costs of AI, such as the environmental impact of AI systems.¹³¹ The direct and indirect environmental impacts of AI are significant and arise across the AI lifecycle.¹³² Training and running AI models can use a significant amount of energy and water and create greenhouse gas emissions.¹³³
- 6.96 We also heard from stakeholders that the proposed principle of 'efficiency' in our consultation paper should be broadened and include consideration of efficacy or effectiveness. 'Effectiveness' is commonly defined as 'producing the intended or expected result'.¹³⁴ Applied to Victoria's justice system, the intended outcome identified by the Supreme Court is 'to serve the community by upholding the law through just, independent and impartial decision making and dispute resolution'.¹³⁵
- 6.97 Stakeholders told us that Principle 7 should be broader than consideration of costs. Rather, it should focus on how AI systems can contribute to improvements for individuals interacting with Victoria's courts and VCAT and better outcomes for Victoria's justice system.¹³⁶
- 6.98 This approach aligns with the Scottish Courts and Tribunals Service AI policy which incorporates the principle of 'public good' and states that AI will only be used 'where it is of benefit to our service users, staff or members of the judiciary'.¹³⁷ We also heard that where efficiencies are realised, savings should be invested back into the court system to increase access and improve services.¹³⁸
- 6.99 This shift allows for the impacts of AI systems on court users to be considered in a broad context, rather than AI systems being assessed only against time and cost savings. This approach is complementary to the principle of access to justice, as discussed above.
- 6.100 It was recommended that one way for Victoria's courts and VCAT to achieve this is to implement human-centred design.¹³⁹ The Federation of Community Legal Centres and Justice Connect recommended that Victoria's courts and VCAT should ensure AI tools 'are designed with accessibility in mind to enhance public trust and engagement'.¹⁴⁰
- 6.101 We heard that environmental impacts should be considered when courts and tribunals are making decisions about designing, developing, deploying or procuring AI.¹⁴¹ If environmental impacts are identified, court and tribunals should consider strategies to reduce environmental impacts.¹⁴² Principle 7 has been updated to incorporate this feedback and include consideration of environmental impacts of AI systems in Victoria's courts and VCAT.

131 Consultation 8 (Federation of Community Legal Centres Workshop).

132 Senate Select Committee on Adopting Artificial Intelligence (AI), Parliament of Australia, *Report of the Select Committee on Adopting Artificial Intelligence (AI)* (Final Report, November 2024) 143–48 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Adopting_Artificial_Intelligence_AI/AdoptingAI/Report>.

133 Organisation for Economic Co-operation and Development (OECD), *Measuring the Environmental Impacts of Artificial Intelligence Compute and Applications: The AI Footprint* (OECD Digital Economy Papers No 341, 15 November 2022) <https://www.oecd.org/en/publications/measuring-the-environmental-impacts-of-artificial-intelligence-compute-and-applications_7babf571-en.html>.

134 *Macquarie Dictionary Online* (Web Page, 2025) (online at 24 September 2025) <https://app-macquariedictionary-com-au.eu1.proxy.openathens.net/?search_word_type=dictionary&word=effectiveness> 'effective'.

135 '2020 - 2025 Strategic Statement', *Supreme Court of Victoria* (Web Page, 2025) <<http://www.supremecourt.vic.gov.au/about-the-court/how-the-court-works/strategic-statement>>.

136 Submissions 6 (Victorian Legal Services Board and Commissioner), 27 (Federation of Community Legal Centres and Justice Connect), Consultation 8 (Federation of Community Legal Centres Workshop).

137 Scottish Courts and Tribunals Service, *Scottish Courts and Tribunals Service: Our Approach to the Development of Services Using Artificial Intelligence* (Policy, April 2025) 2 <<https://www.scotcourts.gov.uk/media/xalno3ff/scts-ai-policy.pdf>>.

138 Consultation 4 (Victorian Legal Services Board and Commissioner).

139 Submission 27 (Federation of Community Legal Centres and Justice Connect), Consultation 31 (Victorian Equal Opportunity & Human Rights Commission).

140 Submission 27 (Federation of Community Legal Centres and Justice Connect).

141 Ibid. Consultation 5 (Victorian Bar Association).

142 Department of Industry Science and Resources (Cth) and National Artificial Intelligence Centre (NAIC), *AI and ESG: An Introductory Guide for ESG Practitioners* (Report, October 2024) 21 <<https://www.industry.gov.au/sites/default/files/2024-10/ai-and-esg-an-introductory-guide-for-esg-practitioners.pdf>>.

Principle 8: Human oversight and monitoring

Courts and tribunals must implement appropriate human oversight as a check on their use of AI systems to address risks relating to AI, including bias, reliability and accuracy. Human oversight should include evaluation and testing before use and ongoing monitoring, assessment and compliance of AI systems after implementation. The level of human oversight required will vary depending on the use and risks of AI in specific contexts.

- 6.102 Appropriate human oversight and monitoring can help safeguard the implementation and management of AI use in Victoria's courts and VCAT. Many of these concerns around AI implementation were considered in Chapter 3.
- 6.103 We heard from stakeholders that while AI can be useful it does need to be verified by humans.
- 6.104 Internationally courts and tribunals have included human oversight in their AI use policies and guidelines. The Federal Court of Canada's *Interim Principles and Guidelines on the Court's Use of Artificial Intelligence*¹⁴³ includes the principle 'human in the loop' and the *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment*¹⁴⁴ has a guiding principle of 'under user control'.
- 6.105 Several stakeholders recommended ongoing oversight, monitoring and evaluation processes. We heard that:
- Continuous monitoring and periodic review of AI systems must be established to ensure courts and tribunals adapt to evolving legal, societal, and technological contexts.¹⁴⁵
 - The level of governance (consultation, testing, training, reporting and oversight) may vary depending on the technology being implemented.¹⁴⁶
 - Governance arrangements and frameworks should include data governance and infrastructure necessary to monitor and evaluate the impacts of the use of AI in court and tribunal settings.¹⁴⁷
 - Independent auditing mechanisms must be established to regularly review AI systems for compliance with the Charter and international human rights standards.¹⁴⁸
 - Human oversight and review are necessary to maintain judicial oversight over AI-driven decision-making processes, prevent unjust outcomes and allow for contestability.¹⁴⁹
 - Courts and tribunals should regularly monitor and evaluate AI systems to identify risks, measure effectiveness and make necessary improvements.¹⁵⁰

143 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 2 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

144 European Commission for the Efficiency of Justice (CEPEJ), *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (2019, adopted at the 31st plenary meeting of the CEPEJ, Strasbourg, 3-4 December 2018) 7.

145 Submission 15 (Human Rights Law Centre).

146 Submission 26 (Supreme Court of Victoria).

147 Submission 10 (Castan Centre for Human Rights Law, Monash University).

148 Submission 15 (Human Rights Law Centre).

149 Submission 27 (Federation of Community Legal Centres and Justice Connect).

150 Ibid.

- 6.106 Principle 8 has been updated to ensure a focus on ongoing monitoring and evaluation of AI systems across all AI lifecycle stages.
- 6.107 In Chapter 9 we discuss how Victoria's courts and VCAT can implement appropriate oversight and monitoring arrangements through good AI governance practices. We explore mechanisms for establishing human oversight bodies and implementing an AI assurance framework to be applied across the AI lifecycle.
- 6.108 The idea of human oversight and monitoring is also relevant to individuals. As discussed under Principle 2, we heard that court users should maintain oversight of AI outputs used or relied on in courts.¹⁵¹
- 6.109 Principle 8 recognises that the level of human oversight required will depend on various factors. This approach is adopted in interjurisdictional court and tribunal polices.¹⁵² The level of oversight necessary is considered separately in Chapter 7 for court users, Chapter 8 for judicial officers and in Chapter 9 for Victoria's courts and VCAT.

Recommendation

4. The Commission's principles should be adopted and applied where relevant by Victoria's courts and VCAT when making decisions about the use of AI. The individual principles should be employed to achieve the overarching objective of maintaining public trust.

151
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Ibid.
Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 3 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IIA-par-les-tribunaux-eng.pdf>>.

CHAPTER 07

Court user guidelines to support safe use of AI

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7. Court user guidelines to support safe use of AI

Overview

- Guidelines can support court users to use AI safely in Victoria's courts and VCAT.
- There are differences in AI guidelines for court users across Australia and internationally. The experience of other jurisdictions is useful to inform the scope of guidelines for Victoria.
- AI guidelines should be consistent across Victoria's courts and VCAT.
- The Supreme Court guidelines should be expanded and updated. The Commission recommends opportunities to reform the Supreme Court AI guidelines by:
 - clarifying their scope
 - updating principles and including educative information
 - providing direction on how court users can use AI to prepare court documents.
- This chapter provides an example of what AI guidelines for Victoria's court and tribunal users could look like.

How can guidelines support the safe use of AI in courts and tribunals?

- 7.1 Our terms of reference ask us to recommend principles and guidelines for the safe use of AI in Victoria's courts and tribunals. In doing so, the Commission considered:
- how AI is regulated in other jurisdictions and potential lessons for Victoria
 - the rapid development of AI technologies and how this may influence the extent to which such technologies should be adopted and regulated.
- 7.2 Jurisdictions within Australia and internationally have issued guidelines on the use of AI in courts and tribunals to manage the safe use of AI. Most jurisdictions recognise the need to monitor and update guidelines as AI technology evolves and new risks and opportunities emerge. As discussed in Chapter 4, non-legislative approaches such as principles and guidelines can flexibly respond to AI as technology and uses rapidly develop.
- 7.3 This chapter examines current guidelines for court users and makes recommendations for expanding existing guidelines in Victoria. Chapter 8 considers guidelines for judicial officers.

AI guidelines for court users in Victoria

7.4 In Victoria, some courts and professional bodies have developed guidelines relating to the safe use of AI by court users. These are discussed below.

Court-issued AI guidelines in Victoria

7.5 In May 2024, the Supreme Court issued guidelines to assist lawyers and self-represented litigants when using AI in litigation.¹ The County Court adopted these guidelines in July 2024.²

7.6 In summary the Supreme Court guidelines:

- define and explain common AI terms
- highlight limitations and risks of AI tools
- explain that the use of AI is subject to, and must align with, existing legal professional obligations
- encourage court users to check AI-generated text to ensure it is accurate and applicable
- encourage parties to disclose their use of AI to each other and the court where appropriate
- encourage self-represented litigants and witnesses to include a statement about the AI tool used in any AI-generated materials.

7.7 The guidelines have not been adopted by the Magistrates' Court, Children's Court, Coroners Court or VCAT at this stage. VCAT is developing its own set of guidelines for tribunal users. This work is still under development.³

7.8 The Victorian Legal Services Board and Commissioner (VLSB+C) census found that less than a third (29.1 per cent) of Victorian lawyers surveyed had read the existing court guidelines.⁴ While the guidelines were generally viewed positively in our consultations, stakeholders identified opportunities for them to be updated and expanded. These opportunities are discussed in this chapter.

Professional body AI guidelines in Victoria

7.9 Peak legal professional bodies in Victoria, Western Australia and New South Wales have released a joint *Statement on the Use of Artificial Intelligence in Australian Legal Practice*.⁵

7.10 The statement emphasises that when using AI, lawyers must comply with their ethical standards and professional obligations, as contained in the Legal Profession Uniform Law and conduct rules for barristers and solicitors.⁶ It states that lawyers must:

- maintain client confidentiality by not inputting confidential, sensitive or privileged client information into public AI tools
- provide independent advice by applying their own assessment and analysis to AI outputs

1 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

2 County Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 3 July 2024); Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

3 Consultation 9 (Victorian Civil and Administrative Tribunal).

4 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 10.

5 The Law Society of NSW, Legal Practice Board of Western Australia, and Victorian Legal Services Board and Commissioner, *Statement on the Use of Artificial Intelligence in Australian Legal Practice* (Statement, 26 March 2025) <<https://lsbc.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

6 *Legal Profession Uniform Conduct (Barristers) Rules 2015*; *Legal Profession Uniform Legal Practice (Solicitors) Rules 2015*.

- be honest and deliver legal services competently and diligently by verifying AI outputs for accuracy and relevance
 - charge costs that are fair, reasonable and proportionate by ensuring the use of AI does not unnecessarily increase costs to clients above traditional methods.⁷
- 7.11 The statement indicates how the existing duties can be practically applied to guide the use of AI by lawyers. However, the VLSB+C census found that there was not broad awareness of this statement among Victorian lawyers, with less than a third (29.2 per cent) being familiar with the statement.⁸
- 7.12 Nonetheless, there appears to be broad agreement and awareness among Victorian lawyers of their duty to ensure AI use complies with their professional obligations. The VLSB+C census found an overwhelming majority of lawyers (96 per cent) either agreed or strongly agreed that they have a duty to ensure their use of AI complies with their professional obligations.⁹ However, 80.3 per cent of lawyers agreed or strongly agreed that insufficient guidance on responsible use of AI posed a risk to using AI in legal practice.¹⁰
- 7.13 In August 2025, the Law Institute of Victoria released the *Ethical and Responsible use of Artificial Intelligence* ethics guidelines.¹¹ The guidelines provide examples of precautions lawyers should take when using AI to ensure use is consistent with their ethical obligations and duties. This includes duties of competence and diligence, honesty, confidentiality and privilege, and supervision of legal services.
- 7.14 Some examples of 'best practice' AI use provided in the guidelines include to:
- Check the outputs of AI tools for accuracy and relevance.
 - Never enter confidential client information or legally privileged information into open source or commercial AI systems without client consent.
 - Disclose the use of AI to clients, and be prepared to inform opponents and the Court (if asked about AI use).
 - Ensure clients are charged fairly for work completed with AI.¹²
- 7.15 The guidelines provide instruction on privacy and data management and direct lawyers to read the privacy policy and terms of use before using an AI tool. Where available, lawyers should review information about the AI model to understand the training data and any potential for inaccuracy or bias by looking at the AI's Model Card and/or Data Nutrition Label.¹³ The Law Institute of Victoria has also provided educative information about AI on its AI Hub.¹⁴
- 7.16 In August 2025, the Victorian Bar released *Guidance on the Ethical Use of Generative AI*. This guideline does not discourage the use of AI by barristers but encourages them to be cautious about potential risks to client confidentiality and integrity of court documents.¹⁵

7 The Law Society of NSW, Legal Practice Board of Western Australia, and Victorian Legal Services Board and Commissioner, *Statement on the Use of Artificial Intelligence in Australian Legal Practice* (Statement, 26 March 2025) <<https://lsbc.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

8 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 10.

9 Ibid 9.

10 Ibid 6.

11 Law Institute Victoria, *Ethical and Responsible Use of Artificial Intelligence Guideline* (Ethical Guideline, 13 August 2025) <<https://www.liv.asn.au/download.aspx?DocumentVersionKey=69158983-87f3-4c1d-be99-8c300b5c7afd>> The Law Institute of Victoria consulted with the VLSB+C and the Legal Practitioners' Liability Committee in drafting the guideline.

12 Ibid 2.

13 Ibid 3. The dataset nutrition label provides information about a dataset including its intended use and other known uses, the process of cleaning, managing, and curating that data, ethical and or technical reviews, the inclusion of subpopulations in the dataset, and a series of potential risks or limitations in the dataset. See 'The Dataset Nutrition Label', *The Data Nutrition Project* (Web Page, 2021) <<https://labelmaker.datanutrition.org/>> for further information.

14 'Artificial Intelligence Hub', *Law Institute of Victoria* (Web Page) <<https://www.liv.asn.au/aihub>>.

15 James Barber KC, 'Guidance on the Ethical Use of Generative AI', *Victorian Bar* (Web Page, 25 August 2025) <<https://www.vicbar.com.au/Web/Web/Contents/Resources/Ethics-Hub/Common-Issues/Use-of-Generative-AI.aspx>>.

- 7.17 The Legal Practitioners' Liability Committee provides professional indemnity insurance to Victorian lawyers and many of Australia's national law firms.¹⁶ It has released statements on the limitations and risks of using AI in legal practice¹⁷ and how to manage those risks.¹⁸
- 7.18 There has been a mixed response by legal workplaces to implementing internal guidelines on the use of AI. The VLSB+C census found that 42 per cent of lawyers surveyed indicated their workplace had established AI guidelines, but 45 per cent noted the absence of such policies. A further 13 per cent were uncertain about the existence of any AI-related guidance.¹⁹
- 7.19 Guidance on AI use has also been issued by prosecutorial agencies. In 2024, Victoria Police introduced the *Victoria Police Artificial Intelligence Ethics Framework*.²⁰ This framework was discussed in our consultation paper. It aims to ensure use of AI by Victoria Police is ethical and consistent with its existing legal and ethical obligations. Additionally, the Australia New Zealand Policing Advisory Agency has released a *Responsible and Ethical Artificial Intelligence Framework* to support police and forensic services by detailing how AI ethics principles can be operationalised across the AI lifecycle.²¹

Other Australian AI guidelines for court users

- 7.20 Some Australian court jurisdictions have developed or are considering AI guidelines for court users. However, there is currently no common approach. Legal professional bodies across Australia have also released guidelines for lawyers on the use of AI.

Interstate court-issued AI guidelines for court users

- 7.21 In November 2024, the NSW Supreme Court released *Practice Note SC Gen 23 – Use of Generative AI*.²² The Practice Note contains guidance for court users about the use of GenAI. It was amended on 28 January 2025, in response to feedback from the legal profession.
- 7.22 The Practice Note contains directions to court users and limits the use of AI in some circumstances. In summary, it:
- defines GenAI and specifies what is excluded from their definition, such as search engines like Google.²³
 - lists shortcomings of GenAI that court users should understand.²⁴
 - prohibits certain information from being entered into GenAI, if it is subject to a non-publication or suppression order or the implied Harman undertaking. But there are exceptions if the information can be considered 'preparatory' such as generating chronologies or summarising documents,²⁵ and if the information will remain within a controlled environment.²⁶

16 'Who We Are', *Legal Practitioners' Liability Committee* (Web Page) <<https://lplc.com.au/about/who-we-are>>.

17 'Limitations and Risks of Using AI in Legal Practice', *Legal Practitioners' Liability Committee* (Web Page, 17 August 2023) <<https://lplc.com.au/resources/lplc-article/limitations-risks-ai-in-legal-practice>>.

18 'Managing the Risks of AI in Law Practices', *Legal Practitioners' Liability Committee* (Web Page, 13 February 2025) <<https://lplc.com.au/resources/lj-article/managing-the-risks-of-ai-in-law-practices>>.

19 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 7.

20 Victoria Police, *Victoria Police Artificial Intelligence Ethics Framework* (Policy, 20 March 2024) <<https://www.police.vic.gov.au/victoria-police-artificial-intelligence-ethics-framework>>.

21 Australia New Zealand Policing Advisory Agency (ANZPAA), *Australia New Zealand Responsible and Ethical Artificial Intelligence Framework* (Report, 22 July 2025) <<https://www.anzpa.org.au/products/products/australia-new-zealand-responsible-and-ethical-artificial-intelligence-framework>>.

22 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>.

23 Ibid paras 2, 6.

24 Ibid para 7.

25 Ibid para 9B clarifies that the prohibition does not apply to: '(a) the generation of chronologies, indexes and witness lists; (b) the preparation of briefs or draft Crown Case Statements; (c) the summarising or review of documents and transcripts; (d) the preparation of written submissions or summaries of argument'.

26 Ibid para 9A.

- prohibits the use of GenAI to generate affidavits, witness statements and character references and requires a disclosure statement that GenAI was not used. But there is an exception for 'merely preparatory' work and leave may also be granted to use AI in exceptional cases.²⁷
- requires that if GenAI is used in written submissions, summaries or skeletons of argument, court users must verify in the document that citations, legal and academic authority, case law and legislation references exist, are accurate and relevant.²⁸
- prohibits the use of GenAI to draft or prepare the content of an expert report without prior leave of the court. If leave is obtained the expert must disclose specified information about the use of AI in the report.²⁹

7.23 The Practice Note has been adopted by the:

- NSW Land and Environment Court³⁰
- District Court of NSW³¹
- NSW Civil and Administrative Tribunal.³²

7.24 The NSW Civil and Administrative Tribunal procedural direction notes that modifications have been made to accommodate particular types of proceedings.³³

7.25 In May 2024, Queensland Courts issued *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers*.³⁴ The guidelines outline the risks and limitations of AI use for non-lawyers. There is no requirement in these guidelines to disclose AI use. At the time of finalising this report, these guidelines were updated by Queensland Courts.³⁵

Guidelines under development

7.26 In April 2025, the Federal Court released a *Notice to the Profession on Artificial Intelligence use in the Federal Court of Australia*.³⁶ In this statement Chief Justice Mortimer indicated that the court is considering 'the development of either Guidelines or a Practice Note in relation to the use of Generative Artificial Intelligence by practitioners and courts users'.³⁷

7.27 The Court was to consult with stakeholders on development of this work. Submissions to this process closed on 13 June 2025. The notice reminds court users that in the meantime they:

- remain responsible for material tendered to the court
- should only use GenAI in a way that is consistent with their existing obligations
- should disclose their use of GenAI 'if required to do so by a Judge or registrar of the Court'.³⁸

27 Ibid paras 10-15.

28 Ibid para 16.

29 Ibid para 20.

30 Land and Environment Court of New South Wales, *Practice Note: Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 11 February 2025) <<https://lec.nsw.gov.au/lec/news-and-announcements/practice-note---use-of-generative-ai.html>>.

31 District Court New South Wales, *District Court General Practice Note 2 Generative AI Practice Note* (Practice Note, 18 December 2024) <https://districtcourt.nsw.gov.au/documents/practice-notes/district-court-pn---general/Gen_AI_Practice_Note.pdf>.

32 NSW Civil & Administrative Tribunal, *NCAT Procedural Direction 7 - Use of Generative Artificial Intelligence (Gen AI)* (Procedural Direction, 7 March 2025).

33 Ibid 1.

34 Queensland Courts, *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers* (Guidelines, 14 May 2024) <<https://www.courts.qld.gov.au/about/news/news233/2024/the-use-of-generative-artificial-intelligence-ai>> Note, these guidelines were revised on the 15th of September 2025.

35 Queensland Courts, *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers* (Guidelines, 15 September 2025) <https://www.courts.qld.gov.au/_data/assets/pdf_file/0012/798375/Artificial-Intelligence_Guidelines-for-Non-Lawyers.pdf>.

36 Federal Court of Australia, *Notice to the Profession: Artificial Intelligence Use in the Federal Court of Australia* (Notice, 29 April 2025).

37 Ibid.

38 Ibid.

- 7.28 The Supreme Court of Western Australia sought stakeholder feedback on the development of a practice direction on the use of AI by the legal profession in court.³⁹ Submissions to this process were due by 31 March 2025. At the time of writing the Court had not released a response to the submissions received.
- 7.29 On 30 May 2025, the Chief Justice of South Australia released a survey seeking information from lawyers about their use of GenAI in South Australian courts.⁴⁰ A committee of judicial officers and other stakeholders was established to consider how the South Australian courts might respond to the use of GenAI. Submissions to this process were due by 30 June 2025. At the time of writing the Court had not released a response to the submissions received.

Interstate professional AI guidelines

- 7.30 As discussed at paragraph [7.9], the VLSB+C, the Legal Practice Board of WA and the Law Society of NSW released the joint *Statement on the Use of Artificial Intelligence in Australian Legal Practice*.⁴¹
- 7.31 In our consultation paper we identified that several legal professional bodies across Australia have released guidance to lawyers on the use of AI. This includes:
- The Law Society of NSW released *A Solicitor's Guide to Responsible Use of Artificial Intelligence* in November 2023 (updated in October 2024).⁴²
 - The NSW Bar Association issued guidelines to barristers about how their professional obligations align with the use of AI in July 2023.⁴³
 - The Queensland Law Society issued a guiding statement on the use of AI in legal practice, in 2023 (updated in October 2024).⁴⁴ The statement sets out principles rather than specific obligations arising from the use of AI. It also released an *AI Companion Guide* in September 2024 which aims to guide lawyers to understand AI and construct appropriate governance and risk frameworks to mitigate risks.⁴⁵
- 7.32 These guidelines share a common focus on raising awareness that lawyers must comply with their existing professional obligations when using AI.
- 7.33 The Law Society of South Australia has not issued formal guidance to lawyers but in May 2025, it made a submission to the Federal Court's proposal for guidelines or a practice note on the use of AI.⁴⁶ The submission was aligned with the approach taken in NSW and submitted that there should be mandatory disclosure for the use of GenAI and restrictions on the kinds of materials permitted to be AI generated such as affidavits, witness statements and expert reports.

39 Supreme Court of Western Australia, *Artificial Intelligence Practice Direction: Consultation Note* (Report, 27 February 2025) <https://www.supremecourt.wa.gov.au/_files/AI_practice_direction.pdf>.

40 'A Statement from The Honourable Chris Kourakis, Chief Justice of South Australia Launching a Survey about Use of Generative AI in the South Australian Courts', *Courts Administration Authority of South Australia* (Web Page, 30 May 2025) <<https://www.courts.sa.gov.au/2025/05/30/a-statement-from-the-honourable-chris-kourakis-chief-justice-of-south-australia-launching-a-survey-about-use-of-generative-ai-in-the-south-australian-courts/>>.

41 The Law Society of NSW, Legal Practice Board of Western Australia, and Victorian Legal Services Board and Commissioner, *Statement on the Use of Artificial Intelligence in Australian Legal Practice* (Statement, 26 March 2025) <<https://lsbc.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

42 Law Society of NSW, 'A Solicitor's Guide to Responsible Use of Artificial Intelligence' (14 November 2023) *LSJ Online* <<https://lsj.com.au/articles/a-solicitors-guide-to-responsible-use-of-artificial-intelligence/>>; Law Society of New South Wales, *A Solicitor's Guide to Responsible Use of Artificial Intelligence* (Guideline, October 2024) <https://www.lawsociety.com.au/sites/default/files/2024-12/LS4527_MKG_ResponsibleAIGuide_2024-10-25%5B43%5D.pdf>.

43 NSW Bar Association, *Issues Arising from the Use of AI Language Models (Including ChatGPT) in Legal Practice* (Guidelines, 12 July 2023) <<https://inbrief.nswbar.asn.au/posts/9e292ee2fc90581f795f1df0105692d/attachment/NSW%20Bar%20Association%20GPT%20AI%20Language%20Models%20Guidelines.pdf>>.

44 Queensland Law Society and QLS Ethics and Practice Centre, *Guidance Statement No.38 Artificial Intelligence in Legal Practice* (Report, 24 October 2024) <<https://www.qls.com.au/content-collections/statements/guidance-statement-no-38-artificial-intelligence-in-legal-practice>>.

45 Queensland Law Society, *AI Companion Guide: The QLS overview guide to AI for solicitors* (Guide, Version 1.0, Queensland Law Society, September 2024) <<https://www.qls.com.au/content-collections/guides/ai-companion-guide>>.

46 Law Society of South Australia, *Use of Artificial Intelligence in the Federal Court of Australia* (Submission to Federal Court Consultation on Artificial Intelligence Use in the Federal Court of Australia, 30 May 2025) <https://lssa.informz.net/lssa/data/images/Website/submissions/L300525_toLCA_UseofAIintheFederalCourt.pdf>.

- 734 The Law Society of Western Australia has not issued formal guidance to lawyers but made submissions to the Supreme Court of Western Australia on the request for input on an AI practice direction or consultation note.⁴⁷ It also made a submission to the Federal Court's proposal for guidelines or a practice note on the use of AI.⁴⁸ In these submissions, the Law Society of Western Australia supported principle-based guidance for all court users and argued against a prescriptive approach as adopted in NSW. It did not support a prohibition on the use of GenAI or mandatory disclosure of AI use.⁴⁹
- 735 The Law Council of Australia, which consists of 16 Australian law societies and bar associations, also made a submission to the Federal Court in response to its consultation on AI use in the Court.⁵⁰ The submission gave in principle support to the development of a practice note on the use of GenAI but noted it did not have a settled position on the contents of a practice note because it had received mixed views from its constituent bodies.⁵¹

International guidelines for court users

- 736 Courts and professional bodies around the world have released guidelines on how courts users may use AI in courts and tribunals.
- 737 Examples include AI guidelines issued by:
- Canadian federal⁵² and provincial courts,⁵³ and professional bodies⁵⁴
 - Caribbean courts⁵⁵
 - English and Welsh professional bodies⁵⁶
 - European Union professional bodies⁵⁷
 - Malaysian professional bodies⁵⁸
 - New Zealand courts⁵⁹ and professional bodies⁶⁰

47 Law Society of Western Australia, *Submission: Supreme Court of Western Australia - Artificial Intelligence* (Submission to Supreme Court of Western Australia's Consultation on the Court's Artificial Intelligence Practice Direction Consultation Note, 11 April 2025).

48 Law Society of Western Australia, *Submission: Federal Court of Australia Artificial Intelligence Project Group* (Submission to Federal Court Consultation on Artificial Intelligence Use in the Federal Court of Australia, 11 June 2025) <<https://lawsocietywa.asn.au/wp-content/uploads/2025/06/2025JUN11-Submission-to-Federal-Court-AI-Project-Group.pdf>>.

49 Ibid 9.

50 Law Council of Australia, *Artificial Intelligence Use in the Federal Court of Australia* (Submission to Federal Court Consultation on Artificial Intelligence Use in the Federal Court of Australia, 16 June 2025) <<https://lawcouncil.au/publicassets/e4c1fd4-334b-f011-94b6-005056be13b5/4686%20-%20AI%20use%20in%20the%20Federal%20Court%20of%20Australia.pdf>>.

51 Ibid 6–7.

52 For example, Federal Court of Canada, *Notice to Parties and the Profession - The Use of Artificial Intelligence in Court Proceedings* (Notice, 7 May 2024).

53 Some examples include Court of King's Bench of Manitoba, *Practice Direction: Re: Use of Artificial Intelligence in Court Submissions* (Practice Direction, 23 June 2023); Court of Quebec, *Notice to the Legal Community and the Public - Maintaining the Integrity of Submissions before the Court When Using Large Language Models* (Notice, 26 January 2024) <<https://courduquebec.ca/en/article/notice-to-the-legal-community-and-the-public-maintaining-the-integrity-of-submissions-before-the-court-when-using-large-language-models>> See Appendix C for further examples.

54 Some examples include Canadian Bar Association, *Ethics of Artificial Intelligence for the Legal Practitioner - Toolkit* (Guide, 2025) '3. Guidelines Relating to Use' <<https://cba.org/resources/practice-tools/ethics-of-artificial-intelligence-for-the-legal-practitioner/3-guidelines-relating-to-use/>>. The Law Society of Alberta, *The Generative AI Playbook* (Guide, January 2024) <<https://www.lawsociety.ab.ca/resource-centre/key-resources/professional-conduct/the-generative-ai-playbook/>>; The Law Society of Manitoba, *Generative Artificial Intelligence: Guidelines for Use in the Practice of Law* (Guidelines, April 2024) <<https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2024/04/Generative-Artificial-Intelligence-Guidelines-for-Use-in-the-Practice-of-Law.pdf>>. Additional examples are provided in Appendix C.

55 Caribbean Court of Justice, *Practice Direction No. 1 of 2025: The Use of Generative Artificial Intelligence Tools in Court Proceedings* (Practice Direction, 14 February 2025) <<https://ccj.org/wp-content/uploads/2025/02/PRACTICE-DIRECTION-NO.-1-OF-2025-THE-USE-OF-GENERATIVE-ARTIFICIAL-INTELLIGENCE-TOOLS.pdf>>.

56 The Law Society of England and Wales, *Generative AI – the Essentials* (Guide, August 2024) <<https://www.lawsociety.org.uk/en/Topics/AI-and-lawtech/Guides/Generative-AI-the-essentials>>.

57 Peter Homoki, *Guide on the Use of Artificial Intelligence-Based Tools by Lawyers and Law Firms in the EU* (Report, Council of Bars and Law Societies of Europe (CCBE) and European Lawyers Foundation (ELF), 2022) <https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Reports_studies/EN_ITL_20220331_Guide-AI4L.pdf>.

58 Bar Council Malaysia, *The Risks and Precautions in Using Generative Artificial Intelligence in the Legal Profession, Specifically ChatGPT* (Circular No 342/2023, 24 November 2023) <<https://www.malaysianbar.org.my/document/members/circulars/2020--2024/2023&rid=46578>>.

59 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Lawyers* (Guidelines, 7 December 2023); Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Non-Lawyers* (Guidelines, 7 December 2023).

60 Law Society of New Zealand, *Lawyers and Generative AI* (Guidance, March 2024) <<https://www.lawsociety.org.nz/assets/Professional-practice-docs/Rules-and-Guidelines/Lawyers-and-AI-Guidance-Mar-2024.pdf>>.

- Scottish professional bodies⁶¹
 - Singaporean courts⁶²
 - United States (US), state and district courts and professional bodies.⁶³
- 7.38 Approaches vary across jurisdictions but there are common features which may inform development of guidelines in Victoria. For example, most guidelines connect existing legal professional obligations to the use of AI.
- 7.39 Some common features of international AI guidelines for court and tribunal users are discussed below (for further details on international guidelines see Appendix C).

International disclosure requirements for court and tribunal users

- 7.40 International guidelines take different approaches to whether court users should disclose their use of AI. Some courts do not require court users to pre-emptively disclose if they have used AI but remind people that they could be asked about their use of AI. Other courts mandate disclosure upon filing of documents and some require court users to disclose how they have used AI.
- 7.41 Table 3 contrasts some different international approaches to disclosure.

Table 3: International approaches to disclosure of AI use by courts users

Approach	Jurisdiction
Pre-emptive disclosure is required	<p>Canada: Courts with disclosure requirements include the Federal Court as well as courts of Manitoba and Yukon.⁶⁴ The Federal Court of Canada requires court users to make a declaration about their use of AI to prepare materials filed with the Court.⁶⁵</p> <p>United States: Some district courts in California,⁶⁶ Texas,⁶⁷ and Pennsylvania,⁶⁸ have issued standing orders requiring court users to sign and submit a form pre-emptively disclosing if they used any form of AI for legal research or drafting in connection with a case and certifying the accuracy of filed documents.</p>

- 61 Law Society of Scotland, *Guide to Generative AI* (Guide, October 2024) <<https://www.lawscot.org.uk/members/business-support/lawscottech/resources/guide-to-generative-ai/>>
- 62 Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar's Circular No 1 of 2024, 1 October 2024) <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>
- 63 Some examples include Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025); District Courts & County Courts at Law, Wichita County, Texas, *Standing Order Regarding Use of Artificial Intelligence* (Standing Order, 26 March 2024) <<https://wichitacountytx.com/download/standing-order-regarding-use-of-artificial-intelligence/>>; American Bar Association, Standing Committee on Ethics and Professional Responsibility, *Formal Opinion 512: Generative Artificial Intelligence Tools* (Report, 29 July 2024) <https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf> For additional examples see Appendix C.
- 64 Federal Court of Canada, *Notice to Parties and the Profession - The Use of Artificial Intelligence in Court Proceedings* (Notice, 7 May 2024); Supreme Court of Yukon, *Use of Artificial Intelligence Tools* (Practice Direction General No 29, 26 June 2023); The Law Society of Manitoba, *Generative Artificial Intelligence: Guidelines for Use in the Practice of Law* (Guidelines, April 2024) <<https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2024/04/Generative-Artificial-Intelligence-Guidelines-for-Use-in-the-Practice-of-Law.pdf>>.
- 65 Federal Court of Canada, *Notice to Parties and the Profession - The Use of Artificial Intelligence in Court Proceedings* (Notice, 7 May 2024) 1–2.
- 66 Orange County Superior Court, *Orange County Superior Court Department C31: Pre-Trial Order and Standing Order Re: Artificial Intelligence* (Guidance, 25 January 2024) <<https://www.occourts.org/system/files?file=civil/knilprocedures.pdf>>.
- 67 394th Judicial District Court (Texas), *Standing Order Regarding Use of Artificial Intelligence* (Standing Order, 1 August 2024) <<https://img1.wsimg.com/blobby/go/2f8cb9d7-adb6-4232-a36b-27b72fdcd38/downloads/Standing%20order%20Regarding%20Use%20of%20Artificial%20Int.pdf?ver=1720638374301>>; County Courts at Law Judges in and for Collin County, Texas, *Standing Order No. 3: Use of Artificial Intelligence for Any Court Filing* (Standing Order, 3 July 2024) <<https://topics.txcourts.gov/LocalRulesPublic/PreviewAttachment/2030>>; District Courts & County Courts at Law, Wichita County, Texas, *Standing Order Regarding Use of Artificial Intelligence* (Standing Order, 26 March 2024) <<https://wichitacountytx.com/download/standing-order-regarding-use-of-artificial-intelligence/>>; Gray County Court, Texas, *Standing Order Regarding Use of Artificial Intelligence* (Standing Order, 17 July 2024) <<https://topics.txcourts.gov/LocalRulesPublic/PreviewAttachment/2014>>; Hudspeth County Court, Texas, *Standing Order Regarding Use of Artificial Intelligence* (Standing Order, 12 July 2024) <<https://topics.txcourts.gov/LocalRulesPublic/PreviewAttachment/1997>>.
- 68 United States District Court for the Eastern District of Pennsylvania, *Standing Order Re Artificial Intelligence ('AI') in Cases Assigned to Judge Baylson* (Standing Order, 6 June 2023) <<https://www.paed.uscourts.gov/sites/paed/files/documents/locrules/standord/Standing%20Order%20Re%20Artificial%20Intelligence%206.6.pdf>>.

Approach	Jurisdiction
<p>No pre-emptive disclosure is required</p>	<p>Canada: Courts that do not mandate pre-emptive disclosure include Alberta, Newfoundland and Labrador, Nova Scotia, Quebec.⁶⁹ Pre-emptive disclosure is not required but court users must exercise caution when referring to authorities or analysis derived from AI.</p> <p>Caribbean: Disclosure is not always required but the court 'may require a user to disclose whether a GenAI tool was employed... [and] court users should be prepared to identify specific portions of their submissions influenced by GenAI and explain the steps taken to ensure accuracy'.⁷⁰</p> <p>England and Wales: Provided AI is used responsibly, there is no reason why a legal representative ought to refer to its use, but this is dependent upon context.⁷¹</p> <p>New Zealand: Disclosure by default is not required, but court users may have to disclose if asked by the court or tribunal.⁷²</p> <p>Singapore: 'pre-emptive declaration of the use of Generative AI is not required'⁷³ but court users 'must be prepared to identify the specific portions of the Court documents which used AI-generated content and explain to the Court how you have verified the output'.⁷⁴</p> <p>United States: The Illinois Supreme Court's policy states 'Disclosure of AI use should not be required in a pleading'.⁷⁵</p>

International accuracy requirements for court and tribunal users

- 7.42 It is common for international AI guidelines to highlight risks around hallucinations and inaccuracies of AI. In response to this risk, some jurisdictions encourage or require courts users to verify the accuracy of AI materials submitted to courts or tribunals.
- 7.43 International guidelines often reinforce the importance of accountability and emphasise that court users remain responsible for materials submitted to courts.

69 Court of Appeal of Alberta, Court of King's Bench of Alberta and Alberta Court of Justice, *Notice to the Profession & Public - Ensuring the Integrity of Court Submissions When Using Large Language Models* (Notice, 6 October 2023) <<https://albertacourts.ca/kb/resources/announcements/notice-to-the-profession-public---use-of-ai-in-citations-submissions>>; Court of Quebec, *Notice to the Legal Community and the Public - Maintaining the Integrity of Submissions before the Court When Using Large Language Models* (Notice, 26 January 2024) <<https://courduquebec.ca/en/article/notice-to-the-legal-community-and-the-public-maintaining-the-integrity-of-submissions-before-the-court-when-using-large-language-models>>; Nova Scotia Courts, *Use of Artificial Intelligence (AI) in Proceedings before the Nova Scotia Court of Appeal* (Report, 14 March 2025) <<https://www.courts.ns.ca/resources/notices/use-of-artificial-intelligence-ai-proceedings-nova-scotia-court-of-appeal>>; Supreme Court of Newfoundland and Labrador, *Notice to the Profession and the General Public Ensuring the Integrity of Court Submissions When Using Large Language Models* (Notice, 12 October 2023).

70 Caribbean Court of Justice, *Practice Direction No. 1 of 2025: The Use of Generative Artificial Intelligence Tools in Court Proceedings* (Practice Direction, 14 February 2025) 3 <<https://ccj.org/wp-content/uploads/2025/02/PRACTICE-DIRECTION-NO.-1-OF-2025-THE-USE-OF-GENERATIVE-ARTIFICIAL-INTELLIGENCE-TOOLS.pdf>>.

71 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 7 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

72 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Lawyers* (Guidelines, 7 December 2023) 4; Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Non-Lawyers* (Guidelines, 7 December 2023) 4.

73 Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar's Circular No 1 of 2024, 1 October 2024) 1 <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>.

74 Ibid 3-4.

75 Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025) 2.

744 Table 4 provides examples of the different international approaches to accuracy and accountability.

Table 4: International approaches to accuracy and accountability of AI use by courts users

Jurisdiction	Approach to accuracy and accountability
Canada (Alberta)	'any AI-generated submissions must be verified with meaningful human control. Verification can be achieved through cross-referencing with reliable legal databases, ensuring that the citations and their content hold up to scrutiny'. ⁷⁶
Caribbean	'Court users who utilise GenAI tools assume full responsibility for the accuracy, relevance, and appropriateness of the outputs'. ⁷⁷
England and Wales	'Review generative AI outputs for accuracy and factual correctness, including mitigation of biases and factchecking'. ⁷⁸
Malaysia	'All output generated by the systems must be independently verified against traditional legal databases and confirmed for relevance and accuracy'. ⁷⁹
New Zealand	'You are responsible for ensuring that all information you provide to the court/tribunal is accurate. You must check the accuracy of any information you get from a GenAI chatbot'. ⁸⁰
Scotland	'Solicitors should still exercise oversight and verify the accuracy and suitability of the information provided by generative AI systems'. ⁸¹
Singapore	'you should ensure that any AI-generated output used in your court document ... is accurate [and] is relevant'. ⁸²
US (Illinois)	'All users must thoroughly review AI-generated content before submitting it in any court proceeding to ensure accuracy and compliance with legal and ethical obligations'. ⁸³

- 76 Court of Appeal of Alberta, Court of King's Bench of Alberta and Alberta Court of Justice, *Notice to the Profession & Public - Ensuring the Integrity of Court Submissions When Using Large Language Models* (Notice, 6 October 2023) <<https://albertacourts.ca/kb/resources/announcements/notice-to-the-profession-public---use-of-ai-in-citations-submissions>>.
- 77 Caribbean Court of Justice, *Practice Direction No. 1 of 2025: The Use of Generative Artificial Intelligence Tools in Court Proceedings* (Practice Direction, 14 February 2025) 2 <<https://ccj.org/wp-content/uploads/2025/02/PRACTICE-DIRECTION-NO.-1-OF-2025-THE-USE-OF-GENERATIVE-ARTIFICIAL-INTELLIGENCE-TOOLS.pdf>>.
- 78 The Law Society of England and Wales, *Generative AI - the Essentials* (Guide, August 2024) 6 <<https://www.lawsociety.org.uk/en/Topics/AI-and-lawtech/Guides/Generative-AI-the-essentials>>.
- 79 Bar Council Malaysia, *The Risks and Precautions in Using Generative Artificial Intelligence in the Legal Profession, Specifically ChatGPT* (Circular No 342/2023, 24 November 2023) 6 <<https://www.malaysianbar.org.my/document/members/circulars/2020---2024/2023&rid=46578>>.
- 80 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Lawyers* (Guidelines, 7 December 2023) 4; Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Non-Lawyers* (Guidelines, 7 December 2023) 4.
- 81 Law Society of Scotland, *Guide to Generative AI* (Guide, October 2024) 9 <<https://www.lawscot.org.uk/members/business-support/lawscottech/resources/guide-to-generative-ai/>>.
- 82 Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar's Circular No 1 of 2024, 1 October 2024) 3 <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>.
- 83 Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025) 2.

International privacy and confidentiality requirements for court and tribunal users

745 It is common for international AI guidelines to highlight risks and obligations for court and tribunal users around data privacy and confidentiality. Some jurisdictions restrict what data court users can input into public AI tools as shown in Table 5.

Table 5: International approaches to privacy and confidentiality for court users

Jurisdiction	Approach to data privacy and confidentiality
Canada	'Lawyers must reasonably ensure the security of an AI system before use, to the extent feasible.' ⁸⁴
Caribbean	'Court users must not input sensitive, confidential, or privileged information into open source GenAI.' ⁸⁵
England and Wales	<p>'If you are using a free, online generative AI service where you have no operational relationship with the vendor other than use, do not put any confidential data into the tool.</p> <p>If you are procuring or working with a vendor to develop a personalised generative AI product for internal use contained solely within your firm's legal environment, you may wish to consider if and how you want to put confidential data into the tool, subject to the terms of use.'⁸⁶</p>
Malaysia	Lawyers must review 'the terms and conditions associated with the GenAI tools to be used and the provider's privacy policy.' ⁸⁷
New Zealand	'you should not enter any information into an AI chatbot that is not already in the public domain.' ⁸⁸
Scotland	'confidential or client sensitive information should not be shared with public generative AI systems.' ⁸⁹
Singapore	'ensure that there is no unauthorised disclosure of confidential or sensitive information when you use Generative AI tools.' ⁹⁰
United States	'Before lawyers input information relating to the representation of a client into a GAI tool, they must evaluate the risks that the information will be disclosed to or accessed by others outside the firm.' ⁹¹

84 Canadian Bar Association, *Ethics of Artificial Intelligence for the Legal Practitioner - Toolkit* (Guide, 2025) '3. Guidelines Relating to Use'. [3.2] <<https://cba.org/resources/practice-tools/ethics-of-artificial-intelligence-for-the-legal-practitioner/3-guidelines-relating-to-use/>>.

85 Caribbean Court of Justice, *Practice Direction No. 1 of 2025: The Use of Generative Artificial Intelligence Tools in Court Proceedings* (Practice Direction, 14 February 2025) 3 <<https://ccj.org/wp-content/uploads/2025/02/PRACTICE-DIRECTION-NO.-1-OF-2025-THE-USE-OF-GENERATIVE-ARTIFICIAL-INTELLIGENCE-TOOLS.pdf>>.

86 The Law Society of England and Wales, *Generative AI – the Essentials* (Guide, August 2024) 12 <<https://www.lawsociety.org.uk/en/Topics/AI-and-lawtech/Guides/Generative-AI-the-essentials>>.

87 Bar Council Malaysia, *The Risks and Precautions in Using Generative Artificial Intelligence in the Legal Profession, Specifically ChatGPT* (Circular No 342/2023, 24 November 2023) 6 <<https://www.malaysianbar.org.my/document/members/circulars/2020---2024/2023&rid=46578>>.

88 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Lawyers* (Guidelines, 7 December 2023) 3; Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Non-Lawyers* (Guidelines, 7 December 2023) 3.

89 Law Society of Scotland, *Guide to Generative AI* (Guide, October 2024) 10 <<https://www.lawscot.org.uk/members/business-support/lawscottech/resources/guide-to-generative-ai/>>.

90 Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar's Circular No 1 of 2024, 1 October 2024) 4 <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>.

91 American Bar Association, Standing Committee on Ethics and Professional Responsibility, *Formal Opinion 512: Generative Artificial Intelligence Tools* (Report, 29 July 2024) 6 <https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf>.

Additional guidance for Victoria's court users

- 746 There was strong support for court-issued guidelines on the use AI by court users. The Victorian Bar Association stated, 'informed Court guidelines are critical'.⁹²
- 747 The existing AI guidelines by the Victorian Supreme Court and County Court were generally viewed positively by stakeholders. The VLSB+C stated that the guidelines 'are measured and helpful'.⁹³
- 748 There have been mixed approaches to the form AI guidance to court users should take. In Victoria, the Supreme Court has issued guidelines, whereas the Supreme Court of NSW has issued a practice note.⁹⁴
- 749 Practice notes and practice directions provide guidance on how the court intends to apply the law and manage cases.⁹⁵ Practice notes can be considered by courts when exercising case management and cost powers. The Supreme Court characterises them as follows:
- While they do not have the force of law, lawyers with the conduct of proceedings are expected to be familiar with their content and follow their requirements where applicable. The Court may take a failure to comply with a Practice Note into account in the exercise of its case management and costs powers.⁹⁶
- 750 Practice notes generally apply to all litigants (whether represented or not) but some practice notes contain separate requirements specifically for lawyers.
- 751 Guidelines are also not enforceable and are intended to assist litigants by providing direction on the interpretation of rules and processes for improved consistency.
- 752 There is an expectation that litigants are aware of and comply with the Supreme Court's AI guidelines. Recently, in *Director of Public Prosecutions v GR*, Justice Elliott stated that 'it is essential that all litigants and practitioners adhere to these [the Supreme Court's] guidelines'.⁹⁷
- 753 However, as discussed above (paragraph [78]) only 29.1 per cent of Victorian lawyers have read the Supreme Court guidelines.⁹⁸ Moving AI guidelines into the form of a practice note may increase awareness.
- 754 The Federal Court has consulted on what form AI guidance should take.⁹⁹ During this consultation process, the Law Council of Australia identified several reasons why a practice note may be preferable to guidelines.¹⁰⁰ However, the Law Society of Western Australia suggested that principle-based guidelines as already adopted by the Supreme Court of Victoria was preferred by most lawyers in Western Australia.¹⁰¹
- 755 It is up to the courts to decide which format is most appropriate for AI guidelines for court users.

92 Submission 23 (Victorian Bar Association).

93 Submission 6 (Victorian Legal Services Board and Commissioner).

94 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>; Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

95 Supreme Court of Victoria, *Practice Note SC Gen 1 Practice Notes and Notice to the Profession* (Practice Note, 30 January 2017) para 4.3 <<https://www.supremecourt.vic.gov.au/sites/default/files/assets/2017/09/25/18c025b3f/gen1practicenotesandnoticetotheprofession.pdf>>.

96 Ibid.

97 *Director of Public Prosecutions v GR* [2025] VSC 490, [78].

98 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 10.

99 Federal Court of Australia, *Notice to the Profession: Artificial Intelligence Use in the Federal Court of Australia* (Notice, 29 April 2025).

100 Law Council of Australia, *Artificial Intelligence Use in the Federal Court of Australia* (Submission to Federal Court Consultation on Artificial Intelligence Use in the Federal Court of Australia, 16 June 2025) 20 <<https://lawcouncil.au/publicassets/e4c1fdf4-334b-f011-94b6-005056be13b5/4686%20-%20S%20-%20AI%20use%20in%20the%20Federal%20Court%20of%20Australia.pdf>>.

101 Law Society of Western Australia, *Submission: Federal Court of Australia Artificial Intelligence Project Group* (Submission to Federal Court Consultation on Artificial Intelligence Use in the Federal Court of Australia, 11 June 2025) 8 <<https://lawsocietywa.asn.au/wp-content/uploads/2025/06/2025JUN11-Submission-to-Federal-Court-AI-Project-Group.pdf>>.

- 756 However, there is an opportunity to build on the content of the Supreme Court guidelines by:
- 1) ensuring consistency in AI guidelines across Victoria's courts and VCAT
 - 2) clarifying the scope of guidelines by:
 - a) incorporating the OECD definition of AI and defining subcategories of AI
 - b) clarifying the guidelines apply to civil and criminal proceedings
 - c) clarifying the guidelines apply to lawyers, litigants (whether represented or not), witnesses and experts.
 - 3) developing additional guidance for court users by providing direction on:
 - a) the Commission's proposed principles
 - b) submissions
 - c) affidavits and statements
 - d) expert reports.

AI guidelines across Victoria's courts and VCAT should be consistent

757 Many people told us that there should be consistency in AI guidelines.¹⁰² This included consistency across Victoria's courts and VCAT, as well as nationally.¹⁰³

758 As discussed above (paragraph [7.5]) the Supreme Court and County Court guidelines are consistent. However, other court jurisdictions in Victoria are yet to adopt guidelines and VCAT is developing its own guidelines.¹⁰⁴

759 There is inconsistency in the approaches adopted by courts across Australia. Like Victoria's Supreme and County courts, Queensland courts do not require disclosure or prohibit the use of AI, noting their guideline is only focused on non-lawyers.¹⁰⁵ In contrast, the NSW Supreme Court has taken a more restrictive approach, which requires disclosure and prohibits use in some circumstances as discussed above from paragraph [7.21].¹⁰⁶

760 The Supreme Court told us:

Regulation of the use of AI is a matter that largely falls on individual jurisdictions. However, as AI technologies develop, it will be important for Victorian jurisdictions to work towards a consistent or uniform approach, to the extent feasible.

It will also be highly desirable to work towards a nationally consistent and coordinated approach to the use of AI. A nationally consistent and coordinated approach can be expected to be cost efficient, to enable a productive sharing of scarce resources across jurisdictions leading to the effective evaluation and adoption of the most appropriate AI tools for use in all courts and tribunals and uniform guidelines for the use of AI by legal practitioners and litigants. A coordinated approach will help to ensure appropriate identification and effective management of information security risks.¹⁰⁷

102 Submissions 2 (Assoc Prof Marcus Smith), 16 (Law Institute Victoria), 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice), Consultation 6 (Office of Public Prosecutions).

103 Submissions 2 (Assoc Prof Marcus Smith), 26 (Supreme Court of Victoria).

104 Consultation 9 (Victorian Civil and Administrative Tribunal).

105 Queensland Courts, *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers* (Guidelines, 13 May 2025) <<https://www.courts.qld.gov.au/about/news/news233/2024/the-use-of-generative-artificial-intelligence-ai>>; Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

106 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>.

107 Submission 26 (Supreme Court of Victoria).

- 761 However, some jurisdictions flagged a need for guidelines to be adapted to suit the context of individual jurisdictions. Representatives of the Magistrates' Court stated:
- The Magistrates' Court is a volume-intense jurisdiction which gives rise to additional considerations distinct from the Supreme and County Courts. Any operational impositions or protraction in proceedings is magnified in this jurisdiction.¹⁰⁸
- 762 While there are differences across courts, there is also significant interaction between courts. For instance, many criminal cases start and are managed in the Magistrates' Court but are then further managed and heard in the County Court. Representatives of the Office of Public Prosecutions stated:
- Consistency would be ideal. While the courts deal with different issues sitting under them, one set of guidelines would be welcome. Cases will move through County to Supreme courts, so we shouldn't have to do different things for each court, especially if they impact expert reports which flow through the courts on appeal.¹⁰⁹
- 763 Regular interaction between different jurisdictions highlights the importance of consistency, so that court users are not navigating an overly complex and conflicting system.
- 764 Legal professional bodies strongly supported consistency in the approach to regulating AI. The Law Institute of Victoria:
- cautions against individual courts or tribunals establishing their own guidelines, which would likely lead to varying standards within and across jurisdictions. Instead, a uniform approach is preferable to ensure consistency and fairness.¹¹⁰
- 765 The Centre for the Future of the Legal Profession and UNSW Law and Justice stated that inconsistent approaches may lead to an unfair outcome for court users:
- This has real potential to increase the burden on lawyers, parties and witnesses who may find that some AI tools or products are acceptable in one court but not another. Ideally, courts and tribunals would work together to achieve unified national guidance where possible.¹¹¹
- 766 Having consistent AI guidelines across Victoria's courts and VCAT will support:
- clarity for court users about their obligations
 - awareness about the accepted uses and limitations, leading to safe use
 - fairness in access to and use of tools
 - sharing of information and learnings across the jurisdictions.
- 767 The Supreme Court's guidelines adopt a principle-based approach, which contrasts with the more prescriptive approach taken in NSW. As discussed in Chapter 6, stakeholders were supportive of a principle-based approach to AI regulation, as it provides flexibility to respond to rapidly developing technology. However, there are opportunities to build on the existing Supreme Court's principle-based guidelines. In this chapter we discuss several ways in which the Supreme Court's guidelines can be expanded.

108 Consultation 15 (Magistrates' Court of Victoria).

109 Consultation 6 (Office of Public Prosecutions).

110 Submission 16 (Law Institute Victoria).

111 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

768 It is recommended that once amended by the recommendations in this chapter, the Supreme Court's guidelines should be adopted by the rest of Victoria's courts and VCAT. However, we acknowledge that some modifications may need to be made to accommodate the types of proceedings determined by individual court jurisdictions.¹¹² Any such modifications should be coordinated through Courts Council so that there is consistency where possible.

Working towards consistency

769 Uses of AI and responses by courts and tribunals are evolving. Courts will need to consistently review and respond to AI over time. Guidance from courts is likely to shift as the technology, risks and uses evolve. It is unsurprising that there will be different responses to the risks and opportunities of AI, particularly in the early stages of providing guidance. This is evident from the diverse responses of other jurisdictions. However, we heard that consistency is desirable across Australian jurisdictions where possible in the longer term.

770 The Supreme Court suggested that the Council of Chief Justices could help to facilitate consistency. Representatives of the Supreme Court told us that the desirability of national consistency will guide the court in its response to AI, noting that:

The profession is a national profession and if possible, practitioners should not have to take different approaches to their use of AI in courts dependent on the jurisdiction in which they appear.¹¹³

771 The Council of Chief Justices of Australia and New Zealand will convene an Australian Legal Convention in November 2025.¹¹⁴ AI is one of seven issues on the agenda for the convention.¹¹⁵ Chief Justice Gageler has stated that AI is a 'huge challenge'¹¹⁶ for the courts to consider. The convention is an early opportunity to bring together representatives of organisations within the Australian legal system to discuss issues relating to AI, among other current and emerging issues.

772 It will be important for Victoria's courts to remain aware of the AI practices of courts in other states and territories and consider where there may be future opportunities for alignment nationally.

Recommendations

5. The Supreme Court's *Guidelines for Litigants: Responsible Use of Artificial Intelligence*, as varied by recommendations 7 to 11, should be adopted by Victoria's courts and VCAT.
6. The Chief Justice of Victoria should consider working with his counterparts through the Council of Chief Justices to seek to achieve consistency nationally on the response to AI throughout Australia's courts and tribunals.

112 For example, the NSW Civil and Administrative Tribunal modified the NSW Supreme Court's Gen AI Practice Note to accommodate the particular types of proceedings in their jurisdiction: NSW Civil & Administrative Tribunal, *NCAT Procedural Direction 7 - Use of Generative Artificial Intelligence (Gen AI)* (Procedural Direction, 7 March 2025).

113 Consultation 32 (Supreme Court of Victoria).

114 Michael Pelly, 'An Interview with Chief Justice Gageler', *Westlaw Updates & Alerts* (Web Page, 8 July 2025) <<https://support.thomsonreuters.com.au/product/westlaw-precision-australia/updates-alerts/interview-chief-justice-gageler>>.

115 Ibid.

116 Ibid.

The scope of court user guidelines should be clarified

- 7.73 There is an opportunity to clarify the scope of the existing Supreme Court guidelines by specifying:
- the scope of AI uses included in the guidelines
 - what proceedings they apply to
 - who is expected to comply with the guidelines.

Court user guidelines should use the OECD definition of AI

7.74 As stated in Chapter 1, there is no universally agreed definition of AI. Many stakeholders highlighted that there are significant difficulties in defining AI because of how quickly the technology is evolving. This has resulted in definitions of AI changing over time.¹¹⁷

7.75 However, we heard from some stakeholders that Victoria's courts and VCAT should seek to adopt a consistent definition of AI.¹¹⁸ The Law Institute of Victoria stated:

Adopting a clear definition of AI would greatly assist courts and tribunals to regulate permissible and impermissible uses of AI, to ensure the integrity of evidence and of the judicial process.¹¹⁹

7.76 Guidance issued by courts and professional bodies adopt a variety of AI definitions. The Supreme Court's guidelines describe AI as 'a term describing a range of technologies and techniques used to computationally generate outputs that typically require human intelligence to produce.'¹²⁰

7.77 The OECD defines AI as:

a machine-based system that, for explicit or implicit objectives, infers from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.¹²¹

7.78 The main benefits of adopting the OECD definition are explained in Chapter 1. In summary, this definition is recognised internationally,¹²² and has been adopted by the Australian and Victorian governments.¹²³ Incorporating this definition into all guidelines for Victoria's courts and VCAT will help ensure a consistent understanding of what AI is and what it is not.

7.79 In addition, we heard from stakeholders that it would be helpful to define subcategories of AI. We heard from representatives of Law Firms Australia that there:

Is a distinction between generative AI (GenAI) and AI tools more generally, as well as between open and closed AI systems ... [We are] interested in a regulatory response that can treat different forms of AI differently.¹²⁴

117 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

118 Submission 16 (Law Institute Victoria).

119 Ibid.

120 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) 5 <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

121 Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council on Artificial Intelligence*, OECD/LEGAL/0449, 3 May 2024, 7 <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>>.

122 The OECD is an authoritative international body that plays a leading role in setting international standards. It has 38 member states including Australia, Canada, New Zealand, Germany, Japan, UK, USA, France and Denmark. 'Members and Partners', *OECD* (Web Page) <<https://www.oecd.org/en/about/members-partners.html>>.

123 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia: Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings* (Proposals Paper, September 2024) 53; Department of Premier and Cabinet (Vic), *Administrative Guideline - The Safe and Responsible Use of Generative AI in the Victorian Public Sector* (No 2024/07, Issue 1.0, November 2024) <<https://www.vic.gov.au/sites/default/files/2024-11/Generative-AI-Guideline-%281%29.pdf>>.

124 Consultation 33 (Law Firms Australia).

- 780 There are various approaches to how AI guidelines define GenAI. The NSW Supreme Court Practice Note lists certain types of GenAI tools which are not included in the definition of GenAI and are not regulated under the Practice Note.¹²⁵ For example, transcription and translation tools are not subject to the restrictions and prohibitions contained in the Practice Note.¹²⁶
- 781 Some stakeholders stated AI guidelines may not need to apply to common, low-risk AI uses. Representatives of Law Firms Australia said that there are 'innocuous uses of GenAI in commonly used tools, such as in relation to spelling, grammar and searching. These uses are sensibly excluded from the NSW Practice Note'.¹²⁷ Similarly, the Centre for the Future of the Legal Profession and UNSW Law and Justice stated AI can be 'built into technological tools that are in everyday use and where the AI component does not necessarily present risks that courts or tribunals should be concerned with (such as grammar checking)'.¹²⁸
- 782 However, in Chapter 3 we discuss that there are difficulties in creating a defined list of permissible or prohibited AI tools because the technology is developing so fast and new uses and tools are emerging with increasing frequency. This is demonstrated by the recent amendment to the NSW Supreme Court Practice Note to update the list of excluded GenAI tools.
- 783 Rather than inserting a static list of AI tools, the Commission recommends guidelines include the following subcategories of AI which we have defined in Chapter 3:
- **GenAI:** Software systems that generate content as text, images, music, audio and videos, based on a user's prompts.
 - **Public AI:** AI tools that are openly accessible to the public, typically via the internet. Public AI tools are trained on broad, often public datasets, most commonly for general purpose use.
 - **Closed AI:** The phrase 'closed AI' is defined in contrast to public AI. Closed AI tools are generally not openly accessible to the public and information used in closed AI tools remains within a controlled environment. When an AI tool is 'closed' there are controls to reduce risks related to privacy, or confidentiality settings that protect information from being made publicly available or used to train the AI tool.
- 784 In Chapter 3, we discuss how these different types of AI carry different types and levels of risk. The Commission recommends that guidelines to court users explain these different risks.
- 785 Using categories of AI directed to underlying risks such as privacy, rather than a list of AI tools, will allow guidelines to better adapt to evolving technology. We heard from one stakeholder that it could be useful to direct AI regulatory responses to the 'particular issues enlivened by the use of particular AI products, instead of attempting to develop a definition which covers current and potentially future AI technologies'.¹²⁹
- 786 Guidelines to court users should highlight that using public AI tools can create greater privacy risks compared to using closed AI tools. For this reason, guidelines should prohibit court users from entering any information into public AI tools which is subject to client privilege, confidential or sensitive (this includes information subject to a non-publication or suppression order).
- 787 Additionally, guidelines should direct court users to exercise caution and review the contractual terms of closed AI tools to ensure the information they input will be kept secure and not made public or used to train the AI program. Examples of privacy and data security considerations are also illustrated in Table 6.

125 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) para 6 <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>.

126 Ibid.

127 Consultation 33 (Law Firms Australia).

128 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

129 Submission 6 (Victorian Legal Services Board and Commissioner).

7.88 Guidelines to court users should cover both AI and GenAI. One reason for this is because we heard guidelines should play a role in setting expectations for experts in their use of AI to form opinions, not just the use of GenAI. This is discussed from paragraph [7.159].

Guidelines should apply to civil and criminal matters

7.89 The Supreme Court guidelines do not state whether they apply to civil and criminal matters.¹³⁰ In contrast, Queensland's guidelines state that they apply to both civil and criminal proceedings.¹³¹

7.90 We asked stakeholders if there was a need to develop separate guidelines for civil and criminal matters. There was not strong support for separate guidelines at this stage.

7.91 The County Court told us:

While it is foreseeable that different risks may emerge in criminal and civil matters, at this stage, the data security and confidentiality risks associated with AI is a significant concern. Both criminal and civil matters have their own sensitivities and there is currently no benefit in distinguishing them based on risk. In addition to the data security and confidentiality risks, there are a number of significant risks with the AI technologies themselves, and until those risks are mitigated, the Court is not able to determine what risks it would be prepared to accept in which matters.¹³²

7.92 To avoid any doubt, the existing guidelines should be updated to clearly state that they apply to both civil and criminal proceedings.

Who should court user guidelines apply to?

7.93 Court-issued guidelines should apply to all court users. This should include lawyers, litigants (whether represented or not), witnesses and experts. The Supreme Court's AI guidelines are directed to litigants and have been 'designed to assist both legal practitioners and self-represented litigants'.¹³³

7.94 There was discussion amongst stakeholders about whether separate guidelines are necessary for lawyers and self-represented litigants. This arose on the basis that lawyers have existing professional obligations which can be applied to guide their use of AI, whereas self-represented litigants do not have the same obligations.¹³⁴

7.95 It was noted that self-represented litigants may not possess the necessary legal knowledge and skills to verify the accuracy and relevance of AI outputs.¹³⁵ The Law Institute of Victoria stated guidelines should distinguish between different users, including self-represented litigants.¹³⁶ The VLSB+C also supported the development of separate guidance for self-represented litigants.¹³⁷

7.96 Courts have made comments that while self-represented litigants do not have the same professional obligations as lawyers, they should still check the accuracy of outputs from AI tools. Judge Porter, when considering a document filed by a self-represented litigant which contained hallucinated cases, stated:

130 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>; County Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 3 July 2024).

131 Queensland Courts, *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers* (Guidelines, 13 May 2025) 1 <<https://www.courts.qld.gov.au/about/news/news233/2024/the-use-of-generative-artificial-intelligence-ai>>.

132 Submission 24 (County Court of Victoria).

133 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) 1 <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

134 Submission 6 (Victorian Legal Services Board and Commissioner). Consultation 4 (Victorian Legal Services Board and Commissioner).

135 Consultation 11 (Law Institute of Victoria).

136 Submission 16 (Law Institute Victoria).

137 Submission 6 (Victorian Legal Services Board and Commissioner).

It is obvious that legal practitioners have a professional duty not blindly to rely on the output of any research tool. While litigants in person do not have the same professional duties, I do not think that gives them a free pass to uncritically adopt the output of AI models. As awareness builds in the community of the potential for hallucinations in output from large language models, a time will come where uncritically placing such output before a Court in circumstances where a litigant is reckless as to its accuracy could amount to contempt of court, in the form of interference in the administration of justice by the litigant in person.¹³⁸

7.97 The Federal Court of Canada provides a clear explanation for why court-issued guidance on AI should apply equally to lawyers and self-represented litigants:

The Court recognizes that counsel have duties as Officers of the Court. However, these duties do not extend to individuals representing themselves. It would be unfair to place elevated AI-related responsibilities only on these self-represented individuals, and allow counsel to rely on their duties. Therefore, the Court provides this Notice to ensure fair treatment of all represented and self-represented parties and interveners.¹³⁹

7.98 This idea of fairness was echoed by Victoria's courts. We heard from most courts that self-represented litigants and lawyers should be treated the same in relation to use of AI. To do otherwise was seen to create an unfair barrier on self-represented litigants that would create inconsistent expectations on court users. A representative of the County Court explained:

It is hard to see why, or how, we would be able to say to parties that they have to comply with different standards. Whatever guidelines we have for submissions, it should be for all parties. Uniformity in how we deal with parties is important. Treating different parties differently might be seen as being unjustified.¹⁴⁰

7.99 The Supreme Court guidelines should be the same for self-represented litigants and lawyers. But they should bring lawyers' attention to their existing legal duties and raise awareness of how those duties apply to the use of AI.

Guidelines should include principles and educative information

7.100 The Commission's principles set out in Chapter 6 could be given effect by being embedded into the Supreme Court guidelines.

7.101 While there has been broad support for the principles, we heard that 'principles alone are helpful but insufficient'.¹⁴¹ Stakeholders told us that if the principles are to be effective, they need to be enlivened with practical examples.¹⁴²

7.102 The Supreme Court's guidelines contain a set of principles for use of AI by litigants. This should be updated to list and describe the Commission's principles. Guidelines should also explain practical ways to align use of AI to the principles. This would serve an educative purpose to increase court users understanding of the risks and limitations of AI as well as their existing obligations.

7.103 Table 6 provides extracts from a range of international guidelines as examples of practical guidance relevant to the principles set out in Chapter 6. We provide an example of how this could be applied in Victoria from paragraph [7.183].

138 *Weedbrook v Partlin* [2024] QDC 194, [41].

139 Federal Court of Canada, *Notice to Parties and the Profession - The Use of Artificial Intelligence in Court Proceedings* (Notice, 7 May 2024) 3.

140 Consultation 12 (County Court of Victoria).

141 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

142 Consultations 22 (Court Services Victoria), 23 (Dr Fabian Horton).

Table 6: Examples of principle-based guidance for court users

Principle	Guidance for court users
Impartiality and fairness	<p>'Have regard to ethical issues—particularly biases and the need to address them. GenAI chatbots generate responses based on the dataset they are trained on (which is generally information from the internet). Information generated by a Gen AI chatbot will reflect any biases or misinformation in its training data'.¹⁴³</p> <p>'Unsubstantiated or deliberately misleading AI generated content that perpetuates bias, prejudices litigants, or obscures truth-finding and decision-making will not be tolerated'.¹⁴⁴</p>
Accountability and independence	<p>GenAI can 'generate answers that appear to be persuasive and authoritative but could be extremely inaccurate or even fabricated. Generative AI chatbots can invent cases and statutes. They can also include facts which you never provided to them or make arguments that you never asked them to make. This is also known as "hallucinating"'.¹⁴⁵</p> <p>'any output generated should only be used on the basis that the Court User assumes full responsibility for the output'.¹⁴⁶</p> <p>'Where the Court User is a lawyer, the lawyer's duty to comply with the rules of professional conduct remains. Lawyers continue to have a professional obligation to ensure that materials they put before the Courts are independently verified, accurate, true, and appropriate'.¹⁴⁷</p> <p>'Irrespective of the systems used, solicitors [lawyers] should still exercise oversight and verify the accuracy and suitability of the information provided by generative AI systems'.¹⁴⁸</p> <p>'Where the Court User is a Self-Represented Person, he or she is also responsible for ensuring that all information provided to the Court is independently verified, accurate, true, and appropriate'.¹⁴⁹</p>
Transparency and open justice	Discussion on disclosure of AI use for submissions, affidavits, statements and expert reports is discussed in this chapter from paragraph [7.104].
Contestability and procedural fairness	Court users 'must be prepared to identify the specific portions of the court documents which used AI-generated content and explain to the Court how you have verified the output'. ¹⁵⁰

143 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Lawyers* (Guidelines, 7 December 2023) 4.

144 Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025) 2.

145 Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar's Circular No 1 of 2024, 1 October 2024) [4.3] <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>.

146 Ibid [3.3].

147 Ibid [3.2(a)].

148 Law Society of Scotland, *Guide to Generative AI* (Guide, October 2024) 9 <<https://www.lawscot.org.uk/members/business-support/lawscottech/resources/guide-to-generative-ai/>>.

149 Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar's Circular No 1 of 2024, 1 October 2024) [3.2(b)] <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>.

150 Ibid [4].

Principle	Guidance for court users
<p>Privacy and data security</p>	<p>'Court users must not input sensitive, confidential, or privileged information into open source GenAI'.¹⁵¹</p> <p>'If a solicitor is considering sharing confidential information with private generative AI systems at a minimum they should undertake appropriate checks to satisfy themselves that (a) appropriate terms are in place with the vendor so that the information inputted will not be accessible by the vendor or used for any other purposes (b) the security arrangements meet appropriate information security standards'.¹⁵²</p>
<p>Access to justice</p>	<p>'The Court does not prohibit the use of Generative AI tools to prepare Court Documents, provided that this Guide is complied with'.¹⁵³</p> <p>The use of AI 'may be expected, should not be discouraged, and is authorized provided it complies with legal and ethical standards'.¹⁵⁴</p>
<p>Efficiency and effectiveness</p>	<p>Users may find that using GenAI 'saves significant time and resources' in several tasks including legal research, document review, contract drafting, due diligence, drafting letters, emails and documents, as well as performing other administrative tasks but there are risks associated with use and verification of outputs is required.¹⁵⁵</p>
<p>Human oversight and monitoring</p>	<p>'In the interest of maintaining the highest standards of accuracy and authenticity, any AI-generated submissions must be verified with meaningful human control. Verification can be achieved through cross-referencing with reliable legal databases, ensuring that the citations and their content hold up to scrutiny'.¹⁵⁶</p>

151 Caribbean Court of Justice, *Practice Direction No. 1 of 2025: The Use of Generative Artificial Intelligence Tools in Court Proceedings* (Practice Direction, 14 February 2025) 3 <<https://ccj.org/wp-content/uploads/2025/02/PRACTICE-DIRECTION-NO.-1-OF-2025-THE-USE-OF-GENERATIVE-ARTIFICIAL-INTELLIGENCE-TOOLS.pdf>>.

152 Law Society of Scotland, *Guide to Generative AI* (Guide, October 2024) 10 <<https://www.lawscot.org.uk/members/business-support/lawscottech/resources/guide-to-generative-ai/>>.

153 Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar's Circular No 1 of 2024, 1 October 2024) [3(1)] <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>.

154 Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025) 2.

155 Bar Council Malaysia, *The Risks and Precautions in Using Generative Artificial Intelligence in the Legal Profession, Specifically ChatGPT* (Circular No 342/2023, 24 November 2023) 2-3 <<https://www.malaysianbar.org.my/document/members/circulars/2020---2024/2023&rid=46578>>.

156 Supreme Court of Newfoundland and Labrador, *Notice to the Profession and the General Public Ensuring the Integrity of Court Submissions When Using Large Language Models* (Notice, 12 October 2023).

Recommendation

7. The Supreme Court guidelines should be updated to:
 - a. define AI, GenAI, public AI and closed AI
 - b. apply to civil and criminal matters
 - c. apply to all court users including lawyers, litigants (whether represented or not) and witnesses (lay and expert)
 - d. contain the Commission's principles.

Guidelines to clarify obligations for using AI in court documents

7.104 The Supreme Court guidelines should be updated to include direction to court users on the use of AI for preparing documents for courts and tribunals. The guidelines should provide direction on:

- submissions
- affidavits, character references and witness statements
- expert reports.

Using GenAI to prepare submissions

7.105 Some court users are using GenAI to develop written submissions that are being filed with courts and tribunals.

7.106 The use of GenAI by court users to prepare submissions raises risks such as:

- They may contain inaccuracies (for instance, incorrectly summarising cases or legislation, incorrectly attributing legal principles to cases or proposing cases that are irrelevant to the proceedings) and 'hallucinations' (such as non-existent case citations or references to non-existent legislation or creating non-existent quotes or extracts from cases and legislation) and may appear accurate, leading to an overreliance on outputs without verification.¹⁵⁷
- There may be 'added cost and complexity to the proceedings, and where unverified, add to the burden of other parties and the Court in responding to it'.¹⁵⁸
- The use of GenAI tools may lead to confidential and or sensitive information being input into systems that do not protect privacy or confidentiality.¹⁵⁹

7.107 Referencing non-existent cases is not in the interests of the court or parties.¹⁶⁰ Courts have issued statements about the risks of misleading information which may result from using AI to prepare submissions. Recently, in *Director of Public Prosecutions v GR*, a defence lawyer used AI to assist in the preparation of joint submissions which were agreed to by the prosecution, before being filed with the court.¹⁶¹ The submissions contained references to non-existent cases and fictitious quotes. Although the court provided the lawyer with an opportunity to revise the submissions, the revised documents were also found to contain non-existent legislation. In response to these events Justice Elliott stated:

157 See for example, *Director of Public Prosecutions v GR* [2025] VSC 490, [70].

158 *May v Costaras* [2025] NSWCA 178, [16].

159 Consultation 33 (Law Firms Australia).

160 Claire Roberts, 'Generative AI in Australian Courts: Early Cases, Emerging Risks' (2025) 27(5–6) *Internet Law Bulletin* 79, 79.

161 *Director of Public Prosecutions v GR* [2025] VSC 490, [61]–[80].

The ability of the court to rely upon the accuracy of submissions made by counsel [lawyers] is fundamental to the due administration of justice ... 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 ... 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.¹⁶²

- 7108 However, GenAI can also bring significant opportunities for court users in the preparation of submissions. It can:
- create efficiencies by reducing the time taken to draft submissions
 - enhance access to justice, particularly for self-represented litigants. Representatives of the Magistrates' Court highlighted that the 'use of GenAI could improve and assist the quality of submissions, particularly those that might struggle with English comprehension'.¹⁶³
- 7109 A representative of the Federal Circuit and Family Court provided an example of how AI may support access to justice for self-represented litigants to draft submissions:
- Recently, a self-represented litigant with limited reading and writing skills could not put his statement of claim together. He was given numerous opportunities to redraft his statement but was unable to. He then used ChatGPT and was able to produce something that was readable and structured that could meet the initial threshold. He disclosed his use of AI and in the circumstances, I did not find it objectional. If he had not used ChatGPT, his statement of claim may have been struck out. It allowed him to articulate the claim and provide something to get him over the threshold. It was still his narrative but the end product was in a form which assisted the court and the opposing party. Think how many who are denied access could get access through the assistance of AI tools.¹⁶⁴
- 7110 Currently, the Supreme Court's guidelines encourage:
- court users to check AI-generated text to ensure it is not out of date, incomplete, inaccurate or incorrect, inapplicable to the jurisdiction or biased
 - parties to disclose their use of AI to each other and the court where appropriate
 - self-represented litigants to include a statement about the AI tool used in any AI generated materials to be filed with the court.¹⁶⁵
- 7111 Other courts and tribunals have taken different approaches to the use of GenAI to produce submissions. Some approaches are that:
- court users are not required to pre-emptively disclose if and how they have used AI to prepare submissions¹⁶⁶
 - court users are required to disclose if they have used AI in the creation of a submission, this may take the form of a written declaration.¹⁶⁷
 - where GenAI is used to prepare written submissions, court users are required to verify in the body of the submission, the accuracy and relevance of all citations, legal and academic authority and case law and legislative references.¹⁶⁸

162 Ibid [79]-[80]. See also Consultation 33 (Law Firms Australia).

163 Consultation 15 (Magistrates' Court of Victoria).

164 Consultation 13 (Federal Circuit and Family Court of Australia).

165 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

166 Queensland Courts, *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers* (Guidelines, 13 May 2025) <<https://www.courts.qld.gov.au/about/news/news233/2024/the-use-of-generative-artificial-intelligence-ai>>.

167 For example, the Federal Court of Canada requires a written declaration if content in the material provided to the court was directly provided by AI Federal Court of Canada, *Notice to Parties and the Profession - The Use of Artificial Intelligence in Court Proceedings* (Notice, 7 May 2024) 1.

168 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) para 16 <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>.

7.112 We heard mixed views on whether court users should disclose if they use GenAI to create submissions. Table 7 illustrates the breadth of views.

Table 7: Stakeholder views on disclosure requirements of AI use in submissions

Position on disclosure of AI use in submissions	Stakeholder views
Pre-emptive disclosure should not be mandatory	Supreme Court: 'Restriction on the use of AI in submissions is undesirable. It is plain forms of AI are already used extensively by the profession. If practitioners are able to more efficiently produce submissions utilising AI this should not be the subject of restriction ...The Court does not presently see a need for disclosure, certification or restriction regarding the use of AI in submissions'. ¹⁶⁹
	County Court: 'Requiring disclosure of how a person has arrived at their submission is not necessarily useful because submissions can be tested in the usual way by discussion in Court'. ¹⁷⁰
	Coroners Court: 'We would encourage disclosure in submissions like [in] the Victorian Supreme Court [Guidelines]; we wouldn't want to discourage AI use or mandate disclosure'. ¹⁷¹
	Magistrates' Court: 'in every case ... the judicial officers of the Magistrates' Court serve as the finder of fact and application of relevant law and will assess the submissions on its proper merits, regardless of whether AI has been used'. ¹⁷²
Pre-emptive disclosure should be mandatory	VCAT: 'Our preliminary view is that, for now, all tribunal users must disclose if they use GenAI for any of the three types of documents: submissions, affidavits or evidence'. ¹⁷³
	Victorian Bar Association: 'mandate disclosure where generative AI has been used in the preparation of written submissions, along with certification that the content of such submissions has been directly verified by the author'. ¹⁷⁴
	InTouch Multicultural Centre Against Family Violence: 'Mandatory disclosure is preferable. For instance, the requirement for disclosure where English is not their first language. This might trigger someone to work with them and help them input, and make sure it is accurate'. ¹⁷⁵
	Office of the Victorian Information Commissioner: 'the importance of self-represented litigants and legal professionals disclosing to courts and tribunals when AI has been, or is being, used...' should be included in guidelines to court users. ¹⁷⁶

169 Consultation 32 (Supreme Court of Victoria).
 170 Consultation 12 (County Court of Victoria).
 171 Consultation 2 (Coroners Court of Victoria).
 172 Consultation 15 (Magistrates' Court of Victoria).
 173 Consultation 9 (Victorian Civil and Administrative Tribunal).
 174 Submission 23 (Victorian Bar Association).
 175 Consultation 26 (inTouch Multicultural Centre Against Family Violence).
 176 Submission 5 (Office of the Victorian Information Commissioner).

- 7113 The VLSB+C census found that there is broad acceptance for the use of AI across the Victorian legal profession.¹⁷⁷
- 7114 GenAI is already being used broadly across society and is being embedded into common products like Google, Adobe and Word. A prohibition or mandatory disclosure would be practically difficult for Victoria's courts and VCAT to enforce because people 'may be unaware that a tool they are using includes AI and therefore inadvertently fail to disclose'.¹⁷⁸ Several stakeholders echoed this view that mandatory disclosure requirements would be challenging because 'people are often not aware they are using it [AI]'.¹⁷⁹
- 7115 While we received mixed views on disclosure from our consultations, the VLSB+C census indicates that there may be support among Victorian lawyers to disclose their use of AI. The census found that 68 per cent of respondents agreed or strongly agreed lawyers should be required to disclose their use of AI in litigation.¹⁸⁰
- 7116 In considering the value and limitations of disclosure representatives of the Judicial College of Victoria stated:
- Disclosure is a risk management exercise for the person making the disclosure and for person receiving it. One of the principal purposes of requiring disclosure for the person receiving it is ... to flag there may be fictitious statements or issues with submitted evidence. But ... a culture of over-disclosure might risk obscuring the meaningful part of what needs disclosure.¹⁸¹
- 7117 It is likely that, due to the ubiquity of GenAI, a mandatory pre-emptive disclosure requirement would lead to over disclosure where court users are asked to perform a 'box ticking' exercise. We heard that a blanket disclosure requirement could 'increase the administrative burden on courts and tribunals without a corresponding benefit'.¹⁸² We heard from several judicial officers that disclosure is not necessarily helpful to determine the matter before them and what is more important is whether the submission is accurate. Representatives of the Supreme Court noted:
- Disclosure is unnecessary. The critical concern is not how the submissions were drafted but that they are helpful to the Court and accurate. Disclosure of the use of AI does not address that critical concern.¹⁸³
- 7118 Some stakeholders considered that existing obligations may be sufficient to address the risk of inaccuracies in submissions prepared with AI. Representatives of Law Firms Australia stated that if AI is used to draft submissions, lawyers are still required to sign off on that document and remain responsible for its accuracy.¹⁸⁴ As discussed above (from paragraph [7.10]), if lawyers fail to verify the accuracy and relevance of documents prepared with AI they may be in breach of their professional obligations.¹⁸⁵ Participants in civil litigation, including self-represented litigants have a paramount duty to further the administration of justice.¹⁸⁶ Inaccurate or misleading submissions 'can impede the administration of justice by leading to a waste of court time and resources'.¹⁸⁷
- 7119 In responding to instances where inaccurate or false material has been filed or relied on in courts, judges have emphasised the critical importance of checking material before relying on it. Chief Justice Bell has stated there is an:

177 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 9. Only 18.4% of respondents agreed or strongly agreed that lawyers should not use AI.

178 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

179 Consultation 8 (Federation of Community Legal Centres Workshop) Also, Consultations 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses), 28 (Monash University Digital Law Group).

180 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 9.

181 Consultation 7 (Judicial College of Victoria).

182 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

183 Consultation 32 (Supreme Court of Victoria).

184 Consultation 33 (Law Firms Australia).

185 The Law Society of NSW, Legal Practice Board of Western Australia, and Victorian Legal Services Board and Commissioner, *Statement on the Use of Artificial Intelligence in Australian Legal Practice* (Statement, 26 March 2025) 1 <<https://lsbc.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

186 *Civil Procedure Act 2010* (Vic) ss 10, 16.

187 Judicial College of Victoria, *Civil Procedure Bench Book* (Online Manual, 2024) '1.2.2.1 The paramount duty' <<https://resources.judicialcollege.vic.edu.au/article/1041737>> n 42 citing *Re Manlio* [No 2] [2016] VSC 130, [25], [27].

absolute necessity for practitioners who do make use of Generative AI in the preparation of submissions ... to verify that all references to legal and academic authority, case law and legislation are only to such material that exists, and that the references are accurate, and relevant to the proceedings.¹⁸⁸

- 7.120 In considering all the issues, the Commission does not recommend court users preemptively disclose that they have verified AI use in court documents. As representatives of the Supreme Court cautioned, while 'it is critical that submissions are checked for accuracy, the Court does not consider that a certification requirement in relation to AI use in submissions is necessary'.¹⁸⁹
- 7.121 Instead, educative guidance on the risk of inaccuracy may help to raise awareness among court users about the risks and limitations of GenAI. This would highlight the importance of verifying outputs where GenAI has been used.
- 7.122 To address concerns relating to accuracy, it is recommended that court-issued guidelines contain a list of considerations for court users to check the accuracy and applicability of submissions prepared with GenAI. This would help to address concerns that the use of GenAI will lead to reliance on inaccurate or irrelevant information in documents for courts and tribunals.
- 7.123 This approach aligns with Singapore's response.¹⁹⁰ The Supreme Court of Singapore does not require disclosure but encourages users to check outputs and reminds users that the court retains the ability to ask about the use of AI.

Singapore Courts Guide on the use of Generative Artificial Intelligence Tools by Court Users

Court-issued guidelines in Singapore contain the following accuracy considerations.

To ensure accuracy in the Court Documents you submit, you should do the following:

- a) Fact-check and proof-read any AI-generated content that you use.
- b) Edit and adapt AI-generated content to suit your situation.
- c) Verify that any references to case law, legislation, textbooks or articles provided as AI-generated content actually exist and stand for the legal positions that are attributed to them. If the AI-generated content includes extracts or quotes, you must verify that these are extracted/quoted accurately and attributed to the correct source.
- d) When checking the materials referred to in (c) above, you should use a source that is known to have accurate content...
- e) Please note that it is not sufficient verification for you to ask a Generative AI tool for confirmation that the materials exist or contain the content that the AI-generated content says it does. To be clear, you cannot use one Generative AI tool to confirm the content generated from another Generative AI tool.¹⁹¹

188 *May v Costaras* [2025] NSWCA 178, [17]. See also comments by Justice Elliott *Director of Public Prosecutions v GR* [2025] VSC 490, [80].

189 Consultation 32 (Supreme Court of Victoria).

190 Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar's Circular No 1 of 2024, 1 October 2024) <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>.

191 *Ibid* [5.3].

- 7.124 GenAI systems are known to contain inaccuracies. Victorian lawyers have reported taking steps to ensure the accuracy of AI-generated content. The VLSB+C census found that it is common practice (76.1 per cent of respondents) to cross-check AI outputs against other sources to verify legal accuracy.¹⁹² This census also found that nearly half of respondents specifically cross-check information to guard against hallucinations.¹⁹³
- 7.125 Incorporating accuracy considerations into guidelines will help court users to thoroughly check their work and to improve the quality of materials filed with the court.
- 7.126 For these reasons, accuracy considerations contained in the Singapore guidelines should be replicated in the Victorian Supreme Court guidelines. This would help to enliven the principles of accountability and independence, and human oversight and monitoring.
- 7.127 Several stakeholders drew attention to the fact that judicial officers will retain the ability to ask about the use of GenAI in submissions. We heard that courts are well placed to ask about submission content and that this was a core function of courts.¹⁹⁴ This was also supported by representatives of the Magistrates' Court.¹⁹⁵ Additionally, the Chief Justice of Western Australia recently argued that: 'Distinguishing between the artificial and the real, however, has always been the role of the legal system, and of the institution of the judiciary'.¹⁹⁶
- 7.128 Guidelines should remind court users that courts and tribunals have broad powers to make directions for the conduct of proceedings. This includes directions relating to documents and evidence.¹⁹⁷ Therefore courts may give directions for parties to provide further information about documents they have produced with the assistance of GenAI.¹⁹⁸
- 7.129 Guidelines should make court users aware of the risks of providing inaccurate material. If court users rely on unverified GenAI outputs in submissions, courts and tribunals may:
- refer lawyers to the regulator on the basis they have breached their professional obligations¹⁹⁹
 - order lawyers to personally pay costs to the other side incurred by using unverified AI content²⁰⁰
 - issue warnings to self-represented litigants about the unsatisfactory consequences of relying on unverified GenAI materials to prepare submissions, or not give weight to or disregard parts of submissions that contain unverified GenAI content²⁰¹
 - refer litigants to AI guidelines or practice notes.²⁰²

192 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 5.

193 Ibid.

194 Consultation 12 (County Court of Victoria).

195 Consultation 15 (Magistrates' Court of Victoria). A representative stated, 'the judicial officers of the Magistrates' Court serve as the finder of fact and law and will assess the submissions on its proper merits regardless of whether AI has been used'.

196 Justice Peter Quinlan, 'The Impact of Social Media and AI on Public Trust in the Judiciary' (Speech, Global Summit of Hellenic Lawyers, Athens, Hellas, 9 July 2025) 16 <https://www.supremecourt.wa.gov.au/_files/Speeches/2025/The%20Impact%20of%20Social%20Media%20and%20AI%20on%20Public%20Trust%20in%20the%20Judiciary.pdf>.

197 For example, *Supreme Court (General Civil Procedure) Rules 2025* (Vic) r 34.01–02.

198 For example, in *Nikolic & Anor v Nationwide News Pty Ltd & Anor* [2025] VSCA 112 the Supreme Court was unable to find copies of the two decisions relied upon by the plaintiffs, and the Registry asked the plaintiffs for copies of them. This led the court to determine that the cases 'do not exist in the real world. They are most probably 'hallucinations': at [39].

199 See for example, *Dayal* [2024] FedCFamC2F 1166, [21]–[22]; *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95, [37]–[38]; *Handa & Mallick* [2024] FedCFamC2F 957, [10].

200 *Murray on behalf of the Wamba Wamba Native Title Claim Group v State of Victoria* [2025] FCA 731, [16].

201 For example, in *Wang v Moutidis* [2025] VCC 1156, Judge Kirton determined the matter based on the defendant's oral submissions because the written submissions had been prepared with AI and contained errors and irrelevancies: at [14]–[15]. See also examples in *Luck v Secretary, Services Australia* [2025] FCAFC 26, [14]; *Nikolic & Anor v Nationwide News Pty Ltd & Anor* [2025] VSCA 112, [41]; *Invins v KMA Consulting Engineers Pty Ltd & Ors* [2025] QIRC 141, [75]–[79]; *May v Costaras* [2025] NSWCA 178, [49]; *Kaur v RMIT* [2024] VSCA 264, [26] n 19; *Goodchild v State of Queensland (Queensland Health)* [2025] QIRC 46, [39].

202 *LJY v Occupational Therapy Board of Australia* [2025] QCAT 96, [22]–[26]; *Bottrill v Graham & Anor (No 2)* [2025] NSWDC 221, [69]–[77]; *Director of Public Prosecutions v GR* [2025] VSC 490, [78]; *Page v Long* [2025] VCC 868, [19]–[21].

- 7.130 It is recommended that court-issued guidance remind court users that courts and VCAT retain the ability to ask about their use of GenAI in the preparation of materials filed with the courts. Guidance should remind court users that it is important they are able to explain how they have used GenAI to prepare materials for the court if asked.

Recommendation

8. The Supreme Court's guidelines should state that court users can use GenAI in the preparation of submissions but to ensure accuracy court users should:
 - a. fact-check and proofread GenAI content
 - b. edit and adapt GenAI content to suit the situation
 - c. verify references
 - d. use sources known to be accurate
 - e. not use GenAI to verify subsections a to d above.

Using GenAI to prepare affidavits, witness and other statements

- 7.131 GenAI is being used to develop affidavits, character references, witness statements and other written statements.
- 7.132 There are several different forms of written statements which can be used to reflect the evidence and/or opinion of the person in legal proceedings. This includes but is not limited to:
- Affidavits: formal written statements which set out facts known to the person. The statement must be signed under oath or affirmation, which is the person saying that the information is true.²⁰³
 - Witness statements: evidence by witnesses is generally led orally, but can in some instances be in writing, For example when ordered in the Supreme Court Commercial Court.²⁰⁴ Where evidence is given orally, at the hearing, the witness will be required to make an oath, or affirmation, before giving their evidence confirming that they will provide 'the truth, the whole truth and nothing but the truth'.²⁰⁵
 - Character references: a person who has pleaded guilty or been found guilty of an offence may wish to provide a character reference to the court. The person producing the character reference includes information about how they know the person and information about their character.²⁰⁶

²⁰³ *Oaths and Affirmations Act 2018* (Vic) s 27; *Supreme Court (General Civil Procedure) Rules 2025* (Vic) ord 43.01.

²⁰⁴ Supreme Court of Victoria, *Practice Note SC CC1 Commercial Court (Second Revision)* (Practice Note, 26 February 2024) para 6.4 <<http://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cc-1-commercial-court-second-revision>>.

²⁰⁵ *Evidence Act 2008* (Vic) s 21, sch 1.

²⁰⁶ 'Character References', *Magistrates Court of Victoria* (Web Page, 14 August 2024) <<https://www.mcv.vic.gov.au/criminal-matters/sentencing-and-penalties/character-references>>.

- Victim impact statements: if someone has pleaded guilty or is found guilty of a crime, a victim of the crime can choose to tell the court about how the crime has affected them in a victim impact statement.²⁰⁷ There are rules about what can be contained in the statement.²⁰⁸ The person making the victim impact statement must make a statutory declaration or orally swear or affirm their evidence.²⁰⁹
- 7.133 Some of the risks associated with using GenAI in the preparation of affidavits and witness statements include:
- The use of GenAI may lead to confidential and or sensitive information being input into environments that do not maintain the privacy or confidentiality of that information.
 - Statements may be inaccurate and distort the views of the statement maker. This risk is acute for self-represented litigants, whereas lawyers are bound by professional obligations to their client and the court and should not allow clients to sign documents that they have not fully accepted as their own position and language.
 - 'Witnesses may defer to the technology, just as they sometimes defer to their lawyer. Once words or language have been suggested they may infect recollection.'²¹⁰ This may alter or inadvertently shape the evidence.
 - Statements could make people appear more competent than they are. This may prevent courts and lawyers from identifying that a person does not understand information or requires accommodations. This is a serious risk for people who are marginalised or who have a disability.²¹¹
 - 'Normalising the use of AI tools to create witness statements might signal you need perfect witness statements, and then AI is determining what's acceptable and what's not. The significance of witness statements is not just what is said, but how it's being said'.²¹²
- 7.134 We spoke to representatives of the Victorian Advocacy League for Individuals with Disability (VALID), an organisation that works with people with intellectual disabilities. They stated that the use of AI to produce statements may remove an important human element of the justice system. They commented that if AI is used to prepare witness statements for their clients it may:
- dilute the experience of justice and processing trauma. In human interaction, there is a sense of processing and having an experience of social justice if you can go through what happened with somebody and they take your statement. Then that statement is read out in court and you might be able to feel you received justice. If you take that [human] element out, you will have less of a sense of justice. If you make the recorder be AI, something is taken out, and that might remove something from the experience of social justice. Part of therapy is having a say, and writing can be powerful.²¹³
- 7.135 Warnings about the use of GenAI for character references emerged in *Director of Public Prosecutions v Khan*.²¹⁴ Justice Mossop held that little weight could be placed on a character reference from the offender's brother because the reference appeared to be generated by an AI program such as ChatGPT.²¹⁵

207 'Victim Impact Statements', *Victims of Crime* (Web Page, 21 November 2023) <<https://www.victimsofcrime.vic.gov.au/victim-impact-statements>>.

208 *Sentencing Act 1991* (Vic) s 8L.

209 *Ibid* s 8K.

210 Michael Legg, 'Generative AI and Affidavits' (2025) 99(5) *Australian Law Journal* 360, 362.

211 Consultation 24 (Victorian Advocacy League for Individuals with Disability).

212 *Ibid*.

213 *Ibid*.

214 *Director of Public Prosecutions (ACT) v Khan* [2024] ACTSC 19.

215 *Ibid* [39]-[44].

- 7.136 One emerging issue is the use of avatars to present statements or the views of parties. Recently, a US court allowed an AI-generated victim impact statement, with the words of a victim's family read by an avatar of the deceased. Concern was raised that it was potentially manipulative and did not represent the victim's own words.²¹⁶ In another US case, a self-represented litigant was to provide the court with an audiovisual presentation of his submission because he claimed to be suffering an ailment that prevented him from articulating himself.²¹⁷ Instead he created an AI-generated avatar. On realising this, the court stopped the presentation and instructed the litigant to give his argument personally.
- 7.137 These issues have not yet emerged in Australia and are unlikely to be permitted under current rules in Victoria.²¹⁸ This is because the relevant legislation requires the involvement of a 'person'. It is a requirement in Victoria that a victim impact statement is made by a victim—which is described as a person or body that has suffered injury, loss or damage or another person on behalf of a victim under certain circumstances.²¹⁹ A victim may request their statement is read aloud by another person approved by the court.²²⁰ Additionally, the *Evidence Act 2008* (Vic) defines competence and compellability to give evidence in relation to a 'person'.²²¹ The court may rule as inadmissible the whole or any part of a victim impact statement.²²²
- 7.138 However, there are provisions made to support witnesses who may need an interpreter or where the witness is deaf and or mute.²²³ The court may give directions about 'any appropriate' means by which a deaf or mute witness gives evidence.²²⁴ The Judicial College of Victoria has stated that this provision 'provides a wide scope for a court to make directions. Such direction might include the use of augmentative and alternative communication to enhance or replace speech'.²²⁵ This opens the possibility that in future AI may be used to help people who are deaf or mute to give evidence, but it will still need to be the statement of that 'person'. Importantly, under the current provisions, this use can only happen after application to the court to proceed in this way.
- 7.139 There are also opportunities associated with the use of GenAI in the preparation of affidavits and statements by improving:
- efficiency by reducing the time taken to draft affidavits and statements
 - access to justice because AI can be used to assist people to draft a cohesive statement.²²⁶ AI can support people to express themselves with more clarity and assist the court to understand their story. That is somewhat analogous to assistance lawyers provide to clients in helping to draft statements.

216 James D Metzger and Tyrone Kirchengast, 'Why a US Court Allowed a Dead Man to Deliver His Own Victim Impact Statement - via an AI Avatar', *The Conversation* (online, 18 June 2025) <<https://theconversation.com/why-a-us-court-allowed-a-dead-man-to-deliver-his-own-victim-impact-statement-via-an-ai-avatar-259045>>.

217 *Dewald v Massachusetts Mutual Insurance Company* 237 AD3d 562 (2025); A video of the court responding to the AI avatar is available at New York Supreme Court, Appellate Division, First Department, 'March 26, 2025, Appellate Division, First Department Live Stream' (YouTube, 26 March 2025) <<https://www.youtube.com/watch?v=Ctv4ZQRZgbA>> 00:19:23-00:26:40; Thomas Claburn, 'Judge Slams AI Entrepreneur for Having Avatar Testify', *The Register* (online, 9 April 2025) <https://www.theregister.com/2025/04/09/court_scolds_ai_entrepreneur_avatar_testify/>.

218 James D Metzger and Tyrone Kirchengast, 'Why a US Court Allowed a Dead Man to Deliver His Own Victim Impact Statement - via an AI Avatar', *The Conversation* (online, 18 June 2025) <<https://theconversation.com/why-a-us-court-allowed-a-dead-man-to-deliver-his-own-victim-impact-statement-via-an-ai-avatar-259045>>; For example, *Sentencing Act 1991* (Vic) ss 3 (definition of victim), 8K(2).

219 *Sentencing Act 1991* (Vic) s 8K.

220 *Sentencing Act 1991* (Vic) s 8Q.

221 *Evidence Act 2008* (Vic) s 12.

222 *Sentencing Act 1991* (Vic) s 8L(3).

223 *Evidence Act 2008* (Vic) ss 30–31.

224 *Ibid* s 31(3)(b).

225 Judicial College Victoria, *Uniform Evidence Manual* (Online Manual, 6 May 2025) 's31-Deaf and mute witnesses' [6] <<https://resources.judicialcollege.vic.edu.au/article/1053064>> (15 December 2023).

226 Consultation 9 (Victorian Civil and Administrative Tribunal); For example, representatives of VALID stated 'a person who is not able to verbalise could give an AI tool like ChatGPT input to create something': Consultation 24 (Victorian Advocacy League for Individuals with Disability).

- 7.140 In relation to affidavits and witness statements, the Supreme Court's guidelines include the following warning:
- Particular caution needs to be exercised if generative AI tools are used to assist in the preparation of affidavit materials, witness statements or other documents created to represent the evidence or opinion of a witness. The relevant witness should ensure that documents are sworn/affirmed or finalised in a manner that reflects that person's own knowledge and words.²²⁷
- 7.141 Other court jurisdictions have taken a variety of approaches to GenAI use in affidavits and statements.²²⁸ Approaches range from:
- cautioning court users about potential risks²²⁹
 - prohibiting the use of GenAI in the generation of the content of affidavits, witness statements, or other similar materials tendered for cross-examination.²³⁰
- 7.142 NSW has taken a restrictive approach by requiring a disclosure that GenAI was not used in the preparation of these materials.²³¹ To give effect to this requirement, the *Uniform Civil Procedure Rules 2005* (NSW) were amended.²³² NSW has also updated the forms for affidavits and witness statements, which now require the person on oath or affirmation to declare that they have not used GenAI to generate an affidavit,²³³ or witness statement.²³⁴
- 7.143 We heard mixed views about the use of AI for the preparation of affidavits and witness statements. The breadth of views is captured in Table 8.

227 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) para 10 <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

228 At the time of finalising this report, Queensland Courts released updated guidelines to non-lawyers which aligns with the approach taken by the Supreme Court of Victoria to affidavits and witness statements: Queensland Courts, *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers* (Guidelines, 15 September 2025) 2 <https://www.courts.qld.gov.au/_data/assets/pdf_file/0012/798375/Artificial-Intelligence_Guidelines-for-Non-Lawyers.pdf>.

229 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>; Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Lawyers* (Guidelines, 7 December 2023); Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Non-Lawyers* (Guidelines, 7 December 2023); Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar's Circular No 1 of 2024, 1 October 2024) <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>; Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>; *Oaths and Affirmations Act 2018* (Vic) s 27.

230 Caribbean Court of Justice, *Practice Direction No. 1 of 2025: The Use of Generative Artificial Intelligence Tools in Court Proceedings* (Practice Direction, 14 February 2025) 1 <<https://ccj.org/wp-content/uploads/2025/02/PRACTICE-DIRECTION-NO.-1-OF-2025-THE-USE-OF-GENERATIVE-ARTIFICIAL-INTELLIGENCE-TOOLS.pdf>>.

231 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) para 13 <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>.

232 *Uniform Civil Procedure Rules 2005* (NSW) rr 31.4(3A)-(3C) relating to witness statements and r 35.3B relating to affidavits.

233 Department of Communities and Justice (NSW), *Uniform Civil Procedure Rules: Form 40 - Affidavit* (Version 8) [2] <https://ucprforms.nsw.gov.au/documents/pdf/ucpr_form_40_v8.pdf>.

234 Department of Communities and Justice (NSW), *Uniform Civil Procedure Rules: Form 163 - Witness Statement* (Version 3) [2] <https://ucprforms.nsw.gov.au/documents/pdf/ucpr_form_163_v3.pdf>.

Table 8: Stakeholder views on GenAI use in affidavits and statements

Position on use of AI in affidavits, statements etc.	Stakeholder views
No prohibition, disclosure or certification	Supreme Court: 'Certification will not add anything additional given the existing jurat requirements for affidavits. Further, while witness statements are not sworn, the person is required to adopt them when they give evidence ... The preferred approach is to maintain the status quo and not require disclosure/certification for affidavits and statements.' ²³⁵
Court users are required to disclose the use of GenAI	VCAT: 'Our preliminary view is that, for now, all tribunal users must disclose if they use GenAI for any of the three types of documents: submissions, affidavits or evidence.' ²³⁶
Court users are required to certify the accuracy of the document and that it reflects their own voice	County Court: 'Certification could be seen as a better compromise. If the document is certified, [the Court] can see which bits are created with AI and ask how [a party] adopted this as [their] evidence and ask them to tell [the Court] more about that. It provides an invitation to the court to scrutinise that use. Cross-examination is where that use can also be scrutinised.' ²³⁷
Prohibit or limit use of GenAI	Victorian Bar Association: 'safeguards are required to ... prohibit the use of Generative AI in the preparation of affidavits, witness statements, witness outlines, answers to interrogatories and character references. Such documents must reflect only the evidence of the witness or author and should be expressed in the witness' or author's own words, not the words of a large language model or system. The Bar urges for particular caution to be shown in respect of criminal proceedings. For example, the use of AI in the preparation of evidential material such as witness statements ... would pose a serious risk to the integrity and reliability of evidence in criminal proceedings and is opposed by the Bar. Further, such documents should contain a statement certifying that Generative AI has not been used'. ²³⁸

7.144 Some stakeholders raised concerns about the approach taken to affidavits and statements in NSW.²³⁹ A possible rationale for NSW's approach is to address concern that the voice of the person will not be accurately reflected if AI is used in drafting the document. However, we heard that the risk of an affidavit not reflecting the person's voice already exists and is not a risk solely created by the use of GenAI. Representatives from Eastern Community Legal Centre explained:

The same risk is already present in someone else drafting an affidavit. Lawyers currently draft them and then send to the client to confirm. Whether it is a human or AI drafting the document is not the issue. Accuracy is the issue. There is a need for human oversight. Once someone swears an affidavit that is them confirming the accuracy of that document. I do not totally understand NSW's approach, the risk is already present with human drafting.²⁴⁰

235 Consultation 32 (Supreme Court of Victoria).

236 Consultation 9 (Victorian Civil and Administrative Tribunal).

237 Consultation 12 (County Court of Victoria).

238 Submission 23 (Victorian Bar Association).

239 Submission 8 (Damian Curran). Consultations 11 (Law Institute of Victoria), 33 (Law Firms Australia).

240 Consultation 30 (Eastern Community Legal Centre).

- 7.145 This view was echoed by representatives of the Supreme Court:
- The concern that an affidavit or witness statement may not be a genuine reflection of the authors voice is an existing issue that predates AI. A lawyer may draft a statement, and it is written in a way that does not reflect the person's voice. For example, where English is a second language for the person, but the statement is written with overly complicated words they do not understand.²⁴¹
- 7.146 Similar statements were made by representatives of the Federal Circuit and Family Court.²⁴²
- 7.147 Judges have previously raised concerns about the authenticity of written materials and that lawyers may be deliberately or inadvertently altering evidence through the drafting of affidavits.²⁴³
- 7.148 However, Professor Michael Legg has argued that there are important differences between lawyers drafting affidavits compared to GenAI. This is because lawyers are subject to professional obligations of candour and honesty.²⁴⁴
- 7.149 To address concerns about the authenticity of written evidence, some jurisdictions have started to return to oral evidence. For example, in the Supreme Court of Western Australia:
- a procedure whereby written statements constituted the evidence of witnesses in civil cases that had been in place for several years has been replaced with a return to oral evidence. Significantly, that change was a consequence of judicial disquiet about the authenticity of written evidence in which the reliability of written material could no longer be assumed to reflect the words and recollections of witnesses themselves.²⁴⁵
- 7.150 The Chief Justice of Western Australia has commented that:
- an ounce of oral dialogue is worth a pound of written advocacy. The greater *intelligibility* and *immediacy* of oral advocacy, again serves to emphasise the interpersonal nature of the judicial process.²⁴⁶
- 7.151 Several stakeholders viewed existing court processes of swearing or affirming an affidavit as sufficient to address the risk that AI may alter the accuracy or voice of the person. If a person makes a false statement in breach of their oath or affirmation they can be charged with the offence of perjury.²⁴⁷
- 7.152 Additionally, it was noted that cross-examination is where the use of AI in statements of affidavits could be examined.²⁴⁸ It was stated that 'evidentiary flaws are usually explored in cross-examination.'²⁴⁹ Representatives of the Supreme Court stated if the document 'does not reflect the author's view, this will likely be exposed through existing court processes of cross-examination'.²⁵⁰
- 7.153 However, we were told there may be a gap that could be addressed because character references and some other written statements do not require an oath or affirmation about the contents of the document.²⁵¹
- 7.154 To address this gap, a verification requirement could be introduced for written statements and character references. This could take the form of the person declaring that they have verified the accuracy of the document and confirm it represents their views. This approach was supported by Professor Ian Freckelton AO KC who stated:

241 Consultation 32 (Supreme Court of Victoria).

242 Consultation 13 (Federal Circuit and Family Court of Australia).

243 Michael Legg, 'Generative AI and Affidavits' (2025) 99(5) *Australian Law Journal* 360, 361 n 14 citing *Queensland v Masson* (2020) 94 ALJR 785, [112] (Nettle and Gordon JJ); [2020] HCA 28; *Concrete Pty Ltd v Parramatta Design and Developments Pty Ltd* (2006) 229 CLR 577, [175] (Callinan J).

244 Ibid 362.

245 Justice Peter Quinlan, 'The Impact of Social Media and AI on Public Trust in the Judiciary' (Speech, Global Summit of Hellenic Lawyers, Athens, Hellas, 9 July 2025) 14 <https://www.supremecourt.wa.gov.au/_files/Speeches/2025/The%20Impact%20of%20Social%20Media%20and%20AI%20on%20Public%20Trust%20in%20the%20Judiciary.pdf>.

246 Ibid 15 (emphasis in original).

247 *Crimes Act 1958* (Vic) s 314.

248 Consultation 12 (County Court of Victoria).

249 Consultation 19 (Professor Ian Freckelton AO KC).

250 Consultation 32 (Supreme Court of Victoria).

251 Confidential consultation.

It is not a problem to get help generating a document from AI so long as the person in whose name it is written swears to its being their document and takes responsibility for every single word within it ... The person whose name the document is in should always certify the document reflects their view if they have used AI. It would be useful to have a required section, such as a jurat, that might say: 'All the content, memories, statements, reasoning, opinions etc, represent my genuine views and has been written by...'²⁵²

- 7.155 The benefit of this approach is that it would reduce the risk of inaccuracy or the potential distortion of the person's voice.
- 7.156 We consistently heard that disclosure is less meaningful than checking accuracy. For this reason, the verification should not require court users to disclose whether they have used GenAI but that they have checked the accuracy and adopt what is written in the document.
- 7.157 Where a written statement (such as a character reference) does not require a jurat, a statutory declaration oath or affirmation, the document should include a verification from the author as to the accuracy of the statement and that it represents their view.
- 7.158 This direction could be contained in AI guidelines to court users. There may also be future opportunities to explore legislative change to detail the requirements of what is to be contained in character references. For example, the *Sentencing Act 1991 (Vic)* details how a victim impact statement is to be prepared, and that it is to be a statutory declaration and/or given orally by evidence which is sworn or affirmed.²⁵³ A similar requirement could be inserted into the *Sentencing Act 1991 (Vic)* to provide direction on how to prepare a character reference which could include completion of the above verification statement.

Recommendation

9. A person making a witness statement, character reference or similar statement must verify its accuracy and that it represents their view.

Using AI in expert reports

- 7.159 GenAI is being used by some experts to draft or prepare the content of their expert reports. Some experts may also use other forms of AI such as predictive algorithms in the content of their reports.
- 7.160 There is a risk that the use of AI to produce expert reports may:
- distort the opinion of the expert
 - not be fully explicable, for example, the 'black box' problem (given it is necessary for the courts to understand how an expert came to their decision)
 - lead to unfair or discriminatory outcomes (because of underlying bias in the data that an AI system is trained on or because of the use of unrepresentative data)
 - lead to confidential and or sensitive information being placed into sources that are not compliant with privacy requirements.

- 7.161 But the use of AI in the preparation of expert reports also brings opportunities to:
- improve efficiency, by reducing the time taken to draft expert reports
 - enhance processing, summarisation and analysis of large amounts of data to inform content
 - identify patterns and connections in large amounts of data.
- 7.162 Representatives from the Federal Circuit and Family Court noted the potential benefits of experts using AI stating:
- The family law section of the court relies on expert evidence ... Anecdotally, experts in family law are under pressure to do their work quickly and efficiently, similarly to the judiciary. The potential for AI to relieve some of that pressure should not be ignored – but it has to be appropriate use, and it needs to be transparent.²⁵⁴
- 7.163 Currently, the Supreme Court's guidelines warn:
- Particular caution needs to be exercised if generative AI tools are used to assist in the preparation of affidavit materials, witness statements or other documents created to represent the evidence or opinion of a witness. The relevant witness should ensure that documents are sworn/affirmed or finalised in a manner that reflects that person's own knowledge and words. Similar considerations arise in the use and identification of such tools in compiling data in the preparation of any expert reports or opinions, and compliance with the Expert Witness Code of Conduct.²⁵⁵
- 7.164 Courts and tribunals have taken different approaches where AI is used to prepare expert reports. The Federal Court of Canada requires expert witnesses to disclose AI use in their reports.²⁵⁶ In Victoria, this approach has been taken in the recent update to the Practice Note *Expert Evidence in Criminal Trials*.²⁵⁷
- 7.165 In contrast, the approach in NSW prohibits the use of AI in expert reports without prior leave of the court. Where leave is granted, there are requirements about what information is necessary to be included in the report about any AI tool used.²⁵⁸
- 7.166 Some stakeholders noted concerns with the approach taken in NSW for the use of AI in expert reports. Representatives of Law Firms Australia stated:
- The NSW requirement to seek leave to use AI in certain circumstances ... might add a time and cost burden that is not proportionate to the risk of use, provided use is disclosed. Seeking leave in respect of the use of AI for expert reports raises similar considerations, provided the Court is able to assess the appropriate weight to be given to a report.²⁵⁹
- 7.167 In Victoria, the recently amended Practice Note *Expert Evidence in Criminal Trials* includes new validity requirements for scientific, medical or technical reports (as discussed in Chapter 5).²⁶⁰ Relevantly, it now contains specific disclosure requirements relating to the use of AI. The new section 7.4 states:
- Where an expert used artificial intelligence to assist in the generation or expression of the opinion contained in his or her report:
- a) those matters are to be disclosed in the report; and
 - b) the report should identify any possible biases that may affect the content generated by the artificial intelligence tool that was used.²⁶¹

254 Consultation 13 (Federal Circuit and Family Court of Australia).

255 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) para 10 <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

256 Federal Court of Canada, *Notice to Parties and the Profession - The Use of Artificial Intelligence in Court Proceedings* (Notice, 7 May 2024) para 1.

257 Supreme Court of Victoria, *SC CR 3 - Expert Evidence in Criminal Trials* (Practice Note, 1 June 2025) para 7.4 <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-3-expert-evidence-in-criminal-trials>>.

258 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) para 22 <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>.

259 Consultation 33 (Law Firms Australia).

260 Supreme Court of Victoria, *SC CR 3 - Expert Evidence in Criminal Trials* (Practice Note, 1 June 2025) para 6.3 <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-3-expert-evidence-in-criminal-trials>>.

261 *Ibid* para 7.4.

7.168 We heard mixed views about the use of AI in expert reports. The breadth of views is captured in Table 9.

Table 9: Stakeholder views on the use of AI in expert reports

Position on use of AI in expert reports	Stakeholder views
<p>Mandate certification where AI is used in expert reports via the Practice Note <i>Expert evidence in criminal trials</i> and update the <i>Expert Witness Code of Conduct</i></p>	<p>Supreme Court: 'The Court should not prohibit the use of AI by experts. Experts are already using AI across several fields. There is no appetite for experts to have to seek leave to request to use AI ... However, there is value in certification of AI use for expert reports. Experts would be required to state in their evidence where and how AI has been used. This increases transparency. It is necessary to avoid a 'black box' problem where AI is used. A revised expert evidence practice note for civil trials will help to avoid this problem.'²⁶²</p>
	<p>County Court: 'It would be useful for them to certify it is accurate and reflects their views etc. If part of the knowledge expressed in the report is based on the expert exercising supervision of an AI tool, that does add something we may want to know.'²⁶³</p>
	<p>Coroners Court: 'The expert has to tell us they used AI however we define it, but if the expert is relying on it, they should tell us how they use it. If they rely on it to come to their opinion or interpret a CT scan, then I want them to tell me that ... We would probably adopt the practice note [<i>Expert Evidence in Criminal Trials</i>]. My starting position is that we are content to rely on what has been developed by the [Forensic Evidence Working Group] updating the practice note, but otherwise the traditional processes of examining the contents of an expert report shouldn't need to vary simply as a result of the introduction of generative AI tools.'²⁶⁴</p>
	<p>Magistrates' Court: This might be 'better addressed through additions to the Expert Code of Conduct ... then experts can show they have complied with it. Where experts have created parts of the report by using AI, or in forming their opinion, they could identify that use in explaining their opinion. For example, an acknowledgement that they have read all the information to make a determination and to satisfy themselves that they still maintain their opinion.'²⁶⁵</p>
	<p>VCAT: 'If an expert does use AI in the preparation of an expert report, they still must verify that it is correct and true. The reference to the use of AI must include a statement that it is accurate and reflects their knowledge.'²⁶⁶</p>

262 Consultation 32 (Supreme Court of Victoria).
 263 Consultation 12 (County Court of Victoria).
 264 Consultation 2 (Coroners Court of Victoria).
 265 Consultation 15 (Magistrates' Court of Victoria).
 266 Consultation 9 (Victorian Civil and Administrative Tribunal).

Position on use of AI in expert reports	Stakeholder views
Prohibit the use of AI in expert reports unless leave is granted.	Victorian Bar Association: 'safeguards are required to prohibit the use of Generative AI in the preparation of expert reports without leave of the Court or Tribunal. Expert reports must reflect the enquiries, reasoning and opinions of the expert, expressed in the expert's own words. Where the use of Generative AI may be justified in the work of an expert, leave of the Court or Tribunal should be able to be sought. Expert witness codes of conduct should be amended to reflect a prohibition on the use of Generative AI by experts.' ²⁶⁷

- 7.169 Many stakeholders rejected prohibiting the use of AI and GenAI by experts. Representatives of the Supreme Court stated that 'the Court should not prohibit the use of AI by experts.'²⁶⁸ Representatives from VCAT stated that 'it is arguable that it goes too far to say they cannot use GenAI at all'.²⁶⁹
- 7.170 As discussed in Chapter 2, some experts are already using AI in their practice and use will continue to increase. This includes use in writing and drafting reports but also in the analysis of information relevant to their opinion.
- 7.171 We heard that disclosure is not always as helpful as knowing that the content of an expert report accurately reflects the expert's view. Professor Ian Freckelton AO KC stated:
- The key thing is that judges receive good products in terms of expert evidence, that they can rely on. It does not really matter if an expert report was written with a quill, a proofreader or with AI, so long as it represents the considered view of the expert. The key is whether the case findings are reliable ... it is still a judge's responsibility to weigh up everything they have. Knowing whether AI has been used or not doesn't take judicial officers far, save that it may prompt scrutiny during a hearing as to whether it is genuinely the view of the author and whether its bases are sound and its reasoning is sound.²⁷⁰
- 7.172 Representatives of the County Court stated that not every use of AI by an expert would be necessary to disclose. They did not see value in disclosing the use of AI to draft an expert report where that use was limited to predictive text or grammar tools.²⁷¹ But they were interested in experts disclosing where they had relied on AI to form the basis of their opinion:
- Perhaps disclosure comes in when AI is used to identify, describe, develop or analyse data or form the basis for the opinion that needs to be disclosed ... [I am] ... interested in when AI may be used for formulating or analysing information that formed part of the basis of the opinion.²⁷²
- 7.173 The Supreme Court's amended Practice Note *Expert Evidence in Criminal Trials* has created a disclosure requirement where AI is used to 'assist in the generation or expression of the opinion.'²⁷³ The Practice Note does not define AI or distinguish between AI and GenAI. This phrasing may capture use of AI to form an opinion and GenAI used more generally to draft an expert report.

267 Submission 23 (Victorian Bar Association).
 268 Consultation 32 (Supreme Court of Victoria).
 269 Consultation 9 (Victorian Civil and Administrative Tribunal).
 270 Consultation 19 (Professor Ian Freckelton AO KC).
 271 Consultation 12 (County Court of Victoria).
 272 Ibid.
 273 Supreme Court of Victoria, *SC CR 3 - Expert Evidence in Criminal Trials* (Practice Note, 1 June 2025) para 7.4 <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-3-expert-evidence-in-criminal-trials>>.

- 7.174 It is not clear if the Practice Note was intended to capture GenAI tools like spell check or formatting assistants which could be used in 'expressing' an opinion. There is also a requirement for experts to identify 'any possible biases that may affect the content' generated by AI.²⁷⁴
- 7.175 The Practice Note prescribes that the expert report must describe if and how the method used in forming the opinion has been validated.²⁷⁵ The benefits of the new validity requirements are discussed in Chapter 5. In summary the validity requirements seem to address the courts' concerns for experts to describe the method they have relied on to form the opinion and the process by which that method has been validated.²⁷⁶
- 7.176 The amended Practice Note will likely help parties and courts understand how AI has been used. It is likely to provide benefits in addressing transparency and bias. It will be necessary to monitor how it is applied over time. It may need refinement in future to avoid over disclosure of GenAI grammar and spelling tools.
- 7.177 The Supreme Court's amended Practice Note has been approved by the County Court.²⁷⁷ Representatives from the Coroners Court indicated they were considering adopting the Supreme Court's amended Practice Note.²⁷⁸
- 7.178 As discussed above, VCAT is developing its own guidelines to tribunal users that is likely to include a requirement for experts to disclose if AI has been used in expert reports.²⁷⁹
- 7.179 It may be valuable for Victoria's other courts and VCAT to consider adopting the direction on AI for expert reports contained in the Supreme Court's amended Practice Note.
- 7.180 We also heard from representatives of the Supreme Court that it may be valuable to consider adopting a similar approach in the civil law context, for example by updating the *Expert Witness Code of Conduct*.²⁸⁰ We note that in relation to civil law matters experts are already bound to comply with overarching obligations in the *Civil Procedure Act 2020* (Vic).²⁸¹ The Commission recommends that the Expert Witness Code of Conduct applicable in civil trials should be updated to align with the Practice Note *Expert Evidence in Criminal Trials* in relation to the use of AI by experts.
- 7.181 Requiring disclosure and introducing validity requirements relating to the use of AI for expert opinions will support transparency, accountability and contestability of expert evidence.
- 7.182 The Supreme Court guidelines to court users on AI should refer to the obligations relating to the disclosure of AI in expert reports in the Practice Note *Expert Evidence in Criminal Trials*.²⁸²

274 Ibid para 7.4(b).

275 Ibid para 6.3(a).

276 Ibid.

277 Ibid para 1.3.

278 Consultation 2 (Coroners Court of Victoria).

279 Consultation 9 (Victorian Civil and Administrative Tribunal).

280 Consultation 32 (Supreme Court of Victoria); *Supreme Court (General Civil Procedure) Rules 2025* (Vic) Form 44A.

281 *Civil Procedure Act 2010* (Vic) s 10(3).

282 Supreme Court of Victoria, *SC CR 3 - Expert Evidence in Criminal Trials* (Practice Note, 1 June 2025) para 7.4 <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-3-expert-evidence-in-criminal-trials>>.

Recommendations

10. The *Expert Witness Code of Conduct* applicable in civil trials should be updated to align with the Practice Note *Expert Evidence in Criminal Trials* in relation to the use of AI by experts.
11. The Supreme Court guidelines should refer to obligations for the use of AI by expert witnesses contained in the:
 - a. Practice Note *Expert Evidence in Criminal Trials* and
 - b. *Expert Witness Code of Conduct* (once updated as per recommendation 10).

Example of updated Supreme Court guidelines

7183 The section below provides an example for how the different elements of guidelines discussed in this chapter could fit together in an updated version of the Supreme Court guidelines.

Example guidelines for court/tribunal users on the safe use of artificial intelligence

Introduction

- 1 These guidelines for the use of AI in court/tribunal proceedings have been developed to assist court/tribunal users, which includes lawyers, litigants (whether represented or not) and witnesses (lay and expert).
- 2 These guidelines apply to civil and criminal proceedings.

Definitions

- 3 **Artificial intelligence (AI):** A machine-based system that, for explicit or implicit objectives, infers from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment. AI is an umbrella term that captures the following:
 - a) **Generative AI (GenAI):** Software systems that generate content as text, images, music, audio and videos, based on a user's prompts.
 - b) **Public AI:** AI tools that are openly accessible to the public, typically via the internet. Public AI tools are trained on broad, often public datasets, most commonly for general purpose use.
 - c) **Closed AI:** The phrase 'closed AI' is defined in contrast to public AI. Closed AI tools are generally not openly accessible to the public and information used in closed AI tools remain within a controlled environment. When an AI tool is 'closed' there are controls to reduce risks related to privacy or confidentiality settings that protect information from being made publicly available or used to train the AI tool.

Principles

- 4 The following principles are intended to guide the use of AI in documents submitted to the court/tribunal.

Principle 1: Access to justice

- 5 The court/tribunal recognises that AI use can enhance access to justice and court users' participation in court processes. However, there are limitations and risks court users need to be aware of before using AI which are set out in these guidelines.
- 6 The use of AI tools by court/tribunal users is permitted provided these guidelines are complied with.

Principle 2: Impartiality and Fairness

- 7 AI can produce outputs that are biased and misleading. This is because it:
 - a) produces responses based on the dataset it was trained on. This means the responses it generates will reflect any biases (cultural or ethical) or geographical information or misinformation in the training data.
 - b) produces responses based on a statistical prediction of what the most likely combination of words are. It does not have an ability to critically examine the patterns it identifies in data. This can result in it drawing inaccurate or biased conclusions.
- 8 Users of AI should seek to understand the limitations of AI tools and take reasonable steps to minimise and avoid reinforcing or perpetuating discriminatory or biased applications and outcomes.

Principle 3: Accountability and independence

- 9 Users of AI remain fully responsible for the content in all documents submitted to the court/tribunal.
- 10 Court users should be aware that the outputs of AI can be inaccurate or incorrect. Court users must personally verify any AI output and confirm it is not:
 - a) Out of date: the model used may only have been trained on data to a certain point in time and therefore will be unaware of any more recent jurisprudence or other developments in the law that may be relevant to a case.
 - b) Incomplete: the tool may not generate material addressing all arguments that a party is required to make or all issues that would be in a party's interests to cover, and summaries generated by such tools may not contain all relevant points.
 - c) Inaccurate or incorrect: the tool may not produce factually or legally correct output (for example in some situations, users have been adversely affected by placing reliance on made-up cases, legislation or incorrect legal propositions).
 - d) Inapplicable to the jurisdiction: as the data used to train the underlying model might be drawn from other jurisdictions with different substantive laws and procedural requirements.
- 11 Lawyers should be aware that they have existing duties to act with competence and diligence, and to provide independent advice. This means that irrespective of the AI tools used, lawyers must exercise oversight and verify the accuracy and suitability of the information provided by any AI system.
- 12 Lawyers should also be aware that if they rely on unverified AI outputs in material submitted to courts and tribunals they may be referred to the Victorian Legal Services Board and Commissioner and/or ordered to pay costs to the other side.

Principle 4: Privacy and data security

- 13 Users should understand that there are privacy and data risks associated with using AI.
- 14 Users should be aware that some AI tools retain the information you input and can use it to train the AI system and to respond to queries from other users.

- 15 Users should be aware that data contained in AI training datasets may have been obtained in breach of copyright.
- 16 For **public AI** tools:
- a) Be aware that any information you enter into a public AI tool could become publicly available.
 - b) Users should not enter any information which is confidential or sensitive (including information subject to a non-publication or suppression order) into public AI tools. If using public AI tools, users should make sure inputs are appropriately anonymised and generalised.
 - c) Lawyers should not enter confidential, sensitive or privileged client information into public AI tools. Lawyers must comply with their obligations to maintain client confidentiality.
- 17 For **closed AI** tools:
- a) If users input private, confidential or sensitive information into closed AI tools they need to exercise caution and satisfy themselves by reviewing the contractual terms or privacy and confidentiality settings that the information they input will be kept within a secure environment and not made public or used to train the AI program.

Principle 5: Transparency and open justice

- 18 The use of AI by court users must not indirectly mislead another participant in the litigation process or the court/tribunal about the nature of any work undertaken or the content produced by that program.
- 19 The use of AI by lawyers to assist in the completion of legal tasks must be subject to the obligations of lawyers in the conduct of litigation. This includes the obligation of candour to the Court and, where applicable, to obligations imposed by the *Civil Procedure Act 2010*, by which lawyers and litigants represent that documents and submissions have a proper basis.

Principle 6: Contestability and procedural fairness

- 20 Courts/tribunals may give directions to court users to provide further information about documents they have produced with the assistance of AI.
- 21 Court users must be prepared to identify the specific portions of the documents which were produced with AI and be able explain how the output was verified.

Principle 7: Efficiency and effectiveness

- 22 Users may find that using AI can save significant time and resources in several tasks. But AI outputs can be inaccurate. Users should factor in appropriate time to verify outputs.

Principle 8: Human oversight and monitoring

- 23 Any content produced using AI must be verified with meaningful human control.

Submissions

- 24 To ensure accuracy in submissions submitted to the court/tribunal, for any GenAI content court users should:
- a) Fact-check and proofread
 - b) Edit and adapt the content to suit the situation.
 - c) Verify that any references to case law, legislation, textbooks or articles provided as AI content have been verified to ensure that they exist and stand for the legal positions attributed to them. If the AI content includes extracts or quotes these must be verified as accurate and attributed to the correct source.
 - d) Note that when checking the materials referred to in (c), use a source that is known to have accurate content. For self-represented litigants this includes AustLII <https://www.austlii.edu.au/> for case law and Victorian legislation <https://www.legislation.vic.gov.au/> for legislation.
 - e) Note that it is not sufficient verification to ask an AI tool for confirmation that the materials exist or contain the content that the GenAI content says it does. To be clear, one AI tool cannot be used to confirm the content generated from another AI tool.

Affidavits and written statements

- 25 Particular caution needs to be exercised if GenAI tools are used to assist in the preparation of affidavit materials, witness statements or other documents created to represent the evidence or opinion of a witness.
- 26 The relevant person should ensure that documents are sworn/affirmed or finalised in a manner that reflects that person's own knowledge and words.
- 27 To ensure written statements are accurate and contain and reflect a person's own knowledge, where a jurat is not already required, the person whose statement it is must verify at the end of the document that they have read the contents of the statement and the documents referred to in it and that it is an accurate and true representation.

Expert reports

- 28 Particular caution needs to be exercised if AI is used to assist in the generation or expression of an opinion contained in an expert report.
- 29 Expert reports must be prepared in compliance with the *Expert Witness Code of Conduct* and the Practice Note *Expert Evidence in Criminal Trials* which contains directions to disclose the use of AI as per section 7.4.

CHAPTER
08

Judicial officer guidelines to support the safe use of AI

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8. Judicial officer guidelines to support the safe use of AI

Overview

- Guidelines can be used to support judicial officers to safely use AI in Victoria's courts and VCAT.
- In Victoria, there is no court-issued guidance to judicial officers on the use of AI.
- Approaches by comparable jurisdictions suggest there is value in developing court-issued AI guidelines for judicial officers.
- Judicial officer guidelines should be developed in Victoria to promote the safe use of AI and assist in the maintenance of trust and confidence in the courts and VCAT.
- Guidelines for Victorian judicial officers should prohibit the use of AI for judicial decision-making. This prohibition should not encompass supportive uses of AI.

AI guidelines for Victorian judicial officers

- 8.1 Our terms of reference ask us to consider how to guide the safe use of AI in Victoria's courts and VCAT.
- 8.2 As discussed in Chapter 4, the development of guidelines can provide a flexible way to ensure the safe use of AI. In Chapter 7 we discussed how guidelines can support the safe use of AI by court users. This chapter focuses on how AI guidelines can be used to support judicial officers.
- 8.3 There is limited information and direction for judicial officers in Victoria on the use of AI.
- 8.4 The Supreme Court released AI guidelines for litigants, which contain a brief statement about the use of AI by judicial officers.¹ As outlined in Chapter 7, the County Court adopted these guidelines.² However, it has not been adopted by other Victorian courts at this stage. VCAT is developing its own guidelines for tribunal members. This work is still underway.³
- 8.5 The Supreme Court guidelines state:
- AI is not presently used for decision making nor used to develop or prepare reasons for decision because it does not engage in a reasoning process nor a process specific to the circumstance before the court.⁴

1 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>.

2 County Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 3 July 2024).
3 Consultation 9 (Victorian Civil and Administrative Tribunal).

4 Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 6 May 2024) para 12 <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-practice-use-of-ai-in-litigation>>; County Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (Guidelines, 3 July 2024) para 12.

- 8.6 The guidelines also refer to the Australasian Institute for Judicial Administration's *AI Decision Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* which is discussed below, from paragraph [8.23].⁵ This guide highlights that AI use should be consistent with core judicial values.
- 8.7 While Victoria's courts and VCAT are at early stages of considering AI, there are examples of AI uses across courts and tribunals. This includes access to publicly available AI tools (see Chapter 3).
- 8.8 Developing guidelines for judicial officers may assist them to understand the risks and limitations of AI when used by court users. Guidelines would also help judicial officers understand how they can use AI in their own work in a way that aligns with core judicial values. These guidelines could then be reinforced through dedicated judicial training, as discussed in Chapter 10.

Stakeholder views on AI guidelines for judicial officers

- 8.9 We heard mixed views about the need for AI guidelines for judicial officers. The scope of views from our consultations is demonstrated in Table 10.

Table 10: Stakeholder views on the need for judicial guidelines on AI

Position	Stakeholder views
Support for judicial officer guidelines	<p>VCAT: VCAT is developing guidance for tribunal members in the form of a presidential direction.⁶</p> <p>Human Rights Law Centre: 'Clear, precise and accessible guidelines must be produced for the ethical and responsible use of AI systems in Victorian courts, tailored to the judiciary's specific needs and aligned with the Charter. These guidelines should be publicly available.'⁷</p> <p>Law Institute of Victoria: Guidelines should be developed for 'Victorian courts and tribunals, including administrative staff, the judiciary and tribunal members, relating to the use of AI'.⁸</p> <p>Centre for the Future of the Legal Profession and UNSW Law and Justice: 'where courts are issuing guidelines or rules for litigants and lawyers concerning the use of AI, adapted guidelines should also apply to judicial officers.'⁹</p>
Judicial officer guidelines may be unnecessary	<p>Supreme Court: 'The Court has not issued any guidelines to judicial officers on the use of AI. There are currently no plans to issue any such guidelines ... However, it is recognised that a cautious approach is required to the use of AI in relation to judicial functions. The Court anticipates that many of the issues will be dealt with on a case-by-case basis by reference to procedural fairness and other fundamental common law principles.'¹⁰</p> <p>Magistrates' Court: 'agrees with the sentiments raised by the Supreme Court'.¹¹</p>

5 Felicity Bell et al, *AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* (Report, Australasian Institute of Judicial Administration, December 2023) 43.

6 Consultation 9 (Victorian Civil and Administrative Tribunal).

7 Submission 15 (Human Rights Law Centre).

8 Submission 16 (Law Institute Victoria).

9 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

10 Submission 26 (Supreme Court of Victoria).

11 Consultation 15 (Magistrates' Court of Victoria).

8.10 Stakeholders supported the development of guidelines for judicial officers on the use of AI to enable transparency and to maintain public trust in the justice system. The UN Special Rapporteur on the independence of judges and lawyers stated that judges are concerned that AI:

could undermine public trust in justice systems by introducing errors, hallucinations and biases by exposing or monetizing private data, or by subverting the right to a trial by a human judge.¹²

8.11 To respond to these concerns, many jurisdictions have released publicly available judicial guidelines on the use of AI.¹³ The Courts and Tribunals Judiciary in England and Wales explained that they chose to publish judicial AI guidelines online to 'promote transparency, open justice and public confidence'.¹⁴

8.12 Developing publicly available guidelines for judicial officers on AI will help to build and maintain public confidence. Clearly communicating the circumstances in which AI may be used by judicial officers will help to promote public trust about AI use in courts. This is important because there is currently a high level of distrust toward AI systems in Australia (discussed further in Chapter 9).¹⁵

8.13 Guidelines can also serve an educative role to raise awareness among judicial officers about the risks and limitations of AI use in courts and tribunals. Professor Tania Sourdin argues that it is critical for judges to acquire knowledge and understanding about AI and to consider the implications of its use in the justice system.¹⁶ The Canadian Judicial Council emphasises that:

The adoption of AI cannot be a passive or reactive process. Some forms of AI are already embedded in everyday judicial applications for tasks such as translation, grammar checking, speech recognition and legal research. As generative AI becomes more prevalent, it becomes imperative that judges appreciate the implications, limitations, evolving risks, and mitigation strategies associated with its use.¹⁷

8.14 Greater awareness and education for judicial officers is important to ensure the safe use of AI in Victoria's courts and VCAT. We discuss opportunities for judicial training and education in Chapter 10.

8.15 In NSW, the Chief Justice of the Supreme Court released judicial guidelines that apply to all judges in NSW (discussed at paragraph [8.20]).¹⁸ Based on these guidelines, the President of NSW's Civil and Administrative Tribunal released guidelines for tribunal members.¹⁹

8.16 As discussed in Chapter 7, there is a strong desire among stakeholders for AI guidelines to be consistent across Victoria's courts and VCAT.

8.17 It is recommended that the Chief Justice of the Supreme Court, in consultation with Victorian heads of jurisdiction, develop publicly available judicial AI guidelines that will apply to all judicial officers in Victoria. The President of VCAT should also release aligned guidelines for VCAT members.

8.18 This chapter goes on to discuss some useful elements that could be contained in guidelines for Victorian judicial officers.

12 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 19 <<https://docs.un.org/en/A/80/169>>.

13 Ibid 6.

14 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 3 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

15 Nicole Gillespie et al, *Trust, Attitudes and Use of Artificial Intelligence: A Global Study 2025* (Report, The University of Melbourne and KPMG International, 2025) 28 <<https://doi.org/10.26188/28822919>>.

16 Tania Sourdin, *Judges, Technology and Artificial Intelligence: The Artificial Judge* (Edward Elgar Publishing, 2021) 295.

17 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 5 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

18 Supreme Court of New South Wales, *Guidelines for New South Wales Judges in Respect of Use of Generative AI* (Guidelines, 21 November 2024) <https://supremecourt.nsw.gov.au/documents/About-the-Court/policies/Guidelines_Gen_AI.pdf>.

19 NSW Civil and Administrative Tribunal (NCAT), *Guidelines for NCAT Members in Respect of Use of Generative Artificial Intelligence (Gen AI)* (Guidelines, 7 March 2025) <<https://ncat.nsw.gov.au/documents/policies/member-guidelines-generative-ai.pdf>>.

Recommendation

12. The Chief Justice of Victoria, in consultation with Victorian Heads of Jurisdiction, should consider developing public guidelines for all judicial officers in Victoria to support public trust in the administration of justice and inform the safe use and understanding of AI. Based on these, the President of VCAT should release guidelines for tribunal members.

Current interjurisdictional AI guidance for judicial officers

- 8.19 Our terms of reference ask us to consider how AI is regulated in comparable jurisdictions to identify potential learnings for Victoria. In the following section, we discuss features of AI guidance that has been issued to judicial officers in other Australian jurisdictions as well as internationally.

Interstate court-issued AI guidelines for judicial officers

- 8.20 In November 2024, the Chief Justice of NSW released *Guidelines for New South Wales Judges in Respect of Use of Generative AI*.²⁰ The judicial guidelines apply to all courts in NSW. In summary they:
- prohibit judges from using GenAI in the formulation of reasons for judgment or the assessment or analysing of evidence preparatory to the delivery of reasons for judgment
 - prohibit the use of GenAI for editing or proofing judgments
 - list the limitations of GenAI if used for secondary legal research or any other purposes
 - direct that any GenAI research should be verified
 - direct that judges should require associates, tipstaff or researchers to disclose when they are using GenAI
 - indicate judges may require court users to disclose any use of GenAI and require assurances about that use and compliance with the Practice Note SC Gen 23 (see Chapter 7).²¹
- 8.21 The NSW Civil and Administrative Tribunal also released *Guidelines for NCAT Members in respect of use of Generative Artificial Intelligence (Gen AI)* based on the guidelines issued by the Chief Justice of NSW.²²
- 8.22 Guidelines to judicial officers on the use of GenAI have also been released by Queensland Courts.²³

20 Supreme Court of New South Wales, *Guidelines for New South Wales Judges in Respect of Use of Generative AI* (Guidelines, 21 November 2024) <https://supremecourt.nsw.gov.au/documents/About-the-Court/policies/Guidelines_Gen_AI.pdf>.

21 Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23 Use of Generative Artificial Intelligence (Gen AI)* (Practice Note, 28 January 2025) <https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf>.

22 NSW Civil and Administrative Tribunal (NCAT), *Guidelines for NCAT Members in Respect of Use of Generative Artificial Intelligence (Gen AI)* (Guidelines, 7 March 2025) <<https://ncat.nsw.gov.au/documents/policies/member-guidelines-generative-ai.pdf>>.

23 At the time of finalising this report, Queensland Courts published the following guidelines: Queensland Courts, *The Use of Generative AI Guidelines for Judicial Officers* (Guidelines, 15 September 2025) <https://www.courts.qld.gov.au/__data/assets/pdf_file/0009/879714/the-use-of-generative-ai-guidelines-for-judicial-officers.pdf>.

Other guidance for Australian judicial officers

- 8.23 The Australasian Institute for Judicial Administration released the *AI Decision Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* in 2022, which was updated in December 2023.²⁴ This guide was developed to support judges, tribunal members and court administrators in the Asia-Pacific region when considering the use of AI in the courtroom.
- 8.24 It is the first guide to consider in detail the challenges and opportunities created by AI in Australian courts and tribunals. It looks at legislation, case law and policies at that time from around the world.
- 8.25 The guide considers how AI tools can impact core judicial values.²⁵ It covers AI concepts, uses, benefits and risks. The guide also contains a list of questions designed to prompt courts and tribunals to consider how the use of AI may interact with core judicial values.
- 8.26 In addition, the Australasian Institute of Judicial Administration produced the *Guide to Judicial Conduct* which has been adopted by the Council of Chief Justices of Australia and New Zealand.²⁶ It has also been adopted by the Judicial Commission of Victoria.²⁷
- 8.27 The *Guide to Judicial Conduct* is not focused on AI. However, it aims to provide 'principled and practical guidance to judges.'²⁸ The guide is not a binding code with prescriptive rules, but a publicly available document which sets out principles and standards of conduct appropriate to the judicial office.²⁹
- 8.28 A review of the *Guide to Judicial Conduct* is underway, led by former High Court judge the Honourable Virginia Bell AC, who is supported by a committee and working group.³⁰
- 8.29 We understand that the revised *Guide to Judicial Conduct* will provide advice relating to the use of GenAI by judges and their staff. This review presents a timely opportunity to raise awareness about the capabilities and limitations of GenAI tools amongst judges and their staff. The revised guide provides an opportunity to set consistent expectations for Australian judges and their staff who choose to use GenAI. Given the rapidly evolving nature of GenAI, it will be important for the guide to be regularly reviewed and updated to ensure the currency of advice.

International guidelines on the use of AI by judicial officers

- 8.30 There are different international approaches to judicial guidelines on the use of AI. Guidelines have been issued by courts, as well as by professional bodies. Assessing international judicial guidance can help to identify how best to support the development of guidelines for judicial officers in Victoria.

24 Felicity Bell et al, *AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* (Report, Australasian Institute of Judicial Administration, December 2023).

25 Ibid 43.

26 Australian Institute of Judicial Administration (AIJA), *Guide to Judicial Conduct, Third Edition (Revised)* (Guide, December 2023) <https://aija.org.au/wp-content/uploads/2024/04/Judicial-Conduct-guide_revised-Dec-2023-formatting-edits-applied.pdf>.

27 'Guidelines', *Judicial Commission of Victoria* (Web Page, 2024) <<https://www.judicialcommission.vic.gov.au/professional-guidelines/#1b7b6041-c7ff-40cf-8e88-be4ef341c912>>; Note s 134 of the *Judicial Commission of Victoria Act 2016* (Vic) provides that the Judicial Commission may make guidelines about the standards of ethical and professional conduct expected of judicial officers and non-judicial members of VCAT.

28 Australian Institute of Judicial Administration (AIJA), *Guide to Judicial Conduct, Third Edition (Revised)* (Guide, December 2023) ix <https://aija.org.au/wp-content/uploads/2024/04/Judicial-Conduct-guide_revised-Dec-2023-formatting-edits-applied.pdf>.

29 Ibid 2.

30 Michael Pelly, 'An Interview with Chief Justice Gageler', *Westlaw Updates & Alerts* (Web Page, 8 July 2025) 4 <<https://support.thomsonreuters.com.au/product/westlaw-precision-australia/updates-alerts/interview-chief-justice-gageler>>.

8.31 Examples of international AI guidelines for judicial officers include those issued in:

- Brazil³¹
- Canada³²
- Colombia³³
- England and Wales³⁴
- Hong Kong³⁵
- India (Kerala)³⁶
- New Zealand³⁷
- South Korea³⁸
- The Vatican³⁹
- United States (US) (state-based guidelines including for Arizona, California, Delaware, Illinois, Nevada, Maryland, South Carolina and Utah, Virginia, Washington).⁴⁰

8.32 For further information on the guidelines see Appendix C.

- 31 'Brazilian National Council of Justice Approves New Regulation for the Use of Artificial Intelligence by the Judiciary', *Instituto Dannemann Siemsen* (Web Page, 6 March 2025) <<https://ids.org.br/en/news-post/brazilian-national-council-of-justice-approves-new-regulation-for-the-use-of-artificial-intelligence-by-the-judiciary/>>; National Council of Justice (Brazil) (CNJ), *RESOLUÇÃO No 615, DE 11 DE MARÇO DE 2025. Estabelece Diretrizes Para o Desenvolvimento, Utilização e Governança de Soluções Desenvolvidas Com Recursos de Inteligência Artificial No Poder Judiciário* [Resolution No. 615, of March 11, 2025. Establishes Guidelines for the Development, Use, and Governance of Solutions Developed with Artificial Intelligence Resources in the Judiciary (English Translation)] (No 615/2025, 11 March 2025) <<https://rm.coe.int/resolucao-cnj-615-ia/1680b51b65>>.
- 32 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>; 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>; Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-LLA-par-les-tribunaux-eng.pdf>>.
- 33 'Justice Meets Innovation: Colombia's Groundbreaking AI Guidelines for Courts', *UNESCO* (Web Page, 1 April 2025) <<https://www.unesco.org/en/articles/justice-meets-innovation-colombias-groundbreaking-ai-guidelines-courts>>; Superior Council of the Judiciary, Republic of Colombia, *Acuerdo PCSJA24-12243 DE 2024: Por El Cual Se Adoptan Lineamientos Para El Uso y Aprovechamiento Respetuoso, Responsable, Seguro y Ético de La Inteligencia Artificial En La Rama Judicial* [Agreement PCSJA24-12243 of 2024: By Which Guidelines Are Adopted for the Respectful, Responsible, Safe and Ethical Use and Exploitation of Artificial Intelligence in the Judicial Branch (English Translation)] (16 December 2024) <<https://actosadministrativos.ramajudicial.gov.co/web/Acto%20Administrativo/Default.aspx?ID=19280>>.
- 34 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.
- 35 Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024).
- 36 'AI Tools Not for Decision Making: Kerala HC Guidelines to District Judiciary on AI Usage', *The Economic Times* (online, 20 July 2025) <<https://economictimes.indiatimes.com/tech/artificial-intelligence/ai-tools-not-for-decision-making-kerala-hc-guidelines-to-district-judiciary-on-ai-usage/articleshow/122794562.cms?from=mdr>>.
- 37 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (Guidelines, 7 December 2023) <<https://www.courtsofnewzealand.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf>>.
- 38 Bae Kim & Lee LLC et al, 'Announcement of Guidelines on Use of Artificial Intelligence in Judiciary', *Lexology* (Web Page, 19 March 2025) <<https://www.lexology.com/library/detail.aspx?g=3de965db-8c9c-4938-af8c-5e4bc09c02dc>>.
- 39 Eleonora Rosati, 'New Vatican AI Guidelines for the Development and Use of AI Models: From AI Training to Vatican's Authorship and Ownership of AI-Generated Outputs (at Least within the Vatican City State)', *The IPKat* (Web Page, 25 January 2025) <<https://ipkitten.blogspot.com/2025/01/new-vatican-ai-guidelines-for.html>>; The Pontifical Commission for the State of the Vatican City, *Decreto Della Pontificia Commissione per Lo Stato Della Città Del Vaticano Recante "Linee Guida in Materia Di Intelligenza Artificiale"* [Decree of the Pontifical Commission for the Vatican City State Containing 'Guidelines on Artificial Intelligence' (English Translation)] (Decree No N. DCCII, 16 December 2024) <<https://www.vaticanstate.va/images/N.%20DCCII.pdf>>.
- 40 Arizona Supreme Court Judicial Branch, *Arizona Code of Judicial Administration* (Code of Practice, 29 January 2025) 'Section 1-509: Use of Generative Artificial Intelligence Technology and Large Language Models' <https://www.azcourts.gov/Portals/0/0/admcode/pdfcurrentcode/1-509%20Use%20of%20AI%20Tech%20and%20LLMs%2001_2025.pdf?ver=acMF-P2SER0dArZTQohBj0%3d%3d>; Board for Judicial Administration and Washington Courts, *BJA AI Statement of Principles* (Report, 21 January 2025); Delaware Courts, Judicial Branch, *Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel* (Interim Policy, 22 October 2024) <<https://www.courts.delaware.gov/forms/download.aspx?id=266838>>; Judicial Council of California, Artificial Intelligence Task Force, *Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work* (Report to the Judicial Council No 25-109, 16 June 2025) <<https://jcc.legistar.com/View.ashx?M=F&ID=14303119&GUID=0C94642A-28D3-47CO-8AE9-1E4DE3A96DFC>>; Judicial Council, Utah, *Interim Rules on the Use of Generative AI* (Interim Rules, 25 October 2023) <<https://nationalcenterforstatecourts.app.box.com/s/px0vzpzg6n42ng10i4lya4a0mwjqqq>>; Maryland Judiciary, *Guidelines for the Acceptable Use of Artificial Intelligence (AI) Tools and Platforms* (Guidelines, 15 April 2024); Nevada Courts, *Artificial Intelligence: A Guide for Judicial Officers* (Guide, February 2025) <https://nvcourts.gov/_data/assets/pdf_file/0028/46693/AI_Guide_for_JudicialOfficers.pdf>; Supreme Court of Illinois, *Supreme Court Policy on Artificial Intelligence: Judicial Reference Sheet* (Reference Sheet, 1 January 2025) <<https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/cb3d6da3-66c7-469d-97f3-41568bdeee8c/ISC%20AI%20Policy%20Bench%20Card.pdf>>; The Supreme Court of South Carolina, *Interim Policy on the Use of Generative Artificial Intelligence* (Policy, 25 March 2025) <<https://www.sccourts.org/media/courtOrders/PDFs/2025-03-25-01.pdf>>.

- 8.33 Generally, judicial guidelines include information about what AI is, and limitations and risks associated with its use. Most guidelines permit judicial uses of AI with various limitations. While permitted uses vary across jurisdictions, common themes include:
- prohibiting delegation of judicial decision-making to AI
 - direction as to whether judicial officers are required to disclose their use of AI
 - restrictions on inputting sensitive or personal information into public GenAI tools.

No delegation of judicial decision-making to AI

- 8.34 International judicial guidelines commonly include a prohibition against the delegation of judicial decision-making to AI. The way this prohibition is phrased varies but generally focuses on ensuring any use of AI does not interfere with judicial independence.
- 8.35 Several guidelines make it clear that judicial officers remain accountable and responsible for their decisions irrespective of the technology used. Table 11 contains extracts from international judicial guidelines that prohibit the use of AI for judicial decision-making.

Table 11: International AI judicial guidelines that prevent delegation of judicial decision-making to AI

Jurisdiction	Example of delegation prohibition
Canada	'It must be unequivocally understood that no judge is permitted to delegate decision-making authority, whether to a law clerk, administrative assistant, or computer program, regardless of their capabilities.' ⁴¹
Colombia	AI must not replace human rationality or decision-making in judicial processes. Judicial decision-making remains the responsibility of the judicial officials. ⁴²
Brazil	'Requirement for human supervision over all judicial decisions using artificial intelligence. Judges will be able to use the systems as support, but the final decision will remain their responsibility.' ⁴³
Hong Kong	Judicial officers 'should ensure that all judicial decisions continue to be independently and personally made by themselves, and should not under any circumstances allow generative AI to take over performance of their judicial functions. In other words, the Court must ensure that any use of generative AI does not usurp or encroach upon its judicial functions but merely supports and facilitates their performance.' ⁴⁴

41 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 3 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

42 'Justice Meets Innovation: Colombia's Groundbreaking AI Guidelines for Courts', *UNESCO* (Web Page, 1 April 2025) <<https://www.unesco.org/en/articles/justice-meets-innovation-colombias-groundbreaking-ai-guidelines-courts>>; Superior Council of the Judiciary, Republic of Colombia, *Acuerdo PCSJA24-12243 DE 2024: Por El Cual Se Adoptan Lineamientos Para El Uso y Aprovechamiento Respetuoso, Responsable, Seguro y Ético de La Inteligencia Artificial En La Rama Judicial* [Agreement PCSJA24-12243 of 2024: By Which Guidelines Are Adopted for the Respectful, Responsible, Safe and Ethical Use and Exploitation of Artificial Intelligence in the Judicial Branch (English Translation)] (16 December 2024) <<https://actosadministrativos.ramajudicial.gov.co/web/Acto%20Administrativo/Default.aspx?ID=19280>>.

43 'Brazilian National Council of Justice Approves New Regulation for the Use of Artificial Intelligence by the Judiciary', *Instituto Dannemann Siemsen* (Web Page, 6 March 2025) <<https://ids.org.br/en/news-post/brazilian-national-council-of-justice-approves-new-regulation-for-the-use-of-artificial-intelligence-by-the-judiciary/>>.

44 Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024) 2.

Jurisdiction	Example of delegation prohibition
India (Kerala)	'The policy aims to ensure that under no circumstances AI tools are used as a substitute for decision making or legal reasoning ... AI tools shall not be used to arrive at any findings, reliefs, order or judgement under any circumstances, as the responsibility for the content and integrity of the judicial order, judgement or any part thereof lies fully with the judges.' ⁴⁵
United States	<p>Delaware: Judicial officers 'may not delegate their decision-making function to approved GenAI'.⁴⁶</p> <p>Illinois: 'Judges remain ultimately responsible for their decisions, irrespective of technological advancements.'⁴⁷</p> <p>South Carolina: Judicial officers 'may not use Generative AI to draft memoranda, orders, opinions, or other documents without direct human oversight and approval. Generative AI tools are intended to provide assistance and are not a substitute for judicial, legal, or other professional expertise'.⁴⁸</p>
Vatican	'The decision on the interpretation of the law, the assessment of facts and evidence is reserved exclusively to the magistrate and on the adoption of every measure.' ⁴⁹

45 'AI Tools Not for Decision Making: Kerala HC Guidelines to District Judiciary on AI Usage', *The Economic Times* (online, 20 July 2025) <<https://economictimes.indiatimes.com/tech/artificial-intelligence/ai-tools-not-for-decision-making-kerala-hc-guidelines-to-district-judiciary-on-ai-usage/articleshow/122794562.cms?from=mdr>>.

46 Delaware Courts, Judicial Branch, *Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel* (Interim Policy, 22 October 2024) 2 <<https://www.courts.delaware.gov/forms/download.aspx?id=266838>>.

47 Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025) 2.

48 The Supreme Court of South Carolina, *Interim Policy on the Use of Generative Artificial Intelligence* (Policy, 25 March 2025) 2 <<https://www.sccourts.org/media/courtOrders/PDFs/2025-03-25-01.pdf>>.

49 The Pontifical Commission for the State of the Vatican City, *Decreto Della Pontificia Commissione per Lo Stato Della Città Del Vaticano Recante "Linee Guida in Materia Di Intelligenza Artificiale"* [Decree of the Pontifical Commission for the Vatican City State Containing 'Guidelines on Artificial Intelligence' (English Translation)] (Decree No N. DCCII, 16 December 2024) art 12 <<https://www.vaticanstate.va/images/N.%20DCCII.pdf>>.

Disclosure of judicial uses of AI

- 8.36 Disclosure is a common element of international judicial guidelines.
- 8.37 Some jurisdictions require judicial officers to disclose their use of AI. Others note that disclosure is not required where the use of AI by judicial officers is limited to a supportive capacity.
- 8.38 Table 12 compares international judicial guidelines based on whether they do or do not require disclosure of AI use by judicial officers.

Table 12: Disclosure obligations in international AI judicial guidelines

Position on disclosure	Jurisdiction
Disclosure is required	Canada: 'The Court will not use AI, and more specifically automated decision-making tools, in making its judgments and orders, without first engaging in public consultation. For greater certainty, this includes the Court's determination of the issues raised by the parties, as reflected in its Reasons for Judgment.' ⁵⁰
	Colombia: 'court staff and judicial operators must clearly disclose if, how and which AI tools were used in judicial decisions to uphold transparency and integrity.' ⁵¹
	The Vatican: If content is AI-generated, then this must be disclosed. ⁵²
Disclosure should be considered	California (US): 'A judicial officer using generative AI for any task within their adjudicative role ... should consider whether to disclose the use of generative AI if it is used to create content provided to the public.' ⁵³
Disclosure is not required	England and Wales: 'Judges are not generally obliged to describe the research or preparatory work which may have been done in order to produce a judgment. Provided these guidelines are appropriately followed, there is no reason why generative AI could not be a potentially useful secondary tool.' ⁵⁴
	New Zealand: Judicial officers 'do not need to disclose use of a GenAI chatbot.' ⁵⁵
	United States (Illinois): 'Disclosure of AI use should not be required in a pleading.' ⁵⁶

50 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 2 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

51 'Justice Meets Innovation: Colombia's Groundbreaking AI Guidelines for Courts', *UNESCO* (Web Page, 1 April 2025) <<https://www.unesco.org/en/articles/justice-meets-innovation-colombias-groundbreaking-ai-guidelines-courts>>.

52 Eleonora Rosati, 'New Vatican AI Guidelines for the Development and Use of AI Models: From AI Training to Vatican's Authorship and Ownership of AI-Generated Outputs (at Least within the Vatican City State)', *The IPKat* (Web Page, 25 January 2025) <<https://ipkitten.blogspot.com/2025/01/new-vatican-ai-guidelines-for.html>>.

53 Judicial Council of California, Artificial Intelligence Task Force, *Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work* (Report to the Judicial Council No 25-109, 16 June 2025) 18-19 <<https://jcc.legistar.com/View.ashx?M=F&ID=14303119&GUID=0C94642A-28D3-47C0-8AE9-1E4DE3A96DFC>>.

54 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 5 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

55 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (Guidelines, 7 December 2023) 3 <<https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf>>.

56 Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025) 2.

Confidentiality and privacy obligations

- 8.39 Confidentiality and privacy obligations are a key feature of international judicial guidelines on the use of AI. Most guidelines contain warnings that judicial officers need to be aware and alert to security and privacy risks associated with using GenAI.⁵⁷
- 8.40 Guidelines also caution that confidentiality and privacy risks are heightened when public AI tools are used. The Canadian Judicial Council warns that 'uploading a draft judgment, or any sensitive or personal information to a free AI editing or translating website brings with it serious privacy implications.⁵⁸ For discussion on the different risks associated with public and closed AI tools, see Chapter 3.
- 8.41 To ensure privacy and confidentiality of information is maintained, several guidelines prohibit judicial officers from entering information that is not already public into a public AI tool. The definition of public AI varies across guidelines. Table 13 provides examples of the different limitations placed on the use of public AI tools.

Table 13: Confidentiality and privacy obligations in international AI judicial guidelines

Jurisdiction	Prohibition on inserting non-public information into public AI tools
England and Wales	'Do not enter any information into a public AI chatbot that is not already in the public domain. Do not enter information which is private or confidential.' ⁵⁹
Hong Kong	Judicial officers 'should not enter any information which is private, confidential or sensitive into open or public generative AI chatbots. Make sure that your input is adequately generalised and anonymised' ⁶⁰
New Zealand	'Generally, you should not enter any information into an AI chatbot that is not already in the public domain. Do not enter any information that is private, confidential, suppressed or legally privileged information.' ⁶¹
United States (California)	'A judicial officer using generative AI for any task within their adjudicative role ... should not enter confidential, personal identifying, or other non-public information into a public generative AI system.' ⁶²

57 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 8 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

58 Ibid.

59 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 3 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

60 Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024) 3.

61 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (Guidelines, 7 December 2023) 2 <<https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf>>.

62 Judicial Council of California, Artificial Intelligence Task Force, *Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work* (Report to the Judicial Council No 25-109, 16 June 2025) 18 <<https://jcc.legistar.com/View.ashx?M=F&ID=14303119&GUID=0C94642A-28D3-47C0-8AE9-1E4DE3A96DFC>>.

International guidance in development

- 8.42 International bodies are also developing guidelines for the use of AI in courts and tribunals by judicial officers.
- 8.43 In 2024, UNESCO released the draft *Guidelines for the Use of AI Systems in Courts and Tribunals* for public consultation. These guidelines were revised in May 2025.⁶³ They include principles and directions for courts and tribunals and outline specific guidance for individual members of the judiciary. They include a focus on transparency, directing judicial members to:
- Disclose the use of generative AI systems for drafting text – rulings, opinions, and other documents that may have legal consequences – or when it is explicitly used in court hearings. For that purpose, distinguish the text produced by the AI chatbot used in a decision by employing quotation marks and a citation system.⁶⁴
- 8.44 Other directions to the judiciary in the draft UNESCO guidelines include:
- protecting personal and confidential data by not inputting such information into external GenAI tools
 - verifying outputs before using them
 - preventing potential infringements of copyright and intellectual property rights associated with the use of content produced by GenAI
 - taking responsibility for any outputs produced by GenAI
 - providing parties with an opportunity to challenge and contest decisions taken with or supported by AI systems.⁶⁵
- 8.45 The near universal membership of UNESCO gives weight to the global influence of its work around judicial guidelines and will likely influence state practices around the world. Australia is a member of UNESCO and, once finalised, the guidelines may be influential in informing how Australian jurisdictions adopt guidelines on AI for judicial members.
- 8.46 In July 2025, the UN Special Rapporteur on the independence of judges and lawyers recommended that 'Judiciaries should develop and adopt guidelines on the use of AI, having regard to international guidance such as that developed by UNESCO, and States should make resources available to the judiciary for that purpose'.⁶⁶

63 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Draft Guidelines for the Use of AI Systems in Courts and Tribunals* (Guidelines, May 2025) <<https://unesdoc.unesco.org/ark:/48223/pf0000393682>>.

64 Ibid 29.

65 Ibid 26–30.

66 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 19 <<https://docs.un.org/en/A/80/169>>.

What should guidelines for judicial officers in Victoria contain?

- 8.47 Based on stakeholder feedback and international examples, we have identified some useful elements that could be contained in guidelines for Victorian judicial officers.
- 8.48 Useful elements of AI guidelines for judicial officers include:
- definition of AI and subcategories of AI
 - principles and educative information
 - a prohibition on the use of AI by judicial officers for judicial decision-making.

Guidelines for judicial officers to contain definitions

- 8.49 Guidelines for judicial officers should contain a clear definition of AI. For consistency, this should align with the OECD definition recommended for court user guidelines in Chapter 7.
- 8.50 Similarly, the definitions of GenAI, public AI and closed AI as described in Chapter 7 should also be incorporated. Guidelines for judicial officers should also set out the risks associated with the different types of AI. We heard that there is concern from judges in Victoria 'about privacy and reputational risks of judicial officers when the AI searches and prompts they use become known'.⁶⁷ To address privacy concerns, guidelines should state that judicial officers should not enter any information that is not already public information into public AI tools. Examples of how this could be framed are listed in Table 14.

Guidelines for judicial officers to contain principles and educative information

- 8.51 The Commission's principles should be incorporated into guidelines for judicial officers (the principles are explained in Chapter 6).
- 8.52 As discussed in Chapter 7, the principles could be given effect by being incorporated into guidelines. This could take the form of educative statements in guidelines to increase judicial officers' understanding of the risks and limitations of AI.
- 8.53 Examples of educative statements from international guidelines that can be used to help judicial officers implement the principles are provided in Table 14.

Table 14: Examples of principle-based guidelines for judicial officers

Principle	Guidance for judicial officers
Impartiality and fairness	<ul style="list-style-type: none"> 'Have regard to ethical issues – particularly biases and the need to address them. GenAI chatbots generate responses based on the dataset they are trained on (which is generally information from the internet). Information generated by a Gen AI chatbot will reflect any biases or misinformation in its training data.'⁶⁸ 'be vigilant against AI technologies that jeopardize due process, equal protection, or access to justice. Unsubstantiated or deliberately misleading AI generated content that perpetuates bias, prejudices litigants, or obscures truth-finding and decision-making will not be tolerated.'⁶⁹

⁶⁷ Consultation 7 (Judicial College of Victoria).

⁶⁸ Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (Guidelines, 7 December 2023) 3 <<https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf>>.

⁶⁹ Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025).

Principle	Guidance for judicial officers
Accountability and independence	<ul style="list-style-type: none"> • 'Before using any AI tools, ensure you have a basic understanding of their capabilities and potential limitations.'⁷⁰ • 'Information provided by AI tools may be inaccurate, incomplete, misleading or out of date.'⁷¹ • 'The accuracy of any information you have been provided by an AI tool must be checked before it is used or relied upon.'⁷² • 'Judicial office holders are personally responsible for material which is produced in their name.'⁷³ • 'Placing too much reliance on any proprietary AI (whether commercial or publicly funded) could compromise judicial independence.'⁷⁴ • See also discussion on the prohibition on delegating judicial decision-making from paragraph [8.54].
Transparency and open justice	<ul style="list-style-type: none"> • See discussion on disclosure from paragraph [8.114].
Contestability and procedural fairness	<ul style="list-style-type: none"> • 'Be aware that court/tribunal users may have used AI tools.'⁷⁵ • 'If it appears an AI chatbot may have been used to prepare submissions or other documents, it is appropriate to inquire about this, ask what checks for accuracy have been undertaken (if any), and inform the litigant [lawyers and self-represented litigants] that they are responsible for what they put to the court/tribunal.'⁷⁶ • 'Fabricated evidence could be submitted as authentic evidence or authentic evidence could be challenged as fabricated evidence.'⁷⁷ 'Judicial officers must remain cautious and aware of emerging technologies, as fake evidence is fairly easy to create.'⁷⁸ • Judicial officers should be aware of, and where appropriate, consider using available powers in relation to expert evidence. In Chapter 5 we discuss a range of express powers judicial officers can use to assess expert evidence in relation to AI. Experts should disclose use of AI in accordance with the Practice Note <i>Expert Evidence in Criminal Trials</i>⁷⁹ and the updated <i>Expert Witness Code of Conduct</i>.⁸⁰

70 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 3 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

71 Ibid.

72 Ibid 4.

73 Ibid 5; This view is reflected in the values of judicial officers in relation to AI. See Erin Solovey, Brian Flanagan and Daniel Chen, 'Interacting with AI at Work: Perceptions and Opportunities from the UK Judiciary' in *Proceedings of the 4th Annual Symposium on Human-Computer Interaction for Work* (Conference Paper, 22 June 2025) 1, 3 <<https://dl.acm.org/doi/10.1145/3729176.3729192>>.

74 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 6 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

75 Ibid.

76 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI): Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 7 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

77 Ibid.

78 AI Rapid Response Team, *Artificial Intelligence: Guidance for Use of AI and Generative AI in Courts* (Guidance, National Centre for State Courts, 7 August 2024) 10 <<https://www.ncsc.org/sites/default/files/media/document/AI-Courts-NCSC-AI-guidelines-for-courts.pdf>>.

79 Nevada Courts, *Artificial Intelligence: A Guide for Judicial Officers* (Guide, February 2025) 2 <https://nvcourts.gov/_data/assets/pdf_file/0028/46693/AI_Guide_for_Judicial_Officers.pdf>.

79 Supreme Court of Victoria, *SC CR 3 - Expert Evidence in Criminal Trials* (Practice Note, 1 June 2025) para 7.4 <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-3-expert-evidence-in-criminal-trials>>.

80 See Recommendation 10. *Supreme Court (General Civil Procedure) Rules 2025* (Vic) Form 44A.

Principle	Guidance for judicial officers
Privacy and data security	<ul style="list-style-type: none"> • 'Some generative AI chatbots retain the information you input and use it to respond to queries from other users. Unless you are using closed-end generative AI, it should be assumed anything you input can become publicly known.' Judicial officers 'should not enter any information which is private, confidential or sensitive into open or public generative AI chatbots. Make sure that your input is adequately generalised and anonymised. Disable the chat history function in the chatbots if this option is available.'⁸¹ • 'Any information that you input into a public AI chatbot should be seen as being published to all the world. The current publicly available AI chatbots remember every question that you ask them, as well as any other information you put into them. That information is then available to be used to respond to queries from other users. As a result, anything you type into it could become publicly known.'⁸² • 'Individual judges must also recognize and endeavour to prevent the security and privacy risks associated with using generative AI.'⁸³ • Judicial officers 'should avoid using generative AI in any way which may infringe copyright and contravene intellectual property law. For instance, uploading any published materials covered by intellectual property to a generative AI chatbot to obtain a summary or analysis could breach the author's copyright. Copyright issues may also arise from outputs that are extracted from an original work. It is the user's responsibility to ensure compliance with copyright and other intellectual property laws when using generative AI.'⁸⁴ • 'In the event of any suspected breach of information security or privacy following the use of generative AI for judicial or administrative duties, the JJO [judicial officer] concerned should report the incident to his/her Court Leader as soon as possible.'⁸⁵
Access to justice	<ul style="list-style-type: none"> • Be aware that AI use can 'enhance access to justice and court users' participation in court processes in a variety of ways'.⁸⁶ • Be aware that 'Some persons may lack the technology to access AI or the knowledge to use it effectively.'⁸⁷

81 Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024) 3.

82 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 3 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

83 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 8 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

84 Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024) 4.

85 Ibid.

86 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 1 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IA-par-les-tribunaux-eng.pdf>>.

87 Ibid.

Principle	Guidance for judicial officers
Efficiency and effectiveness	<ul style="list-style-type: none"> • 'the Court recognizes that AI can improve the efficiency and fairness of the legal system. For instance, it can assist with tasks such as analyzing large amounts of raw data, aiding in legal research, and performing administrative tasks. This can save time and reduce workload for judges and Court staff, just as it can for lawyers.'⁸⁸ • 'AI will not be the appropriate solution to every problem and should not be used simply because it is new, exciting, or available. Possible use of AI should be founded on identifying the problem and assessing possible solutions – including other technologies or non-technological approaches, rather than simply integrating AI into ineffective processes.'⁸⁹
Human oversight and monitoring	<ul style="list-style-type: none"> • "'Human in the loop": The Court will ensure that members of the Court and their law clerks are aware of the need to verify the results of any AI-generated outputs that they may be inclined to use in their work.'⁹⁰

Guidelines to prohibit the use of AI for judicial decision-making

8.54 There was universal support amongst stakeholders for a prohibition on the use of AI by judicial officers for judicial decision-making.

8.55 Several jurisdictions prohibit the use of AI by judicial officers for decision-making. This includes NSW,⁹¹ Canada,⁹² Delaware,⁹³ and Hong Kong.⁹⁴ A United Nations Special Rapporteur noted that in some areas, such as judicial decision-making, the use of AI solutions 'should not be countenanced for final decisions, but only as part of decision-support in certain areas'.⁹⁵

8.56 Constraints or prohibitions on the use of AI for judicial decision-making have been emphasised in several international frameworks. The EU AI Act classifies AI tools used in the administration of justice as 'high risk' stating:

AI tools can support the decision-making power of judges or judicial independence, but should not replace it: the final decision-making must remain a human-driven activity.⁹⁶

8.57 In explaining its current AI guidelines, the Supreme Court told us that:

AI is not currently used for decision-making. Nor is it used to develop or prepare reasons for decision, aside from incidental uses outlined above in terms of legal research databases and Microsoft tools.⁹⁷

88 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 1 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

89 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 3 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IAA-par-les-tribunaux-eng.pdf>>.

90 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 2 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

91 Supreme Court of New South Wales, *Guidelines for New South Wales Judges in Respect of Use of Generative AI* (Guidelines, 21 November 2024) 1 <https://supremecourt.nsw.gov.au/documents/About-the-Court/policies/Guidelines_Gen_AI.pdf>.

92 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 3 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

93 Delaware Courts, Judicial Branch, *Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel* (Interim Policy, 22 October 2024) 2 <<https://www.courts.delaware.gov/forms/download.aspx?id=266838>>.

94 Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024) 2.

95 Joseph A. Cannataci, Special Rapporteur, *Artificial Intelligence and Privacy, and Children's Privacy: Report of the Special Rapporteur on the Right to Privacy*, Joseph A. Cannataci, UN Doc A/HRC/46/37 (25 January 2021) 3 <<https://documents.un.org/doc/undoc/gen/g21/015/65/pdf/g2101565.pdf>>.

96 Regulation (EU) 2024/1689 (Artificial Intelligence Act) [2024] OJ L 2024/1689, recital 61.

97 Submission 26 (Supreme Court of Victoria).

8.58 We heard broad support from court users for a prohibition on AI use for judicial decision-making. Some of these comments are contained in Table 15.

Table 15: Stakeholder feedback on a prohibition on delegation of judicial authority

Stakeholder	Stakeholder views
Victoria Legal Aid	'AI cannot replace the role of human decision making which requires careful ethical, legal and forensic judgement.' ⁹⁸
Office of the Victorian Information Commissioner	'The use of AI tools should be prohibited in the courts and tribunals for decision-making, or for providing material to be used in arriving at a decision.' ⁹⁹
Victorian Bar Association	'AI tools, platforms and systems should not currently or for the foreseeable future, be used to make a judicial or administrative decision in any Victorian court or tribunal. Critically, the Bar contends that Judges should not use GenAI in the analysis of evidence or in writing, editing or proofing judgments. This is because the function of a judge is not (at least for the time being) able to be delegated to AI, because of the limitations of AI and the need for public confidence - and corresponding openness - in the judicial process.' ¹⁰⁰
Office of Public Prosecutions	Holds 'concerns for the use of AI tools in judicial decision-making, regardless of whether these tools are legally focused or not. Using AI tools in this process, even if they were legally focused, would present a risk to the transparency of the decision-making process.' ¹⁰¹
Federation of Community Legal Centres and Justice Connect	'Courts and tribunals retain their judicial independence and ultimate decision-making authority. AI can assist, but the responsibility for final rulings remains with judges, magistrates and tribunal members, who are accountable for their decisions.' ¹⁰²
Deakin Law Clinic	'Human experience and discretion is a core judicial value in the decision-making process. When arriving at a conclusion on a matter, judges engage their discretion and problem-solving skills to evaluate the full range of factors involved in the case. This cannot, at this point in time, be meaningfully exercised by any (known) AI algorithms. Further, it is not morally desirable to allow a machine system to make judgements regarding peoples' freedoms or even their lives.' ¹⁰³
Professor Ian Freckelton AO KC	'It is crucial not to abrogate or delegate judicial or professional functions to AI ... it is unrealistic to think that judges won't use AI. We need to focus on the ethical and legal requirement for the judicial mind to engage with all relevant aspects of a judgment. If they fail to do so they are not discharging the judicial function. There is a spectrum of output when this function is exercised, but the crucial thing is that the judicial function has been exercised in a discerning and considered way.' ¹⁰⁴

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Submission 12 (Victoria Legal Aid).
Submission 5 (Office of the Victorian Information Commissioner).
Submission 23 (Victorian Bar Association).
Submission 17 (Office of Public Prosecutions).
Submission 27 (Federation of Community Legal Centres and Justice Connect).
Submission 20 (Deakin Law Clinic).
Consultation 19 (Professor Ian Freckelton AO KC).

Why is a prohibition on AI use for judicial decision-making needed?

- 8.59 Stakeholders unanimously supported a prohibition on the use of AI for judicial decision-making. Some stakeholders said that this should not occur currently or for the foreseeable future. But most stakeholders thought that even if the technology develops, ethical concerns will persist. Others said judicial decision-making would be a high-risk use of AI as discussed in Chapter 3.
- 8.60 The view that AI should not undertake judicial decision-making was supported by the Supreme Court,¹⁰⁵ Coroners Court,¹⁰⁶ County Court,¹⁰⁷ Magistrates' Court¹⁰⁸ and by VCAT.¹⁰⁹ Representatives of the Supreme Court stated:
- The Court will not use AI to make a decision. The judging task is a fundamentally human endeavour and AI is not an appropriate substitute for decision making by a judge.¹¹⁰
- 8.61 Internationally, judges have also voiced strong views that: 'AI must never replace a human in making final decisions.'¹¹¹ The UN Special Rapporteur on the independence of judges and lawyers has stated that 'the right to an independent and impartial tribunal requires access to a human judge'.¹¹²
- 8.62 The prohibition on delegating judicial decision-making to AI has been described in a variety of ways by other jurisdictions (see Table 11 above). The NSW guidelines prescribe that judges '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.'¹¹³ Guidance issued by the Vatican adopts different wording: 'The decision on the interpretation of the law, the assessment of facts and evidence is reserved exclusively to the magistrate'.¹¹⁴
- 8.63 There are several reasons why AI tools should not be used for judicial decision-making. These include common risks associated with AI use discussed in Chapter 3, such as:
- errors, inconsistencies and hallucinations in GenAI outputs
 - automation bias, that is the human tendency to defer to and rely on algorithmic outputs which could erode judicial discretion
 - deskilling of justice professionals including judicial officers, as the overreliance on AI could lead to a loss of legal research, opinion drafting and even judicial reasoning skills
 - replication and exacerbation of bias in AI systems, which can result in discriminatory judicial decisions.¹¹⁵

105 Consultation 32 (Supreme Court of Victoria).

106 Submission 4 (Coroners Court of Victoria).

107 Submission 24 (County Court of Victoria).

108 Consultation 15 (Magistrates' Court of Victoria).

109 Consultation 9 (Victorian Civil and Administrative Tribunal).

110 Consultation 32 (Supreme Court of Victoria).

111 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 16 <<https://docs.un.org/en/A/80/169>>.

112 Ibid.

113 Supreme Court of New South Wales, *Guidelines for New South Wales Judges in Respect of Use of Generative AI* (Guidelines, 21 November 2024) 1 <https://supremecourt.nsw.gov.au/documents/About-the-Court/policies/Guidelines_Gen_AI.pdf>.

114 The Pontifical Commission for the State of the Vatican City, *Decreto Della Pontificia Commissione per Lo Stato Della Città Del Vaticano Recante "Linee Guida in Materia Di Intelligenza Artificiale"* [Decree of the Pontifical Commission for the Vatican City State Containing 'Guidelines on Artificial Intelligence' (English Translation)] (Decree No N. DCCII, 16 December 2024) art 12 <<https://www.vaticanstate.va/images/N.%20DCCII.pdf>>.

115 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 16–18 <<https://docs.un.org/en/A/80/169>>; See also a discussion on the risks of bias in 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) 116, 133–136.

- 8.64 There are also specific risks associated with the use of AI for judicial decision-making. The use of AI may negatively impact the evolution of the common law. As discussed in Chapter 3, GenAI systems produce the most statistically likely output based on training data and user inputs. Hallucinations occur because they produce outputs that are likely rather than outputs that are necessarily correct. GenAI systems identify and replicate patterns in data. If GenAI systems are used for judicial decision-making this may result in the replication of past decisions without consideration of the facts and individuals involved in the particular case being decided, or how the law should develop. AI systems can also repeat historical biases. This may prevent legal innovation and the development of new legal precedent which is responsive to changing societal values and understandings.
- 8.65 Additionally, AI:
- can undermine judicial independence and confidence in the administration of justice
 - cannot exercise the process of judicial reasoning
 - cannot understand or apply morality, human emotions or experience.

Judicial independence

- 8.66 While the wording and scope of the prohibition changes across guidelines a common objective is to protect judicial independence. As explained in the *Guide to Judicial Conduct*, judicial independence requires 'that a judge be, and be seen to be, independent of all sources of power or influence in society'.¹¹⁶
- 8.67 Several international guidelines highlight that the use of AI may put judicial independence at risk. The Federal Court of Canada interim guidelines state:
- The Court acknowledges the potential for AI to impact adversely on judicial independence. The Court also recognizes the risk that public confidence in the administration of justice might be undermined by some uses of AI. The Court will exercise the utmost vigilance to ensure that any use of AI by the Court does not encroach upon its decision-making function.¹¹⁷
- 8.68 It is important that AI does not and is not perceived to influence institutional independence and the personal impartiality of judicial officers in discharging their judicial functions and exercising decision-making powers.¹¹⁸ Professor Lyria Bennett Moses has argued that a 'critical outcome for any use of AI is retention of public confidence in the judiciary and the legal system as whole'.¹¹⁹
- 8.69 Justice Perry of the Federal Court has stated that there are real risks where judges use AI:
- In my view AI has no place in the expression of judicial reasoning and were that to occur, it would have a very real capacity to undermine public confidence in the judiciary, no matter how limited the use of AI in the particular judgment may have been.¹²⁰
- 8.70 AI may introduce risks to judicial independence, both institutional and personal.¹²¹ One of the risks to judicial independence is that an overreliance on AI by judicial officers may impact procedural fairness:

116 Australian Institute of Judicial Administration (AIJA), *Guide to Judicial Conduct, Third Edition (Revised)* (Guide, December 2023) 7 <https://aija.org.au/wp-content/uploads/2024/04/Judicial-Conduct-guide_revised-Dec-2023-formatting-edits-applied.pdf>.

117 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 2 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

118 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) 116, 130–132.

119 Lyria Bennett Moses, 'Stochastic Judges: The Limits of Large Language Models' (2024) 98(9) *Australian Law Journal* 640, 644.

120 Justice Perry, 'Emerging Technologies and International Frameworks' (Speech, Australian Law Librarians' Association Conference, Adelaide, 9 August 2024) 8 <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-perry/perry-j-20240809>>.

121 Daniel Escott, *FJIT: Integrating Judicial Independence and Technology* (Manuscript, Osgoode Hall Law School, York University, 2025) 8.

Procedural fairness requires judges to maintain discretion and autonomy in their application of the law. Technologies such as AI-driven evidence analysis tools may inadvertently constrain this discretion by presenting conclusions as definitive or overly authoritative.¹²²

- 8.71 If judicial officers rely on third-party AI tools for decision making, this may impact judicial independence.¹²³ If third-party tools designed by private sector actors are used to make decisions, this could create a risk that technology companies could exercise undue influence on the judicial process. Particularly where information about how AI tool works is protected by proprietary interests (as discussed in Chapter 3),¹²⁴ Engaging third-party providers to design or deliver AI tools may interfere with judicial independence since companies are profit driven and will not necessarily embed values like fairness.¹²⁵ Developers of AI tools also have the power to make choices on the technical parameters of AI applications. Those choices could see biases embedded in AI tools and could influence judicial decision-making.¹²⁶
- 8.72 Justice Perry has also noted that there is a 'risk of potential control, interference or surveillance from foreign states via privately developed AI tools'.¹²⁷ There is also concern that AI could be deployed by states in a way that increases political oversight of courts and reduces judicial independence.¹²⁸
- 8.73 Another concern raised is that there may be a lack of social licence for AI to be used in judicial decision-making. There is a risk that people may not recognise AI decisions as legitimate and authoritative decision-making,¹²⁹ which could undermine trust in the administration of justice.

Judicial reasoning

- 8.74 Large language models can 'mimic the outputs of judges'.¹³⁰ Putting aside current limitations that AI tools can be inaccurate, contain hallucinations and biases and do not understand the impact of their outputs, it is possible they can be used to produce written judgments that look similar to judgments containing legal reasoning.¹³¹
- 8.75 Chief Justice Gageler recently stated that if a large language model was fed data from Commonwealth law reports it is likely that it:
- could produce something that looks like a well-reasoned High Court judgment ... and I have little doubt that either now, or within two years, the predictive power of that large language model will be pretty close, if not surpassing that above an individual judge.¹³²
- 8.76 However, even if the outputs of AI look similar to what is produced by a judge, it has been argued that judicial decision-making is not just about the output and that the process by which that output is reached is critical.¹³³ Bennett Moses argues that:

122 Ibid 9.

123 Justice Perry, 'Emerging Technologies and International Frameworks' (Speech, Australian Law Librarians' Association Conference, Adelaide, 9 August 2024) 8 <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-perry/perry-j-20240809>>; Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 17–18 <<https://docs.un.org/en/A/80/169>>.

124 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 18 <<https://docs.un.org/en/A/80/169>>.

125 Kalliopi Terzidou, 'The Use of Artificial Intelligence in the Judiciary and Its Compliance with the Right to a Fair Trial' (2022) 31(3) *Journal of Judicial Administration* 154, 160–161 <<https://search.informit.org/doi/10.3316/agispt.20220401064756>>.

126 Ibid 165.

127 Justice Perry, 'Emerging Technologies and International Frameworks' (Speech, Australian Law Librarians' Association Conference, Adelaide, 9 August 2024) 8 <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-perry/perry-j-20240809>>.

128 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 18 <<https://docs.un.org/en/A/80/169>>.

129 Lyria Bennett Moses, 'Artificial Intelligence: Affordances and Limits in the Context of Judging' (2024) 157(1) *Journal & Proceedings of the Royal Society of New South Wales* 123, 128.

130 Lyria Bennett Moses, 'Stochastic Judges: The Limits of Large Language Models' (2024) 98(9) *Australian Law Journal* 640, 649.

131 Ibid.

132 Michael Pelly, 'An Interview with Chief Justice Gageler', *Westlaw Updates & Alerts* (Web Page, 8 July 2025) 2 <<https://support.thomsonreuters.com.au/product/westlaw-precision-australia/updates-alerts/interview-chief-justice-gageler>>.

133 Lyria Bennett Moses, 'Stochastic Judges: The Limits of Large Language Models' (2024) 98(9) *Australian Law Journal* 640, 646–47.

What judges do, even in higher courts, goes beyond producing text containing valid doctrinal arguments. What is most important is that they are exercising judgment. This is different from both prediction (working out the expected outcome of litigation using probability) and simulation (which is what ChatGPT does when asked to produce the text of a judgment). The manner of the decision is as critical as its content.¹³⁴

- 8.77 Professors Tania Sourdin and Richard Cornes emphasise the unconscious reasoning process of a human judge, noting that an AI judge is unlikely to replicate this process.¹³⁵ Losing these elements may 'fundamentally change what justice looks like'.¹³⁶
- 8.78 If judicial officers rely on AI tools for judicial decision-making, they may be less able to provide reasons for decisions if they cannot explain the part played by AI tools, either for proprietary reasons, or because they do not understand the technology. The UN Special Rapporteur on the independence of judges and lawyers has stated:
- If AI is used to automate judicial decisions, the "black box" nature of AI tools may render the decision-making process so opaque and incontestable that the right to a fair trial is violated.¹³⁷
- 8.79 This is because the judge will not necessarily be able to go into the black box and determine whether the output was informed by flawed or discriminatory data or how the output was produced.¹³⁸
- 8.80 In Victoria, there are existing duties on judicial officers in relation to exercising decision-making powers. A core duty is for judicial officers to provide reasons for their decisions.¹³⁹ Five key purposes for providing reasons are that they:
- a) allow the parties to see the extent to which arguments have been understood and accepted
 - b) allow the parties to understand the basis for the judge's decision
 - c) foster judicial accountability
 - d) facilitate certainty in the law by assisting lawyers, the legislature and the public to see how similar cases may be decided
 - e) assist appellate courts to determine whether the trial judge's decision was affected by appealable error.¹⁴⁰
- 8.81 It has also been argued that the requirement to give reasons does not just benefit parties but also the wider public.¹⁴¹ The duty to give reasons has been tied to the principle of open justice as it requires a judge to describe their reasoning process which allows 'the public to scrutinise how and why they came to their decision'.¹⁴²

134 Lyria Bennett Moses, 'Artificial Intelligence: Affordances and Limits in the Context of Judging' (2024) 157(1) *Journal & Proceedings of the Royal Society of New South Wales* 123, 127.

135 Tania Sourdin, *Judges, Technology and Artificial Intelligence: The Artificial Judge* (Edward Elgar Publishing, 2021) 215; Tania Sourdin and Richard Cornes, 'Do Judges Need to Be Human? The Implications of Technology for Responsive Judging' in T. Sourdin and A. Zariski (eds), *The Responsive Judge: International Perspectives on Law and Justice* (Springer, 2018) 87, 104–5; See also Monika Zalnierute 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) 116, 21.

136 Felicity Bell et al, *AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators* (Report, Australasian Institute of Judicial Administration, December 2023) 56.

137 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 5 <<https://docs.un.org/en/A/80/169>>.

138 Ibid 17.

139 Judicial College Victoria, *Criminal Proceedings Manual* (Online Manual) '6.2 Reasons for decision' [1] n 1599 <<https://resources.judicialcollege.vic.edu.au/article/1053061/section/843511>> (7 May 2025) citing: *Soulezis v Dudley* (1987) 10 NSWLR 247; *R v Arnold* [1999] 1 VR 179; Reasons for a decision may also be required under specific statutory provisions for example, *Criminal Procedure Act 2009* (Vic) s 351.

140 Judicial College Victoria, *Criminal Proceedings Manual* (Online Manual) '6.2 Reasons for decision' [3] <<https://resources.judicialcollege.vic.edu.au/article/1053061/section/843511>> (7 May 2025).

141 Brian Barry, 'AI for Assisting Judicial Decision-Making: Implications for the Future of Open Justice' (2024) 98(9) *Australian Law Journal* 656, 659–61.

142 Ibid 659.

8.82 The requirement to give reasons has been interpreted by courts to mean that a judicial officer needs to direct their mind to the issues. The 'reasons must demonstrate a process of reasoning and explain the basis for the decision'.¹⁴³ In *DPP v Harika*, Justice Gillard held:

The object of the requirement is to ensure that judicial officers turn their minds to the issues and determine the matter in accordance with the law. The obligation to state reasons focuses the mind on the issues. In order to determine whether the judicial officer has done so, one turns to the reasons.¹⁴⁴

8.83 While there are several descriptions of judicial reasoning, they commonly refer to a cognitive exercise involving 'a human judge thinking about the arguments made and coming to their own conclusion'.¹⁴⁵ This concept of 'turning their mind to the issues' is essential and should not be delegated to an AI system.

8.84 Another duty requires judicial officers to pay attention to the evidence and submissions put before them. Chief Justice French in *R v Cesan* held:

The appearance of a court not attending to the evidence and arguments of the parties and control of the conduct of the proceedings is an appearance which would ordinarily suggest to a fair and reasonable observer that the judicial process is not being followed.¹⁴⁶

8.85 These concepts were also echoed by the courts we engaged with. Representatives of the County Court noted:

The role of the judge is the decision maker. The role is to make decisions and provide reasons for how the decision was made. It is to state that these are the facts, these are the submissions, and these are the reasons I have arrived at this decision ... This is the essential personal account of a decision maker's process, what is their evaluation of facts. It fundamentally remains the decision maker's role to show they were informed by these things in coming to their decision.¹⁴⁷

8.86 Representatives of the Coroners Court made similar comments that while decisions may be informed by preparatory work done using AI, it is still up to the judicial officers 'to review that and satisfy themselves as to content and then make a decision about circumstances. So, AI is an input but not the final arbiter'.¹⁴⁸

Human emotion and experience

8.87 An essential part of judicial decision-making is for judicial officers to apply human emotions to the case before them. Large language models 'do not and thus cannot exercise moral judgment'.¹⁴⁹

8.88 There are inherently human factors in judicial decision-making, such as human experience, emotion, morality and creativity. Chief Justice Quinlan of Western Australia recently stated that: 'The law is, after all, and above all, a human institution'.¹⁵⁰

143 Judicial College Victoria, *Criminal Proceedings Manual* (Online Manual) '6.2 Reasons for decision' [7] <<https://resources.judicialcollege.vic.edu.au/article/1053061/section/843511>> (7 May 2025) citing; *DPP v Harika* [2001] VSC 237. [30].

144 *DPP v Harika* [2001] VSC 237. [30].

145 Brian Barry, 'AI for Assisting Judicial Decision-Making: Implications for the Future of Open Justice' (2024) 98(9) *Australian Law Journal* 656, 661.

146 *R v Cesan* [2008] HCA 52; (2008) 36 CLR 358, [72].

147 Consultation 12 (County Court of Victoria).

148 Consultation 2 (Coroners Court of Victoria).

149 Lyria Bennett Moses, 'Stochastic Judges: The Limits of Large Language Models' (2024) 98(9) *Australian Law Journal* 640, 653; See also Tania Sourdin, *Judges, Technology and Artificial Intelligence: The Artificial Judge* (Edward Elgar Publishing, 2021) 249–50.

150 Justice Peter Quinlan, 'The Impact of Social Media and AI on Public Trust in the Judiciary' (Speech, Global Summit of Hellenic Lawyers, Athens, Hellas, 9 July 2025) 7 <https://www.supremecourt.wa.gov.au/_files/Speeches/2025/The%20Impact%20of%20Social%20Media%20and%20AI%20on%20Public%20Trust%20in%20the%20Judiciary.pdf>.

- 8.89 A recent study in England and Wales suggested that judges perceived judicial decision-making to be a fundamentally human task.¹⁵¹ Judges in this study identified that their work requires evaluative judgements, practical reasoning and an awareness of human values that goes beyond 'pure logic' and that AI would not have the capability to apply those essential processes. The study identified that in some cases 'a human judge is vital to providing emotional and psychological closure, and a sense of "dignity" which AI cannot provide'.¹⁵²
- 8.90 Bennett Moses has commented that human emotions can help judges in a range of ways. This includes by enabling them to empathise with parties, interpret facts and reflect on the impact of a decision on the community more broadly.¹⁵³

A prohibition on AI for judicial decision-making

- 8.91 A prohibition on the use of AI for judicial decision-making is critical for maintaining judicial independence. Having this prohibition in publicly available judicial guidelines supports transparency and the overarching obligation to maintain public trust.
- 8.92 To provide reassurance to members of the public the prohibition could be described as: 'Judicial officers in Victoria must not delegate their decision-making authority to AI. Judicial officers will be able to use AI to support their functions but must continue to turn their minds to the evidence and submissions before them to formulate reasons and to decide the matter in accordance with the law.'
- 8.93 This approach is consistent with several publicly available international judicial guidelines discussed above in Table 11 that prohibit the use of AI for judicial decision-making. This approach is also consistent with the Commission's principles of accountability and independence, as it is necessary for every judicial decision to be ultimately attributable to a person.
- 8.94 In practice, this prohibition would require judicial officers to verify all outputs of AI tools. Judicial officers would remain clearly accountable and responsible for their decisions regardless of any technology they have used.¹⁵⁴

Recommendation

13. Guidelines for judicial officers should prohibit the use of AI for judicial decision-making.

151 Erin Solovey, Brian Flanagan and Daniel Chen, 'Interacting with AI at Work: Perceptions and Opportunities from the UK Judiciary' in *Proceedings of the 4th Annual Symposium on Human-Computer Interaction for Work* (Conference Paper, 22 June 2025) 1, 3–4 <<https://dl.acm.org/doi/10.1145/3729176.3729192>>.

152 Ibid 3.

153 Lyria Bennett Moses, 'Stochastic Judges: The Limits of Large Language Models' (2024) 98(9) *Australian Law Journal* 640, 645.

154 As recommended in the Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025) 2.

How can AI support judicial officers?

- 8.95 We heard that there may be opportunities for AI to support judicial officers in a way that does not impact their core judicial decision-making function.
- 8.96 The Canadian Judicial Council's guidelines on AI use in courts emphasises that 'judges are encouraged to leverage available support systems to assist in their judicial responsibilities'.¹⁵⁵
- 8.97 The guidelines include the following examples, noting that these activities should not be misconstrued as judicial decision-making:
- consulting with a colleague or associate on legal queries
 - requesting an administrative assistant proofread and format draft decisions
 - using grammar and spell-check features
 - using speech recognition tools for example for dictation.¹⁵⁶
- 8.98 Internationally, AI is being used in various ways to support judicial officers. Some examples include:
- In England and Wales, Lord Justice Birss highlighted the potential use of AI in providing case summaries, which he saw as useful in assisting a judge to get across a case more quickly.¹⁵⁷
 - In the United States, a judge used a large language model to interpret the ordinary meaning of a word.¹⁵⁸
 - In Germany, an AI assistant supports judges to 'sift through documents faster and use specific search criteria to find relevant information from various documents'.¹⁵⁹
 - In the Netherlands, a judge used ChatGPT to collect information to inform his reasoning on the average price of electricity and life span of solar panels.¹⁶⁰
- 8.99 A qualitative study collected views from 12 judges working in the United Kingdom legal system on opportunities of AI to support their everyday tasks and workflows. Opportunities identified in the study included:¹⁶¹
- summarising or creating publicly accessible or child-appropriate versions of decisions (this could involve using alternative formats such as podcasts or videos to make content more accessible)
 - proofreading decisions
 - initial judgment drafting or summarising of background information (for high volume courts)
 - consideration of 'small claims'
 - analysis of bulk sentencing data and court administrative data
 - legal research and summarisation of cases and documents (there was hope that AI could assist with these, but also a current lack of trust that it would do so reliably).

155 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 3 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

156

Ibid.

157 Lord Justice Birss, 'Speech by the Deputy Head of Civil Justice: Future Visions of Justice' (Speech, King's College London Law School, 18 March 2024) <<https://www.judiciary.uk/speech-by-the-deputy-head-of-civil-justice-future-visions-of-justice/>>.

158

Snell v United Specialty Insurance Company, 102 F.4th 1208 (2024), 1234.

159

Eckhard Schindler, 'Judicial Systems Are Turning to AI to Help Manage Vast Quantities of Data and Expedite Case Resolution', *IBM* (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>>.

160

'Dutch Judge Uses ChatGPT to Help Reach a Verdict', *Dutch News* (online, 5 August 2024) <<https://www.dutchnews.nl/2024/08/dutch-judge-uses-chatgpt-to-help-reach-a-verdict/>>.

161

Erin Solovey, Brian Flanagan and Daniel Chen, 'Interacting with AI at Work: Perceptions and Opportunities from the UK Judiciary' in *Proceedings of the 4th Annual Symposium on Human-Computer Interaction for Work* (Conference Paper, 22 June 2025) 1, 4 <<https://dl.acm.org/doi/10.1145/3729176.3729192>>.

- 8.100 Additionally, the UN Special Rapporteur on the independence of judges and lawyers reported judges internationally had identified AI may hold opportunities for:
- summarising parties' positions for inclusion in written opinions
 - summarising and searching within large quantities of evidence
 - improving spelling, grammar and syntax in written judgments.¹⁶²
- 8.101 As discussed in Chapter 2, there are opportunities for AI to provide improved and new support systems to judicial officers. However, judicial officers need to be aware that some uses of AI use have higher risks than others.
- 8.102 Table 16 indicates how international approaches have tried to draw a distinction between acceptable uses of AI and uses that require caution and/or are restricted because of the risks associated with use. As shown in Table 16 there are inconsistencies in these approaches. Some are comfortable with AI being used by judicial officers for legal research and others are not. This demonstrates that defining a static list of acceptable AI uses is complicated.
- 8.103 Much of the commentary in this area is related to the use of public rather than closed AI that may have been developed by legal publishers or a court itself (as discussed in Chapter 3).

162

Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 15 <<https://docs.un.org/en/A/80/169>>.

Table 16: International approaches to judicial use of AI

Jurisdiction	Categories of AI uses relevant to judicial officers in interjurisdictional guidelines
European Union ¹⁶³	<p>Not high risk:</p> <ul style="list-style-type: none"> purely ancillary administrative activities such as anonymisation or pseudonymisation of judicial decisions, documents or data, communication between personnel, administrative tasks. <p>High risk uses:</p> <ul style="list-style-type: none"> researching and interpreting facts and the law and in applying the law to a concrete set of facts.
European Commission for the Efficiency of Justice ¹⁶⁴	<p>The following is a sample and is not an exhaustive list of uses considered.</p> <p>Uses to be encouraged:</p> <ul style="list-style-type: none"> caselaw enhancement (finding search options, linking sources, creating data visualisations to illustrate search results). <p>Possible uses, requiring considerable methodological precautions:</p> <ul style="list-style-type: none"> help in the drawing up of scales in certain civil disputes. <p>Uses to be considered following additional scientific studies:</p> <ul style="list-style-type: none"> judge profiling (to offer judges a more detailed quantitative and qualitative assessment of their activities, with the informative aim of assisting in decision-making, and for their exclusive use). <p>Uses to be considered with the most extreme reservations:</p> <ul style="list-style-type: none"> use of algorithms in criminal matters to profile individuals (such as COMPAS, discussed in Chapter 2) quantity-based norms (Providing each judge with the content of the decisions produced by other judges and locking their choice into the mass of precedents).
Hong Kong ¹⁶⁵	<p>Potential uses:</p> <ul style="list-style-type: none"> summarising information speech/presentation writing legal translation administrative tasks (drafting emails, memoranda, letters). <p>Requiring extra caution:</p> <ul style="list-style-type: none"> legal research. <p>Not recommended:</p> <ul style="list-style-type: none"> legal analysis.

163 Regulation (EU) 2024/1689 (Artificial Intelligence Act) [2024] OJ L 2024/1689, recital 61.

164 European Commission for the Efficiency of Justice (CEPEJ), *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (2019, adopted at the 31st plenary meeting of the CEPEJ, Strasbourg, 3–4 December 2018) 64–7.

165 Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024) 6.

Jurisdiction	Categories of AI uses relevant to judicial officers in interjurisdictional guidelines
New South Wales (Australia) ¹⁶⁶	<p>Be aware of limitations of using GenAI for:</p> <ul style="list-style-type: none"> secondary legal research. <p>GenAI should not be used:</p> <ul style="list-style-type: none"> editing or proofing draft judgments, and no part of a draft judgment should be submitted to a Gen AI program.
New Zealand ¹⁶⁷	<p>Potential tasks:</p> <ul style="list-style-type: none"> summarising information speech writing administrative tasks (drafting emails, scheduling meetings). <p>Tasks requiring extra care:</p> <ul style="list-style-type: none"> legal research legal analysis.
United Kingdom ¹⁶⁸	<p>Potentially useful tasks:</p> <ul style="list-style-type: none"> summarising text writing presentations administrative tasks Microsoft Co-Pilot Chat. <p>Tasks not recommended:</p> <ul style="list-style-type: none"> legal research legal analysis.
Utah (United States) ¹⁶⁹	<p>AI may be used for:</p> <ul style="list-style-type: none"> preparing educational materials legal research preparing draft documents testing reading comprehension of public documents (to ensure a document is accessible to a self-represented litigant) instructions on how to use a new piece of software.

166 Supreme Court of New South Wales, *Guidelines for New South Wales Judges in Respect of Use of Generative AI* (Guidelines, 21 November 2024) 1 <https://supremecourt.nsw.gov.au/documents/About-the-Court/policies/Guidelines_Gen_AI.pdf>.

167 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (Guidelines, 7 December 2023) 5–6 <<https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf>>.

168 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 6 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

169 Judicial Council, Utah, *Interim Rules on the Use of Generative AI* (Interim Rules, 25 October 2023) 2 <<https://nationalcenterforstatecourts.app.box.com/s/px0vzpzg6n42ng10i4lya4al0mwjhhq>>.

- 8.104 We heard from representatives of Victoria's courts and VCAT that it is important to clarify that the prohibition on AI use in judicial decision-making should not extend to all functions that support judges in making their decisions. However, drawing the distinction between what is a supportive as opposed to a replacement function of AI can be difficult. It has been noted: 'In practice, it is extremely difficult to draw a line between AI tools that only assist judges and those that can interfere in decisions.'¹⁷⁰
- 8.105 The New York City Bar Association's Working Group on Judicial Administration and Artificial Intelligence highlighted that 'the use of AI by a court in connection with decision-making can take many different forms, and the point at which it is being used to render a decision may not always be clear'¹⁷¹
- 8.106 Representatives of the Supreme Court also noted:
- The conceptual distinction between supported and substituted decision making can be a useful tool in delineating an area of appropriate use for AI tools. Like many technological changes, there is likely to be room for AI to support judicial decision making in an appropriate and efficient way. The Court would not support either restriction or disclosure of AI use when it has been used to support the process of decision making. The Court's reasons for decision stand on their own. If they contain error they may be corrected on appeal. The current statement in the SCV guidelines that AI is not presently used for decision making nor used to develop or prepare reasons for decision may need to be revisited as the technology and our understanding of it evolves.¹⁷²
- 8.107 Sourdin has proposed three categories to describe how technology is reshaping the justice system:
- a) Supportive technology: at the most basic level, technology which helps to inform, support and advise people involved in the justice system
 - b) Replacement technologies: technology which can replace functions and activities that were previously carried out by humans.
 - c) Disruptive technology: technology which can change the way judges work and provide for very different forms of justice, particularly where processes change significantly such as predictive analytics that may reshape the adjudicative role.¹⁷³
- 8.108 The prohibition discussed above in recommendation 13, would still enable judges to use supportive AI. For example, AI could be used for:
- searching cases and legislative research (preferably via specialised closed AI such as tools developed by legal publishers or specialised legal large language models)¹⁷⁴
 - correcting grammar, word use and improving readability
 - administrative tasks (drafting emails and producing presentation material)
 - organising, paginating, assembling documents (provided sources are referenced and checked)
 - creating chronologies, summarising, auto-inserting precedent material and even assisting with complex single-issue research.

170 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 17 <<https://docs.un.org/en/A/80/169>>; See also Tania Sourdin, *Judges, Technology and Artificial Intelligence: The Artificial Judge* (Edward Elgar Publishing, 2021) 135–137.

171 Working Group on Judicial Administration and Artificial Intelligence (JAAI), New York City Bar, *Artificial Intelligence and the New York State Judiciary: A Preliminary Path* (Report, 3 June 2024) 7 <<https://nationalcenterforstatecourts.app.box.com/s/dwtpkyv4vadgwwryz872382xg1gj9svh>>.

172 Consultation 32 (Supreme Court of Victoria).

173 Tania Sourdin, 'Judge v Robot? Artificial Intelligence and Judicial Decision-Making' (2018) 41(4) *University of New South Wales Law Journal* 1114, 1117 <<https://www.unswlawjournal.unsw.edu.au/article/judge-v-robot-artificial-intelligence-and-judicial-decision-making/>>. Ibid.

174 However, even legal research tools continue to contain hallucinations and inaccuracies. See, for example, Varun Magesh et al, 'Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools' (2025) 22(2) *Journal of Empirical Legal Studies* 216 <<https://onlinelibrary.wiley.com/doi/10.1111/jels.12413>>.

- 8.109 Caution may be required for judicial usage of AI in reframing material, structure creation, complex research or using AI to translate or interpret material. This usage requires extra caution in part because of the potential for error.¹⁷⁵ Judicial officers should be cautious that 'an AI tool the rewrites a judgment for clarity may alter its legal meaning'.¹⁷⁶
- 8.110 The prohibition would prevent uses which impact more significantly on the process of human judgment. Such uses may include using AI for evaluation and predictive analytics,¹⁷⁷ using AI 'assistants' to check and comment on drafts.
- 8.111 Chief Justice Gageler has flagged that the High Court is planning to run a pilot in 2025 to test closed AI programs for editing judgments. But he qualified that the AI tool 'is not to generate the original script; it is to improve'.¹⁷⁸ It has been argued that large language models 'should not author entire judgments, not only because of quality issues associated with outputs, but also because it will lead to bad outcomes and does not involve an appropriate process'.¹⁷⁹ Drafting judgments in their entirety raises significant risks for interfering with judicial functions. The formulation of words in paragraph [8.92] is intended to prevent this from occurring.
- 8.112 For clarity, guidelines to judicial officers should state that uses of AI that are supportive should not be discouraged. However, the Commission recommends that the guidelines should not list specific uses of AI that judicial officers can or cannot use. If guidelines were to include a specific list of supportive AI uses it is likely this list would quickly become outdated given the pace of AI developments.
- 8.113 Instead of setting a static list of approved uses, in Chapter 9 we discuss an AI assurance framework which can be used to help Victoria's courts and VCAT make decisions about what AI tools should be developed, procured or made available to judicial officers and court staff. An AI assurance framework can help structure the consideration of risks and support decision making to ensure adequate consideration is given to security, privacy and explainability.

Recommendation

14. Guidelines for judicial officers should clarify that the prohibition on AI use for judicial decision-making is not intended to encompass supportive uses of AI.

175 Also, Aniket Deroy, Kripabandhu Ghosh and Saptarshi Ghosh, 'How Ready Are Pre-Trained Abstractive Models and LLMs for Legal Case Judgement Summarization?' (2023) arXiv:2306.01248v2 [cs.CL] <<https://doi.org/10.48550/arXiv.2306.01248>>; Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 16–17 <<https://docs.un.org/en/A/80/169>>.

176 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 17 <<https://docs.un.org/en/A/80/169>>.

177 There has been significant commentary on the risks of predictive analytics tools, particularly when used by judicial officers to inform decision making in the criminal justice system. See for example, Jeff Larson et al, 'How We Analyzed the COMPAS Recidivism Algorithm', *ProPublica* (online, 23 May 2016) <<https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm>>.

178 Michael Pelly, 'An Interview with Chief Justice Gageler', *Westlaw Updates & Alerts* (Web Page, 8 July 2025) 3 <<https://support.thomsonreuters.com.au/product/westlaw-precision-australia/updates-alerts/interview-chief-justice-gageler>>.

179 Lyria Bennett Moses, 'Stochastic Judges: The Limits of Large Language Models' (2024) 98(9) *Australian Law Journal* 640, 654.

Should judicial officers disclose their use of AI?

- 8.114 There has been a mixture of approaches internationally as to whether judicial officers are required to disclose their use of AI.
- 8.115 The New York City Bar Association's Working Group on Judicial Administration and Artificial Intelligence investigated the potential impact of AI on the New York State judiciary. In their report, they identified benefits of disclosing judicial use of AI:
- ensuring judges are accountable for their use of AI
 - helping parties and the public better understand how the judiciary is using AI and to raise concerns if a judge appears to use an AI tool inappropriately
 - assisting with appellate review of a lower court's decision.¹⁸⁰
- 8.116 In the report, they recommended that 'serious consideration be given to whether judicial ethics rules should be amended to require judges to disclose their use of AI in decision-making'.¹⁸¹
- 8.117 Some international jurisdictions have encouraged disclosure and consultation where AI is used in court by judicial officers. The Federal Court of Canada will not use AI without engaging in public consultation this specifically includes using automated decision-making tools, in making judgments.¹⁸²
- 8.118 However, some guidelines are silent as to the need to disclose AI use.¹⁸³ In others states judicial officers do not need to disclose AI use. In New Zealand it is clearly stated that: 'Judges/judicial officers/tribunal members: You do not need to disclose use of a GenAI chatbot'.¹⁸⁴
- 8.119 In England and Wales, there is no direction for judicial officers to disclose AI use where the guidelines are appropriately followed.¹⁸⁵
- 8.120 In Victoria, representatives of the Supreme Court suggested judges would not need to disclose use of tools which support decision making.¹⁸⁶ Similar comments were made by other Victorian courts.¹⁸⁷ However, representatives of the Coroners Court said disclosure of the use of AI by judicial officers should be encouraged.¹⁸⁸
- 8.121 Several court user groups saw value in requiring disclosure of AI use by judicial officers. Some of the comments supporting disclosure are listed in Table 17.

180 Working Group on Judicial Administration and Artificial Intelligence (JAAI), New York City Bar, *Artificial Intelligence and the New York State Judiciary: A Preliminary Path* (Report, 3 June 2024) 7 <<https://nationalcenterforstatecourts.app.box.com/s/dwtpkv4vadgvwryz872382xg1gj9svh>>.

181 Ibid.

182 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 2 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

183 Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024).

184 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (Guidelines, 7 December 2023) 3 <<https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf>>.

185 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) 6 <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

186 Consultation 32 (Supreme Court of Victoria).

187 Consultation 12 (County Court of Victoria).

188 Consultation 2 (Coroners Court of Victoria).

Table 17: Stakeholder views on disclosure of judicial use of AI

Stakeholder	Stakeholder views
Victoria Legal Aid	'For courts, all decisions where AI is involved, must be contestable. If courts are using AI, in a process where they are not prepared to show their working out, the data or underlying code, they should not be using AI.' ¹⁸⁹
Office of the Victorian Information Commissioner	'Courts and tribunals should be aware of, and transparent about, any AI projects and use cases to their stakeholders and the public.' ¹⁹⁰
Law Institute of Victoria	'Courts and tribunals should also disclose AI use to all court users.' ¹⁹¹
Federation of Community Legal Centres and Justice Connect	'Courts and tribunals should ensure processes and decisions supported by AI systems are transparent to court users. It should be clear how AI systems generate their outputs, including the data and models they use, and how AI systems informed decisions, with appropriate human oversight and judgment.' ¹⁹²

- 8.122 There was support amongst court users for disclosure of AI tools by judicial officers. However, some stakeholders recognised that the value of an obligation to disclose AI use may depend on the type of tool and how it is used.¹⁹³
- 8.123 Many people told us that the risk of AI use and the need for transparency increases the closer the use of AI is to the exercise of a judicial officer's decision-making authority.¹⁹⁴
- 8.124 If AI is only used as a supportive tool, as recommended above, that does not impact outcomes, there is less reason for judicial officers to disclose individual use in every matter. However, to uphold public confidence in the administration of justice, it is desirable for Victoria's courts and VCAT to make information publicly available about the sorts of AI tools which judicial officers may choose to use in a supportive capacity.
- 8.125 Disclosure of supportive AI tools by individual judicial officers is not recommended. But in Chapter 9, the Commission recommends that AI tools developed, procured or made available by Victoria's courts and VCAT to judicial officers, are disclosed at an organisational level via a public AI inventory.

189 Consultation 35 (Victoria Legal Aid).

190 Submission 5 (Office of the Victorian Information Commissioner).

191 Submission 16 (Law Institute Victoria).

192 Submission 27 (Federation of Community Legal Centres and Justice Connect).

193 Submission 15 (Human Rights Law Centre). Consultation 7 (Judicial College of Victoria).

194 Consultation 7 (Judicial College of Victoria).

What obligations should apply to judicial support staff?

- 8.126 Judicial officers are assisted by a variety of support staff. This includes associates and research officers. In providing guidance to judicial officers, several jurisdictions have included directions to judicial support staff on the use of AI.
- 8.127 A prescriptive approach has been taken in NSW where guidance states:
Judges should require that their associates, tipstaves or researchers disclose to the judge if and when they are using Gen AI for research purposes or any other related purpose, and associates, tipstaves or researchers should be separately required to verify any such output for accuracy, completeness, currency and suitability.¹⁹⁵
- 8.128 In New Zealand, judicial support staff are required to:
discuss with your supervising judge/judicial officer/tribunal member how you are using GenAI chatbots (or any other GenAI tools) and the steps you are taking to mitigate any risks.¹⁹⁶
- 8.129 Some Victorian court representatives viewed a disclosure obligation on judicial support staff as unnecessary. Representatives of the Supreme Court stated:
The Court is confident there is a frank and open relationship between Judges and associates in how their work is undertaken. Associates are made aware of their obligations in relation to dealing with material to which they have access at the Court. These are reinforced by judicial officers. There are important legal rules which protect the confidentiality of the work undertaken between judges and associates (judicial privilege) that reflect the fact that it is a matter for individual judicial officers how that work is undertaken.¹⁹⁷
- 8.130 The primary purpose of judicial officer guidelines on AI use is to serve an educative function. There is value in setting a clear and transparent expectation that judicial support staff should discuss their use of AI with their supervising judicial officer. This would serve to improve communication and awareness of the risks and limitations of AI.

Recommendation

15. Guidelines for judicial officers should encourage judicial support staff to discuss their use of AI tools with their supervising judicial officer.

195 Supreme Court of New South Wales, *Guidelines for New South Wales Judges in Respect of Use of Generative AI* (Guidelines, 21 November 2024) 2 <https://supremecourt.nsw.gov.au/documents/About-the-Court/policies/Guidelines_Gen_AI.pdf>.

196 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (Guidelines, 7 December 2023) 3 <<https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf>>.

197 Consultation 32 (Supreme Court of Victoria).

AI-assisted online dispute resolution

- 8.131 AI-assisted online dispute resolution tools are not currently being used by Victoria's courts and VCAT. However, in Chapter 2, we identified that international courts and tribunals are using AI-assisted online dispute resolution. We discussed that AI tools can be used at different stages and for different purposes, from supporting people to participate in dispute resolution to producing suggested or final decisions. In Singapore, GenAI is being piloted in the Small Claims Tribunal to support people to participate in the resolution of small claims, for example, by translating documents.¹⁹⁸ In future, this system may be able to point parties to settlement options but this is not available yet.
- 8.132 AI may present opportunities to support Victorians to resolve disputes. However, the use of AI-assisted online dispute resolution tools to produce decisions raises significant complexities. At this stage, the Commission has recommended AI should not be used for judicial decision-making for the reasons discussed above.
- 8.133 However, given the rapid development of AI technology, if existing risks such as inaccuracy, bias and opacity are sufficiently mitigated, Victoria's courts and VCAT may in future wish to consider incorporating AI-assisted online dispute resolution for some matters. We heard that there could be opportunities for AI-assisted online dispute resolution to be considered in the context of small civil claims, including consumer disputes.¹⁹⁹ We also heard that AI-assisted online dispute resolution may be best suited to high-volume, low-complexity disputes where there is low discretion.²⁰⁰
- 8.134 Victoria's courts and VCAT would need to exercise extreme caution when considering the incorporation of such systems to suggest or make decisions that affect people's rights or interests. Careful consideration of safeguards would be necessary to protect people's rights if such systems were developed.

198 European Commission for the Efficiency of Justice (CEPEJ), Artificial Intelligence Advisory Board (AIAB), *1st AIAB Report on the Use of Artificial Intelligence (AI) in the Judiciary Based on the Information Contained in the Resource Centre on Cyberjustice and AI* (CEPEJ-AIAB (2024) 4 Rev 5, 28 February 2025) 8.

199 Submissions 14 (Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne), 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice). See also discussion in Vivi Tan, Jeannie Paterson and Julian Webb, 'Generative AI in Small Value Consumer Disputes: Reviving Not Resolving Challenges of Design and Governance in Online Dispute Resolution' (2025) 48(4) *University of New South Wales Law Journal* (forthcoming) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5313052>.

200 Consultation 6 (Office of Public Prosecutions).

CHAPTER 09

Governance to support AI innovation

224 Overview

224 Why do courts and tribunals need AI governance?

231 Opportunities to strengthen AI governance bodies, roles and responsibilities

234 Reform options for AI governance bodies across Victoria's courts and VCAT

237 Developing an AI policy for courts, tribunals and Court Services Victoria

253 Developing an AI assurance framework

9. Governance to support AI innovation

Overview

- The growth of AI use in courts and tribunals requires effective governance to support safe use and public trust.
- There are opportunities to improve AI governance in Victoria's courts and VCAT to reduce risks and embrace opportunities for innovation.
- This chapter recommends AI governance components, which together may enhance the safe use of AI in Victoria's courts and VCAT. This includes:
 - AI governance bodies with multidisciplinary and multijurisdictional representation and documented roles and responsibilities to facilitate coordination and consistency
 - an AI policy to document principled guidelines to court and tribunal staff on the safe use of AI and disclosure and consultation processes
 - an AI assurance framework to assess risks and the suitability of potential AI uses.

Why do courts and tribunals need AI governance?

- 9.1 Our terms of reference ask us how to guide the safe use of AI in Victoria's courts and tribunals while maintaining public trust and ensuring integrity and fairness in the court system.
- 9.2 There are many definitions of governance. One understanding of governance relates to putting constraints around the exercise of power.¹ We are interested in governance as it relates to courts, VCAT and Court Services Victoria putting controls around decision making about AI use.
- 9.3 AI governance is comprised of several components. These components include an 'organisational structure, policies, processes, regulation, roles, responsibilities and risk management framework'.²
- 9.4 Appropriate governance can help safeguard the implementation and active management of AI across its lifecycle in Victoria's courts and VCAT.
- 9.5 As discussed in Chapter 3, the use of AI raises new risks and challenges. In some of Victoria's courts and in VCAT, governance processes have been adapted to respond to these risks and opportunities.

1 John Alford, Royston Gustavson and Philip Williams, *The Governance of Australia's Courts: A Managerial Perspective* (Report, Australian Institute of Judicial Administration Incorporated, 2004) 2.

2 Australian Government et al, *National Framework for the Assurance of Artificial Intelligence in Government: A Joint Approach to Safe and Responsible AI by the Australian, State and Territory Governments* (Report, 21 June 2024) 6.

- 9.6 Although there is no one-size-fits-all AI approach for Victoria's courts, a coherent governance approach can support consistent understanding and enable innovative approaches to be shared.
- 9.7 We heard about the need for governance to ensure the safe use of AI in courts and tribunals and address key risks associated with AI.³ We heard that the complexity and evolving nature of AI requires a governance approach that facilitates continual monitoring and review. This can ensure AI use adapts to evolving legal, societal and technological contexts.⁴
- 9.8 We were told that appropriate governance was essential to ensure the use of AI in courts and tribunals did not negatively impact human rights.⁵ We also heard governance is critical to mitigate security and data privacy concerns related to AI use.⁶
- 9.9 From our consultations, other benefits of implementing AI governance include increased:
- transparency and public trust in the administration of justice⁷
 - coordination across jurisdictions and increased sharing of resources and information, as well as reduced risk of duplicated effort and inconsistency⁸
 - education and awareness across the organisation on the risks, benefits and safe use of AI⁹
 - capacity to comply with existing legislative obligations.¹⁰
- 9.10 In this chapter, we discuss governance components which together could help support the safe use of AI in Victoria's courts and VCAT. This involves updating governance bodies, allocating roles and responsibilities, implementing an AI policy and an AI assurance framework.
- 9.11 Guidelines for the use of AI by judicial officers are recommended in Chapter 8. In this chapter, the Commission recommends that guidelines for court and tribunal staff should be included in an AI policy for Victoria's courts and VCAT.

Governance arrangements in Victoria's courts and VCAT

- 9.12 Each court jurisdiction and VCAT operate independently of each other. The head of each jurisdiction (for example, the Chief Justice) is given legislative powers relating to the 'business of the Court'.¹¹ Each jurisdiction:
- has its own internal governance structure
 - has a Chief Executive Officer who manages its staff and administration services (appointed by Courts Council)
 - develops their own strategic plan to reflect their own priorities.¹²
- 9.13 Some of Victoria's courts and VCAT have adapted their internal governance structures or created new governance bodies to consider risks, opportunities and potential AI use cases (as shown in Table 18). For this report, an 'AI use case' refers to the use of AI that is designed, developed, deployed or procured to support official work of Victoria's courts or VCAT. This may either be standalone, or part of a wider solution.

3 Submissions 5 (Office of the Victorian Information Commissioner), 10 (Castan Centre for Human Rights Law, Monash University), 12 (Victoria Legal Aid), 14 (Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne); 26 (Supreme Court of Victoria).

4 Submission 15 (Human Rights Law Centre).

5 Ibid.

6 Submission 27 (Federation of Community Legal Centres and Justice Connect).

7 Submission 5 (Office of the Victorian Information Commissioner).

8 Submission 16 (Law Institute Victoria).

9 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

10 Consultation 21 (Public Record Office Victoria). See also Public Record Office Victoria, *Recordkeeping Policy: Artificial Intelligence Technologies and Recordkeeping* (Policy, 29 February 2024) <https://prov.vic.gov.au/sites/default/files/files/documents/ai_tech_and_recordkeeping_policy_v1_2024.pdf>.

11 For example, see *Supreme Court Act 1986* (Vic) s 28AAA (1).

12 Victorian Auditor-General's Office, *Administration of Victorian Law Courts* (Independent Assurance Report to Parliament No 2021-22:06, October 2021) 11 <[https://www.audit.vic.gov.au/report/administration-victorian-courts/?section=">](https://www.audit.vic.gov.au/report/administration-victorian-courts/?section=).

Table 18: AI governance bodies in Victoria's courts and VCAT.

Jurisdiction	Governance body
Supreme Court	The Digital Strategy Steering Committee has a role in considering AI risks, opportunities and use cases within the court.
County Court	The Technology Advisory Committee advises the Chief Judge and is focused on the judicial experience of technology in the court process. This Committee is responsible for considering AI use cases, for example it reviewed the court's speech-to-text AI pilot. ¹³
Magistrates' Court	The Magistrates' Court is actively engaged on the CSV AI Working Group (see paragraph [9.24]). Existing internal governance and administrative forums also provide a role in developing Magistrates' Court jurisdiction policies and actions before they are referred to the judiciary. ¹⁴
Coroners Court	An informal AI working group consisting of lawyers and coroners has been set up. This may become a formal governance body to monitor and review AI issues and operate similarly to the Court's existing Research Committee. The Coroners Court's Executive Team and Risk Committee has current oversight and governance in exploring AI use cases. ¹⁵
VCAT	An AI Committee was established in early 2024 and comprises representatives from VCAT's members, strategic and operational staff. It identifies potential AI use cases and assesses benefits and limitations. It also makes recommendations for the effective, ethical, and lawful use of AI and suggests policy changes and guidelines. ¹⁶

Court Services Victoria governance

- 9.14 Court Services Victoria (CSV) is an independent statutory body.¹⁷ It provides and coordinates independent administrative services and facilities to Victoria's Courts Group. The Courts Group is made up of the six court jurisdictions, the Judicial College of Victoria and the Judicial Commission of Victoria.
- 9.15 CSV provides administrative support to the jurisdictions. One of CSV's functions is to provide information and communication technology services. CSV's Digital Group supports jurisdictions with general technology needs and in implementing and updating technology.¹⁸
- 9.16 CSV is required to comply with the *Victorian Government Risk Management Framework*, which outlines minimum risk management requirements.¹⁹ CSV is responsible for actively managing risks related to its own corporate services and for coordinating and managing an 'organisational risk management plan for risks that affect the whole of Courts Group'.²⁰

13 Consultation 12 (County Court of Victoria).
 14 Consultation 15 (Magistrates' Court of Victoria).
 15 Consultation 2 (Coroners Court of Victoria).
 16 Victorian Civil and Administrative Tribunal, *Annual Report 2023-24* (Report, September 2024) 29.
 17 Operating under the *Court Services Victoria Act 2014* (Vic).
 18 Court Services Victoria, *Delivering Excellence in Court and Tribunal Administration, Annual Report 2023-24* (Report, October 2024) 24.
 19 CSV is required by the Standing Directions under the *Financial Management Act 1994* (Vic) to comply with the Victorian Government Risk Management Framework. See: Minister for Finance (Vic), *Standing Directions 2018 Under the Financial Management Act 1994* (Issued 11 October 2018, incorporating revisions to 4 September 2023); Victorian Government, *Victorian Government Risk Management Framework* (Report, August 2020).
 20 Victorian Auditor-General's Office, *Administration of Victorian Law Courts* (Independent Assurance Report to Parliament No 2021-22:06, October 2021) 41 <[https://www.audit.vic.gov.au/report/administration-victorian-courts/?section="](https://www.audit.vic.gov.au/report/administration-victorian-courts/?section=)>.

- 9.17 The arrangement Victoria's courts have with CSV is unique. In most other Australian jurisdictions administrative court services sit within government departments.²¹ Until 2014, the then Victorian Department of Justice delivered court administrative and technology services to the courts.²²
- 9.18 We heard that courts were interested in applying their own analysis when considering potential AI tools rather than simply implementing tools adopted by other government departments.²³ CSV can provide an independent courts-specific assessment of proposed AI tools.
- 9.19 There are several bodies within CSV that play a role in supporting the safe use of AI in administrative arrangements.

Courts Council

- 9.20 Courts Council is the governing body of CSV. It directs CSV's strategy, governance and risk management. It is chaired by the Chief Justice and consists of the six heads of jurisdiction and has non-judicial independent representation.²⁴ The Council has a role in 'the implementation of AI systems across the court system'.²⁵

Audit and Risk Committee

- 9.21 The Audit and Risk Committee is a subcommittee of Courts Council. It consists of 'Council representatives, members of the judiciary and an independent external specialist with expertise in ICT'.²⁶
- 9.22 This Committee supports Council's capacity for informed decision-making on AI. Part of its role is to maintain risk management and accountability.
- 9.23 The Committee is responsible for reviewing 'Organisational Risk Profiles'. CSV intend to establish an Organisational Risk Profile for AI.²⁷ This would mean that causes and controls for AI-specific risks are documented and monitored. The Committee also monitors the Courts Group Digital Risk Register which aims to include 'shared AI related risks across the Courts Group'.²⁸

AI Working Group

- 9.24 In response to the challenges and opportunities of AI, CSV established an AI Working Group.²⁹
- 9.25 The AI Working Group is comprised of members from each jurisdiction and CSV staff. There are 17 members primarily from business transformation or information technology digital services functions. However, it includes a tribunal member of VCAT's Planning and Environment list.³⁰
- 9.26 CSV describes the AI Working Group as the 'central coordination point for AI initiatives across CSV'.³¹ Some of its responsibilities are:
- managing and monitoring AI risks on the Courts Group Digital Risk Register
 - developing frameworks, principles, evaluating AI tools and assessing information security requirements
 - monitoring pilot projects, ensuring adherence to ethical and regulatory requirements

21 South Australia is the only somewhat analogous jurisdiction in Australia in terms of administrative services for courts. The Courts Administration Authority of South Australia is also an independent statutory entity like CSV which provides independent administrative facilities and services required by South Australian courts. See *Courts Administration Act 1993* (SA).

22 Victorian Auditor-General's Office, *Administration of Victorian Law Courts* (Independent Assurance Report to Parliament No 2021-22:06, October 2021) 12 <[https://www.audit.vic.gov.au/report/administration-victorian-courts/?section="](https://www.audit.vic.gov.au/report/administration-victorian-courts/?section=)>.

23 Consultation 12 (County Court of Victoria).

24 The six jurisdictions are Supreme, County, Magistrates', Children's and Coroners courts and VCAT: Court Services Victoria, *Delivering Excellence in Court and Tribunal Administration, Annual Report 2023-24* (Report, October 2024) 6.

25 Submission 25 (Court Services Victoria).

26 Ibid.

27 Ibid.

28 Ibid.

29 Ibid; Consultation 22 (Court Services Victoria).

30 Consultation 22 (Court Services Victoria). Provided as supplementary information regarding working group terms of reference.

31 Submission 25 (Court Services Victoria).

- facilitating knowledge-sharing and providing guidance on best practice
- developing guidelines (including for lawyers) and practice notes.

9.27 CSV also has working groups focused on information security and data management.³²

AI Proof of Concept Lab

9.28 CSV is developing an AI Proof of Concept Lab to test potential AI use cases. CSV stated that the lab will be a controlled environment established separately from their existing network and will only use test data to prove AI use cases.³³

9.29 CSV intend to pilot AI use cases on a small scale in closed environments before scaling them up and submitting them to user testing or applying them to development environments.³⁴

9.30 The use of secure environments to develop AI tools is sometimes referred to as a 'development sandbox'.³⁵ Its aim is to provide a secure environment to test AI while minimising privacy and data security risks. Development sandboxes can involve testing and developing AI tools with:

- clean data sources (such as anonymised or pseudonymised data to ensure data protection and confidentiality)
- technical protections (such as a one-way data gate so that data can go in but not out of the sandbox)
- controls on access (ensuring suitable access controls and audit logs, and ensuring that if third parties have access to the sandbox, they are subject to appropriate data protection and confidentiality clauses).³⁶

9.31 The UN Special Rapporteur on the independence of judges and lawyers has recommended that judicial systems institute 'sandbox environments to pilot AI programs and experiment with appropriate regulations'.³⁷

9.32 Peak national and international AI standards emphasise the importance of rigorous pre- and post-deployment testing to identify errors, risks and limitations of AI tools and to test and monitor whether the tool is serving its intended purpose.³⁸ These standards also encourage the development of clearly defined metrics and criteria to monitor the performance of the tool.³⁹

9.33 Australia's *National Framework for the Assurance of Artificial Intelligence in Government* states that small scale pilots should be used to evaluate AI tools, to identify and mitigate problems before tools are scaled up.⁴⁰ However, the framework notes that a balance is needed because testing tools in highly controlled environments may not accurately reflect the full risk and opportunities. While testing in less controlled environments may pose governance challenges.

9.34 Internationally, courts have highlighted the importance of piloting AI tools. The Office of the Commissioner for Federal Judicial Affairs Canada encourages courts to trial multiple tools simultaneously and under different conditions to determine which will best suit their needs. It also encourages courts to pilot tools to troubleshoot issues

32 Ibid.

33 Ibid; Consultation 22 (Court Services Victoria).

34 Submission 25 (Court Services Victoria).

35 Linklaters, *Ethical, Safe, Lawful: A Toolkit for Artificial Intelligence Projects* (Toolkit, 2018) A27. A development sandbox is distinct from a regulatory sandbox. A regulatory sandbox can be set up by regulators to give organisations the ability to test products in a controlled environment and the regulator may provide the organisation with a waiver or an agreement not to take enforcement action while the tools is being developed in the sandbox.

36 Ibid A27.

37 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 19 <<https://docs.un.org/en/A/80/169>>.

38 Department of Industry, Science and Resources (Cth), National Artificial Intelligence Centre, and CSIRO, *Voluntary AI Safety Standard* (Report, August 2024) 25–28 <<https://www.industry.gov.au/sites/default/files/2024-09/voluntary-ai-safety-standard.pdf>>.

39 Ibid 20–21; See also National Institute of Standards and Technology (NIST), *AI RMF Playbook* (Report, U.S. Department of Commerce, 2024) 93–144 <https://airc.nist.gov/AI_RMF_Knowledge_Base/Playbook>.

40 Australian Government et al, *National Framework for the Assurance of Artificial Intelligence in Government: A Joint Approach to Safe and Responsible AI by the Australian, State and Territory Governments* (Report, 21 June 2024) 20.

before launching them.⁴¹ In the United States (US), the National Centre for State Courts has made an AI sandbox available to court staff to allow them to 'practice with GenAI in an end environment where your data will not be used to train commercial models.'⁴²

- 9.35 From our consultations we heard that several of Victoria's courts and VCAT have implemented AI pilots.⁴³ Victoria's courts, VCAT and CSV should use secure environments to pilot and test tools before deployment and implement ongoing testing and monitoring to help ensure AI tools continue to operate correctly and serve their intended purpose.

International AI governance structures in courts and tribunals

- 9.36 Other jurisdictions have implemented a range of governance structures to support the safe use of AI within their judicial systems. These may be helpful to Victoria's courts and VCAT.
- 9.37 Many of these approaches bring judicial and administrative sides of the courts together to form a coordinated response to AI usage and implementation. Some examples of international AI governance features are considered in Table 19.

Table 19: International court and tribunal AI governance features

Jurisdiction	AI governance features
New Zealand	<p>Digital strategy: In New Zealand the executive arm of government, via the Ministry of Justice, delivers IT services to courts and tribunals. The Courts of New Zealand developed a digital strategy which details how the judiciary and the New Zealand Ministry of Justice work together on technology.⁴⁴ The strategy contains the judiciary's objectives and guiding principles for the use of technology within New Zealand courts and tribunals.⁴⁵ It identifies investigating and so far, as practical, implementing AI as part of its longer-term aspirations.⁴⁶</p> <p>Technology and innovation judicial role and function: Justice Goddard led the development of the digital strategy and chairs the Information and Digital Technology Committee.⁴⁷ In this role, there is time allowed to support implementation of the strategy. The Chair of this committee has responsibility for reporting to the Chief Justice and liaising with the Ministry of Justice and court jurisdictions to consider digital use cases.</p> <p>Multijurisdictional and multidisciplinary body: An Artificial Intelligence Advisory Group was commissioned by the New Zealand Chief Justice to develop AI guidelines.⁴⁸ The group is multijurisdictional and multidisciplinary with 'representatives from the Senior Courts and District Court, judicial support staff, court registries, and the Ministry of Justice'.⁴⁹ This group also works with the Heads of Bench Committee and respective tribunal chairs.</p>

41 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 5 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IA-par-les-tribunaux-eng.pdf>>.

42 'NCSC AI Sandbox', *National Centre for State Courts (NCSC)* (Web Page, 2025) <<https://aisandbox.ncsc.org/login>>.

43 Submission 24 (County Court of Victoria), Consultation 15 (Magistrates' Court of Victoria), Victorian Civil and Administrative Tribunal, *Annual Report 2023-24* (Report, September 2024) 29.

44 Office of the Chief Justice of New Zealand, *Digital Strategy for Courts and Tribunals* (Report, March 2023) <<https://www.courtsofnz.govt.nz/assets/7-Publications/2-Reports/20230329-Digital-Strategy-Report.pdf>>.

45 Ibid 18–21.

46 Ibid 27.

47 Dame Helen Winkelmann, Chief Justice of New Zealand, *Chief Justice Launches Digital Strategy for Courts of New Zealand* (Media Statement, 29 March 2023) <<https://www.courtsofnz.govt.nz/assets/7-Publications/Announcements/20230329-Media-Release-Chief-Justice-launches-Digital-Strategy-for-Courts-of-New-Zealand.pdf>>.

48 Courts of New Zealand, *Judiciary Publishes Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals* (Media Release, 7 December 2023) 2.

49 Ibid.

Jurisdiction	AI governance features
Canada	<p>Multijurisdictional and multidisciplinary body: The Office for the Commissioner for Federal Judicial Affairs established an Action Committee on Modernizing Court Operations which combines members of the judiciary with the executive. It is co-chaired by the Chief Justice of Canada and the Minister of Justice and Attorney-General of Canada.⁵⁰ It is supported by a technical working group and produces guidelines and principles for the planning and implementation of AI projects. Canada also has the Canadian Judicial Council, which has released its own AI guidelines.⁵¹</p>
Singapore	<p>Technology and innovation judicial role and function: In Singapore one judge is allocated a senior role in charge of 'Transformation and Innovation in the Judiciary'.⁵² The judge sits on a range of business operations committees and reports regularly to the Chief Justice to ensure the Chief Justice is engaged in AI decision making. There is also a Chief Transformation and Innovation Officer.⁵³ The approach focuses not just on AI but also on judicial innovation. The Chief Justice and other jurisdictional leads can make recommendations to the allocated judge who can then raise them with the administrative arm. Use cases are then developed and budgeted. Where proposals seem to be viable, the Chief Transformation and Innovation Officer may bring these to the attention of the Transformation and Innovation Judge.</p>
England and Wales	<p>AI Action Plan for Justice: Released in July 2025, the plan sets out the Ministry of Justice's strategic priorities for AI adoption over three years across courts, tribunals, prisons, probation and supporting services.⁵⁴</p> <p>Multijurisdictional and multidisciplinary body: A cross jurisdictional Judicial AI Advisory Group was established to assist the judiciary on the use of AI.⁵⁵ This advisory group helped to develop guidance for the judiciary on the use of AI.⁵⁶ In 2024 the Ministry of Justice established the Justice AI Unit, which consists of 'an interdisciplinary team of AI specialists, designers, technologists, and operational experts working to embed responsible AI across the justice system'.⁵⁷</p>

50 'Action Committee on Modernizing Court Operations: The Action Committee - Who We Are and What We Do', *Office of the Commissioner for Federal Judicial Affairs Canada* (Web Page, 21 February 2025) <<https://fja-cmf.gc.ca/COVID-19/index-eng.html#Committee>>.

51 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

52 'Justice Aidan Xu @ Aedit Abdullah', *Singapore Courts* (Web Page, 6 August 2025) <<https://www.judiciary.gov.sg/who-we-are/justice-aedit-abdullah>>.

53 'AI in the Judiciary: A Singapore Courts Perspective', *Thomson Reuters: Legal Insight* (Web Page, 14 January 2025) <<https://insight.thomsonreuters.com/sea/legal/posts/ai-in-the-judiciary-a-singapore-courts-perspective>>.

54 Ministry of Justice (UK), *AI Action Plan for Justice* (Policy Paper, 31 July 2025) <<https://www.gov.uk/government/publications/ai-action-plan-for-justice/ai-action-plan-for-justice>>.

55 Ailin O'Flaherty and Andrew Wilkinson, 'New Artificial Intelligence Advisory Body in England and Wales – Bringing the Modern World to the Judiciary', *Global IP & Technology Law Blog* (Squire Patton Boggs, 14 March 2019) <<https://www.iptechblog.com/2019/03/new-artificial-intelligence-advisory-body-in-england-and-wales-bringing-the-modern-world-to-the-judiciary/>>.

56 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

57 Ministry of Justice (UK), 'Justice AI Unit', *Justice AI Unit* (Web Page, 2025) <<https://ai.justice.gov.uk>>.

Opportunities to strengthen AI governance bodies, roles and responsibilities

- 9.38 While each court jurisdiction and VCAT operate independently, there are opportunities for jurisdictions to collaborate with Courts Council and CSV to ensure the safe use of AI.
- 9.39 The Victorian Auditor-General's Office has described CSV's governance structure as complex. One reason for this is because: 'While each jurisdiction is independent, they work together and depend on each other.'⁵⁸
- 9.40 There are several opportunities to improve the current approach through:
- coordination and consistency
 - transparency and accountable decision making
 - diversity of skills and expertise
 - judicial representation.

Coordination and consistency

- 9.41 We heard that there is value in ensuring a coordinated and consistent response to AI. If courts, VCAT and CSV work in isolation in their approach to AI, this could lead to inconsistency and duplication of resources. The Law Institute of Victoria noted:
- The strategy for adopting AI technologies in Victoria's courts and tribunals should be developed with a view not only to ensuring consistency of regulation with other Australian jurisdictions, but also to avoiding duplication of investment and effort within Victoria. This will be even more important in the current fiscal environment in Victoria, as we often see across the courts and tribunals, each jurisdiction developing their own technology solution, for example case management systems, rather than looking at how best to leverage technologies across all jurisdictions.⁵⁹
- 9.42 A lack of coordination reduces opportunities to collaborate, pool resources, pilot and implement innovative approaches and share learnings from pilots. Developing and implementing AI solutions in isolation could also lead to variations in data and privacy security processes.
- 9.43 While different jurisdictions may have differing needs, there will be some AI tools that are applicable across jurisdictions. In Chapter 2 we discussed how the County Court, Magistrates' Court and VCAT have all undertaken their own AI transcription pilots.
- 9.44 It was recognised that CSV could play a role in promoting consistency across jurisdictions.⁶⁰ The County Court said:
- To achieve consistency, the most practical approach may be a consultative approach between CSV and the relevant courts and tribunal that respects the independence of the judiciary, while aiming to provide practical assistance to ensure courts are safely utilising AI technology.⁶¹
- 9.45 The development of the AI Working Group, which has representation from each jurisdiction and has been endorsed by Courts Council, supports a coordinated approach. However, it is unclear how this group will effectively ensure consistency across courts. It is also not clear how AI governance bodies that have been developed across Courts Group and within CSV interact with each other and how roles and responsibilities are allocated.

58 Victorian Auditor-General's Office, *Administration of Victorian Law Courts* (Independent Assurance Report to Parliament No 2021-22:06, October 2021) 5 <[https://www.audit.vic.gov.au/report/administration-victorian-courts/?section=">](https://www.audit.vic.gov.au/report/administration-victorian-courts/?section=).

59 Submission 16 (Law Institute Victoria).

60 Submission 26 (Supreme Court of Victoria).

61 Submission 24 (County Court of Victoria).

Transparency and accountability of decision making

- 9.46 It is important that the courts, VCAT and CSV are transparent about who has authority for decisions. AI governance requires a clear chain of responsibility for decision making and accountability.⁶²
- 9.47 Many stakeholders supported courts and tribunals adopting transparent measures to communicate the approval and use of AI. The Office of the Victorian Information Commissioner stated: 'The community expects government organisations to be transparent and accountable, and to publicly report on their use of AI.'⁶³
- 9.48 The Supreme Court told us that 'CSV has responsibility for procurement and maintenance of IT infrastructure.'⁶⁴
- 9.49 While CSV has developed the AI Working Group, this operates at a low level of seniority and has a limited decision-making function. It is not clear how the AI Working Group fits into existing CSV and individual jurisdictional decision-making processes. The terms of reference for the AI Working Group state broadly that the group reports to jurisdictional and CSV executives, as well as jurisdictional Digital/Information Technology Committees.

Diversity of skills and expertise

- 9.50 AI governance requires governance bodies to represent multidisciplinary capabilities and expertise.⁶⁵ Because AI can present risks that combine technical, legal and ethical considerations, it is important that diverse perspectives are considered when making decisions about AI.
- 9.51 In many AI governance models, there is a focus on ethical expertise to support decision making. This could include consideration of the unique risks that impact on the judicial function.
- 9.52 Technical and business operations experts might consider some process concerns (such as bias, accuracy, privacy and explainability). But they may lack a broad understanding of human-centred concerns (autonomy, fairness, wellbeing, truth and democratic values). They may also view risks such as bias and explainability from a technical perspective rather than in terms of procedural fairness. AI developments in courts require consideration of AI impacts on individuals, institutions and society, particularly where AI may impact on trust in courts.
- 9.53 The Office of the Victorian Information Commissioner and the Judicial College of Victoria identified the need for multiple skill sets to be brought together when considering decisions about AI.⁶⁶ The need for multidisciplinary skills to be reflected in AI governance and decision making was also supported by representatives of Microsoft.⁶⁷ The Office of the Victorian Information Commissioner warned:

The accountability and responsibility of implementing, approving or managing AI systems should not fall solely on the IT department or equivalent. Given the breadth and scale of AI applications across the whole organisation, it is advisable to nominate the head of the agency as the responsible and accountable officer for the adoption of AI, with a whole-of-organisation approach taken to identifying and managing the risks involved.⁶⁸

62 Standards Australia Limited, 'AS ISO/IEC 38507: 2022 Information Technology - Governance of IT - Governance Implications of the Use of Artificial Intelligence by Organizations' 2-3 <<https://store.standards.org.au/product/as-iso-iec-38507-2022>>.

63 Submission 5 (Office of the Victorian Information Commissioner). The Centre for the Future of the Legal Profession and UNSW Law and Justice also commented that 'Transparency in court internal systems, including where AI is used, and provides reassurance to members of the public, enables human scrutiny and oversight and supports faith in the rule of law.'; Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

64 Consultation 32 (Supreme Court of Victoria).

65 Australian Government et al, *National Framework for the Assurance of Artificial Intelligence in Government: A Joint Approach to Safe and Responsible AI by the Australian, State and Territory Governments* (Report, 21 June 2024) 6.

66 Submission 5 (Office of the Victorian Information Commissioner). Consultation 7 (Judicial College of Victoria).

67 Consultation 25 (Microsoft).

68 Submission 5 (Office of the Victorian Information Commissioner).

- 9.54 This was further supported by representatives of the Judicial College of Victoria who stated AI governance requires an understanding of judge's needs, court processes and AI expertise and that 'normal governance frameworks within courts are unlikely to be well-equipped to deal with AI developments'.⁶⁹
- 9.55 Currently, the AI Working Group consists of members largely from transformation or information technology/digital services functions. Effective AI governance should include representation from multiple skill sets, such as technology specialists, legal, policy and subject domain specialists.

Judicial representation

- 9.56 It is important that judicial officers are involved in decisions about the use of AI in courts and tribunals.
- 9.57 The UN Special Rapporteur on the independence of judges and lawyers has stated that judiciaries should be confronting issues around the use of AI in judicial systems as a matter of priority.⁷⁰ They recommended that to preserve judicial independence, 'decisions about whether to use AI in judicial systems, and which tools to use, should be made by judges'.⁷¹
- 9.58 In considering how AI may shape the future of the justice system, Professor Tania Sourdin argues that it is crucial for judges to be involved in considering how technological advancements may be adopted in courts.⁷² Sourdin states that for judges to be able to provide input on technological advancements:
- Judges must not only acquire foundational knowledge and understandings about AI, but they must also consider the implications of its use on both the justice system and the judiciary. As such, judges must have strategies in place to deal with the ethical and other issues raised by Judge AI.⁷³
- 9.59 CSV's role has been legislated to ensure business operations in relation to technology infrastructure are supported. But current governance arrangements do not support the use of AI when specifically directed at the judiciary or external court users.
- 9.60 Some information and technology committees established within different court jurisdictions have been focused on the 'judicial experience of technology in the court process'.⁷⁴ However, CSV's multijurisdictional AI Working Group does not have broad judicial officer representation. This may be appropriate given the current role of the group. But as a result, it may be unable to reflect the views of the judiciary in respect to the uses, limitations and opportunities for AI in courts and tribunals.
- 9.61 Creating a multijurisdictional body with judicial officer representation will help provide an opportunity to support the needs of the judiciary in relation to the use of AI in courts and tribunals.

69 Consultation 7 (Judicial College of Victoria).

70 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 19 <<https://docs.un.org/en/A/80/169>>.

71 Ibid.

72 Tania Sourdin, *Judges, Technology and Artificial Intelligence: The Artificial Judge* (Edward Elgar Publishing, 2021) ch 10.

73 Ibid 295.

74 Consultation 12 (County Court of Victoria).

Reform options for AI governance bodies across Victoria's courts and VCAT

- 9.62 The experience of other jurisdictions is useful to inform how AI governance bodies and the allocation of roles and responsibilities could be improved in Victoria's courts and VCAT.
- 9.63 Options for reform include establishing:
- a technology and innovation committee
 - technology and innovation judicial roles and functions.

Establish a technology and innovation committee

- 9.64 Jurisdictions such as Canada and New Zealand have implemented multidisciplinary and multijurisdictional committees to assess technology and AI use in courts and tribunals (as shown in Table 19). These groups also have a role in developing or reviewing AI guidelines.
- 9.65 In the US, the Conference of State Court Administrators recommend that courts establish a taskforce with diverse membership to assist in developing a responsive and flexible institutional framework for the use of GenAI in the court.⁷⁵ They recommend such a taskforce should consist of court leaders and be informed by people outside the legal system such as university and industry professionals.
- 9.66 In Australia, the Federal Circuit and Family Court has established an internal AI committee.⁷⁶ This committee consists of judicial members, a technical member (the courts head of digital), representatives from the Chief Justice's office and a senior judicial registrar.
- 9.67 There is currently no specific sub-committee of Courts Council responsible for technology and AI related initiatives. However, CSV is considering establishing a technology committee which would have a focus on AI.⁷⁷
- 9.68 CSV previously had an Information Technology Portfolio Committee, which was a sub-committee reporting to Courts Council.⁷⁸ It was merged into the Strategic and Innovative Projects Committee in 2019. Its responsibilities included advising Courts Council on the development and implementation of 'court facilities and technology related initiatives'.⁷⁹ The Strategic and Innovative Project Committee, chaired by the Chief Justice, was multidisciplinary with judicial representation and contained experts from outside of CSV.⁸⁰ However it was dissolved in April 2024.⁸¹ CSV advised that the committee was disbanded following the COVID-19 pandemic because of financial constraints.⁸²
- 9.69 CSV anticipates that re-implementing a technology committee will support coordination and consistency across the jurisdictions. The committee would consider procurement matters, potential use cases, ethical, financial and contractual issues.⁸³

75 Conference of State Court Administrators (COSCA), *Generative AI & the Future of the Courts: Responsibilities and Possibilities* (Policy Paper, National Center for State Courts, August 2024) 15 <<https://www.ncsc.org/resources-courts/generative-ai-future-courts>>.

76 Consultation 13 (Federal Circuit and Family Court of Australia).

77 Consultation 22 (Court Services Victoria).

78 Court Services Victoria, *Connecting Courts and Communities, Annual Report 2018-19* (Report, October 2019) 9 <https://courts.vic.gov.au/sites/default/files/publications/csv_annual_report_2018-19.pdf>.

79 Court Services Victoria, *Delivering Excellence in Court and Tribunal Administration, Annual Report 2023-24* (Report, October 2024) 11.

80 Consultation 22 (Court Services Victoria).

81 Court Services Victoria, *Delivering Excellence in Court and Tribunal Administration, Annual Report 2023-24* (Report, October 2024) 11.

82 Consultation 22 (Court Services Victoria).

83 Ibid.

- 9.70 Establishing a technology and innovation committee would address current gaps in the governance for AI if it were set up to be:
- multijurisdictional with representation from each of the jurisdictions
 - multidisciplinary and members have appropriate expertise and a foundational understanding of AI
 - represented with judicial officers.
- 9.71 It would be useful to consider bringing in external technical expertise as needed. This would help the committee keep up to date on evolving technology risks and opportunities.
- 9.72 It will also be relevant for this committee to be aware of the experiences and concerns of court users. Below (from paragraph [9.134]) we discuss how consultation should be considered in the design and development of AI tools for Victoria's courts and VCAT. Outcomes of consultations should inform the committee's decision making on AI use cases.
- 9.73 It will be important for this committee to clearly document accountability and responsibility for decision making. It will also be critical to ensure that there are resources available to support AI governance with appropriate secretariat support.
- 9.74 To meet community expectations for transparency, one option to clearly document responsibilities would be for CSV to make the terms of reference of the committee publicly available. This approach is adopted in Canada, with the terms of reference for the Action Committee on Modernizing Court Operations made available online.⁸⁴
- 9.75 It should be clear in the terms of reference that the committee would be responsible for:
- reporting on AI risks
 - making recommendations on AI procurement, potential use cases, ethical and financial issues to Courts Council.
- 9.76 The existing AI Working Group could continue its work as an information sharing forum and report up to the committee.
- 9.77 Because the head of each jurisdiction has legislated responsibilities (as noted above, paragraph [9.12]) for the business of their court, they are responsible for implementing recommendations made by Courts Council in their jurisdiction. This reflects that there are differences in how each of the jurisdictions operates and some AI use cases may not be suitable for every jurisdiction.
- 9.78 Even though each jurisdiction has its own legislated responsibilities this does not negate the benefits and importance of coordination (as discussed in paragraph [9.41]).
- 9.79 The committee should report to the Courts Council, which should actively coordinate responses and identify opportunities for consistency and alignment in Victoria's courts and VCAT where possible.

84

⁸⁴ 'Action Committee on Modernizing Court Operations: The Action Committee - Who We Are and What We Do', *Office of the Commissioner for Federal Judicial Affairs Canada* (Web Page, 21 February 2025) <<https://fja-cmf.gc.ca/COVID-19/index-eng.html#Committee>>.

Establish technology and innovation judicial roles

- 9.80 To ensure judicial perspectives are incorporated into Victoria's courts and VCAT responses to AI, lead judicial technology and innovation roles could be created. Sourdin argues there is a 'need to appoint judges with backgrounds that include sophisticated understandings of new technologies and the time and the ability to design systems that are responsive to judicial and user needs'.⁸⁵ Sourdin states this is necessary to ensure judges can adequately participate in the challenges and opportunities raised by technological advancements and to prevent an overreliance on private technological companies or on the executive arm of government.
- 9.81 Some courts have established specialised technology and innovation judicial leads who work with the administrative arm of court services or a government unit that provides technological support to courts. As discussed in Table 19, Singapore's courts have appointed an 'Innovation and Technology Judge'. New Zealand also created a specialised role to consider digital technology issues.
- 9.82 In Victoria's courts and VCAT, lead technology and innovation judicial roles could be created by the head of each jurisdiction appointing a dedicated judicial officer to lead the implementation of AI.
- 9.83 The proposed technology committee requires judicial representation. This could be achieved by having the appointed judicial leads as committee members. This would support a cohesive approach as the judicial lead could coordinate feedback from their jurisdiction and ensure it is factored into a courts-wide approach to AI.
- 9.84 As noted above (in Table 18) several of Victoria's courts and VCAT already have technology committees in place. These forums will remain important to coordinate feedback within each jurisdiction. It would be useful for judicial leads to bring their jurisdictional perspectives together at the multijurisdictional forum. This can enable a coordinated and, where possible, consistent response to AI usage and implementation.
- 9.85 The judicial responsibilities of the technology and innovation judicial leads would have to be adjusted to ensure that they have sufficient time out of court to fulfill the functions of the AI technology and innovation role.
- 9.86 Other international jurisdictions have developed digital strategies to guide decision making and set direction on the adoption of technology within courts and tribunals.⁸⁶ The development of a digital strategy can assist to ensure that AI use cases are strategically developed to consider future court needs.
- 9.87 The development of a Victorian courts digital strategy could be the focus of the technology committee, like the development of New Zealand's *Digital Strategy for Courts and Tribunals*.⁸⁷

85 Tania Sourdin, *Judges, Technology and Artificial Intelligence: The Artificial Judge* (Edward Elgar Publishing, 2021) 197.

86 See for example Ministry of Justice (UK), *AI Action Plan for Justice* (Policy Paper, 31 July 2025) <<https://www.gov.uk/government/publications/ai-action-plan-for-justice/ai-action-plan-for-justice>>.

87 Dame Helen Winkelmann, Chief Justice of New Zealand, *Chief Justice Launches Digital Strategy for Courts of New Zealand* (Media Statement, 29 March 2023) <<https://www.courtsofnz.govt.nz/assets/7-Publications/Announcements/20230329-Media-Release-Chief-Justice-launches-Digital-Strategy-for-Courts-of-New-Zealand.pdf>>.

Recommendations

16. A technology and innovation committee should be established by the Courts Council to support ongoing governance of AI across Victoria's courts and VCAT.
17. Coordination and consistency in AI governance should be promoted by the Courts Council across Victoria's courts and VCAT.
18. A technology and innovation judicial officer or VCAT member should be appointed by the head of each of Victoria's court jurisdictions and VCAT to support AI development and innovation.

Developing an AI policy for courts, tribunals and Court Services Victoria

- 9.88 While a strategy can support ongoing developments, an AI policy can be used to set accepted use, roles and responsibilities and obligations in relation to the use of AI.
- 9.89 The Commission is not aware of CSV or any of Victoria's courts or VCAT having implemented an AI policy. CSV has implemented some aspects of the *Administrative Guideline for the safe and responsible use of Generative Artificial Intelligence in the Victorian Public Sector* issued by the Victorian Government.⁸⁸
- 9.90 This guideline is based on *Australia's AI Ethics Principles* and sets out minimum requirements for the use of GenAI by Victorian public sector personnel. Some of the requirements are that agency-approved tools are to be used ahead of publicly available GenAI tools. Additionally, personnel can only input publicly available information into GenAI tools that have not been approved, and personnel remain responsible and accountable for their work.⁸⁹
- 9.91 But as the Supreme Court has noted the Victorian Government Administrative Guideline does not apply to courts or CSV.⁹⁰

88 Submissions 25 (Court Services Victoria), 26 (Supreme Court of Victoria). See: Department of Premier and Cabinet (Vic), *Administrative Guideline - The Safe and Responsible Use of Generative AI in the Victorian Public Sector* (No 2024/07, Issue 1.0, November 2024) <<https://www.vic.gov.au/sites/default/files/2024-11/Generative-AI-Guideline-%281%29.pdf>>; Department of Premier and Cabinet (Vic), *Administrative Guideline Direction on the Use of DeepSeek Products, Applications and Web Services* (No 2025/1, Issue:1.0, February 2025) <<https://www.vic.gov.au/sites/default/files/2025-02/Administrative-Guideline-DeepSeek.pdf>>; Department of Government Services, *Guidance for the Safe and Responsible Use of Generative AI in the Victorian Public Sector* (Report, Victorian Government, 19 March 2025) <<https://www.vic.gov.au/guidance-safe-responsible-use-gen-ai-vps>>.

89 Department of Premier and Cabinet (Vic), *Administrative Guideline - The Safe and Responsible Use of Generative AI in the Victorian Public Sector* (No 2024/07, Issue 1.0, November 2024) 4 <<https://www.vic.gov.au/sites/default/files/2024-11/Generative-AI-Guideline-%281%29.pdf>>.

90 Submission 26 (Supreme Court of Victoria).

- 9.92 While not directly relevant to Victoria's courts, the Australian government's *Policy for the responsible use of AI in government*⁹¹ contains principle-based guidance for how non-corporate Commonwealth entities can safely engage with AI. It includes mandatory requirements for entities to designate accountability for implementing the policy to accountable officers. It requires them to make publicly available statements outlining their approach to AI adoption. Additionally, in July 2025, the Australian government released the *Technical standard for government's use of artificial intelligence*.⁹² It provides technical requirements to support the implementation of the Australian Government's *AI Ethics Principles*.
- 9.93 We understand CSV is developing an AI policy that will apply to CSV staff.⁹³ Representatives of CSV stated it will likely contain high-level statements about the restrictions on staff use of AI.⁹⁴
- 9.94 Internationally, courts and government departments have developed policies about the use of AI in courts and tribunals. Examples of international court AI policies are described in Table 20.

Table 20: International court AI policies

Jurisdiction and policy	Summary of approach
<p>Canada</p> <p><i>Use of AI by Courts to Enhance Court Operations</i>⁹⁵</p> <p>Office of the Commissioner for Federal Judicial Affairs - Action Committee on Modernizing Court Operations</p>	<p>Identifies benefits and challenges of courts use of AI and principles to assist courts to consider how to responsibly use AI. It contains key stages to roll out AI tools, including an initial needs assessment and planning phase focusing on community consultation. It then steps through AI project management phases:</p> <ul style="list-style-type: none"> • data handling throughout the AI lifecycle • design (identifying the purpose of the tool testing and training and ensuring the technical requirements fit courts systems and structures) • deployment (consideration of trials, pilots, transition plans, training and regular auditing) • decommissioning considerations.
<p>Scotland</p> <p><i>Our Approach to the Development of Services Using Artificial Intelligence</i>⁹⁶</p> <p>Scottish Courts and Tribunals Service</p>	<p>The policy sets out the overall approach the Scottish Courts and Tribunals Service takes to the development and use of AI. It contains seven guiding principles to ensure the use of AI is ethical and beneficial. It provides for governance and oversight through a hierarchy of control across different governance bodies. It also makes commitments to training, development, monitoring and review. It specifies that contracts with suppliers will include clauses that specify ethical AI use and compliance with relevant laws and standards such as data protection and privacy.</p>

91 Digital Transformation Agency (Cth), *Policy for the Responsible Use of AI in Government* (Version 1.1, 1 September 2024) 8 <<https://www.digital.gov.au/policy/ai/policy>>.

92 Digital Transformation Agency (Cth), *Australian Government's AI Technical Standard* (Version 1, July 2025) <<https://www.digital.gov.au/policy/ai/AI-technical-standard>>.

93 Consultation 22 (Court Services Victoria).

94 Ibid.

95 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-lIA-par-les-tribunaux-eng.pdf>>.

96 Scottish Courts and Tribunals Service, *Scottish Courts and Tribunals Service: Our Approach to the Development of Services Using Artificial Intelligence* (Policy, April 2025) <<https://www.scotcourts.gov.uk/media/xalno3ff/scts-ai-policy.pdf>>.

Jurisdiction and policy	Summary of approach
<p>Spain</p> <p><i>Policy on the use of AI in the Administration of Justice</i>⁹⁷</p> <p>Ministry of Justice and Court Relations</p>	<p>Incorporates the <i>European ethical charter on the use of Artificial Intelligence in judicial systems and their environment's</i> five ethical principles.⁹⁸ It contains rules for the use of AI in the administration of justice and creates obligations to set responsibility for AI use, development, implementation, quality control and auditing. It also contains examples of AI uses that are:</p> <ul style="list-style-type: none"> • prohibited • require the approval of IT • require management's approval • generally permitted.
<p>United States (Arizona)</p> <p><i>Code of Judicial Administration</i>⁹⁹</p> <p>Arizona Supreme Court</p>	<p>The <i>Code of Judicial Administration</i> was updated to include a chapter <i>on the Use of Generative Artificial Intelligence Technology and Large Language Models</i>. It applies to all court personnel and lists considerations for judicial leaders when determining whether to permit the use of GenAI. It also contains rules for staff which restrict staff from inputting public content into non approved AI systems. It sets out that the administrative director must keep a list of GenAI tools that are:</p> <ul style="list-style-type: none"> • approved for all purposes • approved for public content only • approved for non-production use only • prohibited. <p>The document also provides direction on court developed tools.</p>
<p>United States (California)</p> <p><i>Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work</i>¹⁰⁰</p> <p>Judicial Council of California</p>	<p>The Judicial Council of California agreed that any court that does not prohibit the use of GenAI by court staff or judicial officers 'must adopt a policy that applies to the use of GenAI by court staff for any purpose and by judicial officers for any task outside their adjudicative role'.¹⁰¹ The Judicial Council of California has specified what must be contained in AI court polices which includes direction on responsible use and disclosure.</p>

97 Minister of the Presidency, Justice and Relations with the Courts (Spain), *Policy on the Use of Artificial Intelligence in the Administration of Justice* (Policy, 2024) <https://www.mjusticia.gob.es/es/JusticiaEspana/ProyectosTransformacionJusticia/Documents/Spains_Policy_on_the_use_of_AI_in_the_Justice_Administration.pdf>.

98 Ibid 3; European Commission for the Efficiency of Justice (CEPEJ), *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (2019, adopted at the 31st plenary meeting of the CEPEJ, Strasbourg, 3-4 December 2018).

99 Arizona Supreme Court Judicial Branch, *Arizona Code of Judicial Administration* (Code of Practice, 29 January 2025) 'Section 1-509: Use of Generative Artificial Intelligence Technology and Large Language Models' <https://www.azcourts.gov/Portals/0/0/admcode/pdfcurrentcode/1-509%20Use%20of%20AI%20Tech%20and%20LLMs%2001_2025.pdf?ver=acMF-P2SEROdArzTQohBjO%3d%3d>.

100 Judicial Council of California, Artificial Intelligence Task Force, *Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work* (Report to the Judicial Council No 25-109, 16 June 2025) <<https://jcc.legistar.com/View.ashx?M=F&ID=14303119&GUID=0C94642A-28D3-47C0-8AE9-1E4DE3A96DFC>>.

101 Ibid 2.

Jurisdiction and policy	Summary of approach
<p>United States (Connecticut) <i>Artificial Intelligence Responsible Use Framework</i>¹⁰² State of Connecticut Judicial Branch</p>	<p>The policy includes guiding principles and information on AI across intake and exploration, impact assessment, procurement and implementation phases. It sets out the terms of reference for the Judicial Branch's Artificial Intelligence Committee. It contains operating procedures on:</p> <ul style="list-style-type: none"> • determination characteristics—to determine whether a system employs AI for decision-making • intake and inventory—to conduct an annual inventory of all systems that employ AI used by the branch • impact assessment—to categorise AI systems into risk categories • procurement and due diligence processes—to procure AI tools.
<p>United States (various courts)</p>	<p>Several other US courts have introduced AI policies for court employees, such as the Supreme Courts in South Dakota¹⁰³ and Illinois.¹⁰⁴ The <i>Illinois Supreme Court Policy on Artificial Intelligence</i> directs that the use of AI by court staff 'may be expected, should not be discouraged, and is authorized provided it complies with legal and ethical standards'.¹⁰⁵</p>

- 9.95 International AI policies provide examples that are helpful in considering the scope of an AI policy for CSV and Victoria's courts and tribunals.
- 9.96 As outlined in Chapter 4, peak standards organisations have released directions on AI governance. While not specific to courts, we heard that international standards could play an important role in shaping public trust in AI governance within courts and tribunals by setting a benchmark of acceptable practices.¹⁰⁶
- 9.97 These peak bodies direct organisations to develop and document a policy for the development and use of AI to:
- a) ensure the use of the AI system is consistent with an organisation's stated values and principles
 - b) define key terms and concepts and the scope of their purposes and intended uses
 - c) align AI governance to broader security, safety, privacy and data governance policies and practices, particularly the use of sensitive or otherwise risky data.¹⁰⁷

102 State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024) 13–21.

103 Supreme Court of South Dakota, *South Dakota Unified Judicial System Generative Artificial Intelligence Guidance* (Guidance, June 2024).

104 Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025).

105 Ibid 2.

106 Consultation 21 (Public Record Office Victoria).

107 Standards Australia, 'AS ISO/IEC 42001:2023 Information Technology - Artificial Intelligence - Management System' 21–22 <<https://www.standards.org.au/standards-catalogue/standard-details?designation-as-iso-iec-42001-2023>>; National Institute of Standards and Technology (NIST), *AI RMF Playbook* (Report, U.S. Department of Commerce, 2024) 5–6 <https://airc.nist.gov/AI_RMF_Knowledge_Base/Playbook>.

- 9.98 They also encourage organisations to:
- a) establish a documentation inventory system
 - b) establish processes about public disclosure of AI use
 - c) implement external stakeholder consultation and engagement processes.¹⁰⁸
- 9.99 Based on these standards and stakeholder feedback, this chapter goes on to suggest key elements to be included in an AI policy for CSV, and Victoria's courts and VCAT being:
- information security and data privacy processes
 - principled guidance for use of AI by CSV and court and tribunal staff
 - disclosure and consultation processes.

Alignment of AI use to information security, privacy and data management

- 9.100 Court users and the public need to be able to trust that Victoria's courts and VCAT can maintain the security and privacy of data. Professor Lyria Bennett Moses has commented: 'The security of AI systems used by courts is ... essential both from a practical standpoint and for the purpose of institutional and public confidence.'¹⁰⁹
- 9.101 International standards highlight that AI policies should refer to and align with an organisation's existing privacy and data governance processes and policies.¹¹⁰ This is consistent with AI policies developed by courts.
- 9.102 In Canada the Office of the Commissioner for Federal Judicial Affairs has set out that appropriate data privacy and cybersecurity measures are needed to guide the use of AI by courts and that:
- A strong data privacy and cybersecurity framework, including a clear protocol in the event of a breach, can mitigate risks associated with using an AI tool to store or process any sensitive information handled by courts. Consideration should be given to how AI-related policies or protocols fit within existing frameworks for information management and information technology.¹¹¹
- 9.103 In Chapter 5 it is recommended that Victoria's courts and VCAT update existing privacy policies and develop AI policies to state how they seek to be consistent with the Victorian Information Privacy Principles (IPPs). In Chapter 5 we also refer to guidance released by the Office of the Victorian Information Commissioner on the use of AI tools.¹¹² This guidance may be helpful for Victoria's courts and VCAT to consider how they can align with the IPPs.

108 National Institute of Standards and Technology (NIST), *AI RMF Playbook* (Report, U.S. Department of Commerce, 2024) 10 <https://airc.nist.gov/AI_RM_F_Knowledge_Base/Playbook>; Standards Australia, 'AS ISO/IEC 42001:2023 Information Technology - Artificial Intelligence - Management System' 24–25, 31 <<https://www.standards.org.au/standards-catalogue/standard-details?designation=as-iso-iec-42001-2023>>; Department of Industry, Science and Resources (Cth), National Artificial Intelligence Centre, and CSIRO, *Voluntary AI Safety Standard* (Report, August 2024) 31–32 <<https://www.industry.gov.au/sites/default/files/2024-09/voluntary-ai-safety-standard.pdf>>.

109 Lyria Bennett Moses, 'Stochastic Judges: The Limits of Large Language Models' (2024) 98(9) *Australian Law Journal* 640, 645.

110 Standards Australia, 'AS ISO/IEC 42001:2023 Information Technology - Artificial Intelligence - Management System' 22 <<https://www.standards.org.au/standards-catalogue/standard-details?designation=as-iso-iec-42001-2023>>.

111 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 3 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IA-par-les-tribunaux-eng.pdf>>.

112 Office of the Victorian Information Commissioner (OVIC), *Use of Enterprise Generative AI Tools in the Victorian Public Sector* (Report, March 2025) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/use-of-enterprise-generative-ai-tools-in-the-victorian-public-sector/>>; Office of the Victorian Information Commissioner (OVIC), *Use of Personal Information with Publicly Available Generative AI Tools in the Victorian Public Sector* (Report, March 2025) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/use-of-personal-information-with-publicly-available-generative-ai-tools-in-the-victorian-public-sector/>>.

- 9.104 We also suggest that Victoria's courts and VCAT should consider a privacy by design approach to court data (as defined in Chapter 3).¹¹³ Victoria's courts and VCAT should also consider:
- implementing robust security controls (including physical security, cybersecurity and insider threat safeguards across the AI lifecycle).¹¹⁴
 - implementing processes and documenting how teams will support the management and protection of data usage rights for AI (including intellectual property, Indigenous Data Sovereignty, privacy, confidentiality and contractual rights).¹¹⁵
- 9.105 In Chapter 3, we highlight that organisations need to consider the physical location of where data is stored and whether the use of an AI tool will result in information travelling outside of Victoria.

Principled guidance for use of AI by CSV and court and tribunal staff

- 9.106 As highlighted in Table 19, many international court AI policies contain rules or guidance to staff about acceptable uses of AI.
- 9.107 The Conference of State Court Administrators in the United States advised that to best achieve time and labour savings, court staff need to be provided with guidelines on what is acceptable AI use and what processes should be followed.¹¹⁶
- 9.108 The Supreme Court noted existing duties on court and tribunal staff in relation to privacy and confidentiality:
- CSV employees' terms of employment include duties relating to confidentiality, which is reinforced in various ways. There are also CSV IT [information technology] policies that apply to Court staff, and CSV provides information to staff regarding the use of AI.¹¹⁷
- 9.109 While there are general information technology policy requirements in place, many people supported the development of principled guidelines about the use of AI by court and tribunal staff.¹¹⁸
- 9.110 As discussed in Chapter 6, the Commission's principles could help to guide safe use of AI in Victoria's courts and tribunals. An AI policy could serve an educative function and connect the principles to relevant considerations for CSV, court and tribunal staff.
- 9.111 Guidance to CSV and court and tribunal staff should be separate to guidance for judicial officers which is discussed in Chapter 8. This is because judicial officers have different roles and responsibilities to court and tribunal staff.
- 9.112 Table 21 provides examples of international court policies to demonstrate how the Commission's principles could help guide the use of AI by CSV, court and VCAT staff.

113 Office of the Victorian Information Commissioner (OVIC), *Privacy by Design* (Guidance No D21/24515, January 2022) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/privacy-by-design/>>.

114 Group of Seven (G7), *Hiroshima Process International Guiding Principles for Organizations Developing Advanced AI System* (Guidance, 30 October 2023) 2 <<https://www.soumu.go.jp/hiroshimaaiprocess/en/documents.html>>.

115 Department of Industry, Science and Resources (Cth), National Artificial Intelligence Centre, and CSIRO, *Voluntary AI Safety Standard* (Report, August 2024) 23 <<https://www.industry.gov.au/sites/default/files/2024-09/voluntary-ai-safety-standard.pdf>>.

116 Conference of State Court Administrators (COSCA), *Generative AI & the Future of the Courts: Responsibilities and Possibilities* (Policy Paper, National Center for State Courts, August 2024) 6 <<https://www.ncsc.org/resources-courts/generative-ai-future-courts>>.

117 Submission 26 (Supreme Court of Victoria).

118 Submission 27 (Federation of Community Legal Centres and Justice Connect).

Table 21: Examples of principle-based guidance for staff

Principle	Guidance for staff
Impartiality and fairness	<ul style="list-style-type: none"> • Court staff 'must thoroughly review all material to ensure it contains neither overt prejudice nor subtle bias.'¹¹⁹ • 'Use AI consistently with core values and ethical rules ... promote AI tools that are accessible to all individuals, including those with disabilities, and that they do not inadvertently exclude any segments of the population or inadvertently perpetuate bias against anyone, including marginalized groups.'¹²⁰
Accountability and independence	<ul style="list-style-type: none"> • 'Any use of GenAI output is ultimately the responsibility of the Authorized User. Authorized Users are responsible to ensure the accuracy of all work product and must use caution when relying on the output of GenAI.'¹²¹ • 'Always verify AI-generated content before use. Generative AI can sometimes generate false information and the output should not be relied on without verification. While AI can be used as a starting point, the output should never be used verbatim in the completion of reports/documents for the Court.'¹²² • 'The planning, procurement, and deployment of generative AI in ... courts must firmly uphold the fundamental principle of judicial independence, encompassing its individual and institutional dimensions.'¹²³
Transparency and open justice	<ul style="list-style-type: none"> • 'ensure transparency and accountability in the design, development, procurement, deployment, and ongoing monitoring of AI in a manner that respects and strengthens public trust. When using AI tools to create content, agency external facing services or dataset inputs or outputs shall disclose the use of AI.'¹²⁴ • Discussion on disclosure is provided from paragraph [9.113].
Contestability and procedural fairness	<ul style="list-style-type: none"> • Court/tribunal use of AI 'shall be documented in ways that ensure the technology is understood by those that make decisions, monitor outcomes, or explain results.'¹²⁵ • 'Any AI tool used in court applications must be able to provide understandable explanations for their decision-making output.'¹²⁶ • This is discussed further from paragraph [9.153].

119 Supreme Court of South Dakota, *South Dakota Unified Judicial System Generative Artificial Intelligence Guidance* (Guidance, June 2024) 2.

120 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 7 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

121 Delaware Courts, Judicial Branch, *Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel* (Interim Policy, 22 October 2024) 1 <<https://www.courts.delaware.gov/forms/download.aspx?id=266838>>.

122 Toledo Municipal Court, *Toledo Municipal Court AI Policy* (Policy, 18 December 2024) 1.

123 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 6 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

124 State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024) 6.

125 Ibid.

126 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 8 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

Principle	Guidance for staff
Privacy and data security	<ul style="list-style-type: none"> • 'Respect data privacy: Be vigilant about confidentiality and data privacy. Remember that information input into AI systems is outside the court's secure network and may be exposed to the public.'¹²⁷ • 'Authorized Users may not input any Non-Public Information into Non-Approved GenAI.'¹²⁸ • 'Employees and affiliated entities must not use LLMs [large language models] in any way that infringes copyrights or on the intellectual property rights of others'.¹²⁹ • 'Should any problems arise related to the use of generative AI, such as unauthorized access or misuse of sensitive, confidential, or privacy restricted information, users must alert the Help Desk and their supervisor immediately.'¹³⁰
Access to justice	<ul style="list-style-type: none"> • 'Serving the public fairly and effectively should guide all decisions related to the use of AI. Consider all potential users of the tool and incorporate their needs into its design, implementation, and monitoring.'¹³¹
Efficiency and effectiveness	<ul style="list-style-type: none"> • 'AI will not be the appropriate solution to every problem and should not be used simply because it is new, exciting, or available. Possible use of AI should be founded on identifying the problem and assessing possible solutions - including other technologies or non-technological approaches, rather than simply integrating AI into ineffective processes.'¹³² • 'The use of AI tools shall be to enhance and improve the value added by our Judicial Branch employees'.¹³³
Human oversight and monitoring	<ul style="list-style-type: none"> • 'Review of AI output through competent human oversight is important at all stages for validating results and making any necessary corrections. The level of human oversight required will depend on various factors: For example, greater oversight may be required for tools not developed specifically for court or legal purposes. When developing tools for courts, greater oversight may be required in the early stages to evaluate accuracy.'¹³⁴

127 Toledo Municipal Court, *Toledo Municipal Court AI Policy* (Policy, 18 December 2024) 1.
128 Delaware Courts, Judicial Branch, *Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel* (Interim Policy, 22 October 2024) 2 <<https://www.courts.delaware.gov/forms/download.aspx?id=266838>>.
129 State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024) 9.
130 Supreme Court of South Dakota, *South Dakota Unified Judicial System Generative Artificial Intelligence Guidance* (Guidance, June 2024) 2.
131 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 3 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IIA-par-les-tribunaux-eng.pdf>>.
132 Ibid.
133 State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024) 6.
134 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 3 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IIA-par-les-tribunaux-eng.pdf>>.

Recommendation

19. An AI policy for Court Services Victoria staff and court and tribunal staff should include the Commission's principles on the safe and acceptable use of AI.

Disclosure of AI use by Victoria's courts and VCAT

- 9.113 Clearly communicating use of AI by courts and tribunals is critical to upholding transparency and open justice and can support public trust in the administration of justice. Public confidence in the courts depends on what the public knows about how the courts use AI.¹³⁵
- 9.114 Many court users expected courts and tribunals to disclose and consult on their use of AI. A sample of stakeholder views is illustrated in Table 22.

Table 22: Stakeholder views on disclosure of court/tribunal use of AI

Stakeholder	Views on disclosure of AI use by courts and tribunals
Victoria Legal Aid	'Consistent with human rights and a client-centred approach, we consider that targeted consultation on AI adoption is vital to foster trust and respect in the justice system. In particular, consultation should occur with groups which represent the diversity of our community and those who engage with the system'. ¹³⁶
Northern Community Legal Centre	'If further technological reforms are to be introduced, court users should be included in consultation processes prior to implementation as well as during regular monitoring activities'. ¹³⁷
Law Institute of Victoria	'courts and tribunals should engage in public consultations before implementing AI tools. Courts and tribunals should also disclose AI use to all court users ... Public consultation would allow affected groups to express concerns and would ensure that AI implementation aligns with community expectations for fairness and transparency'. ¹³⁸
Federation of Community Legal Centres and Justice Connect	'Courts and tribunals should ensure processes and decisions supported by AI systems are transparent to court users'. ¹³⁹
Centre for the Future of the Legal Profession and UNSW Law and Justice	'it is imperative to disclose when AI is being used in a human process within courts or tribunals, which are rule of law promoting institutions'. ¹⁴⁰

135 Conference of State Court Administrators (COSCA), *Generative AI & the Future of the Courts: Responsibilities and Possibilities* (Policy Paper, National Center for State Courts, August 2024) 6 <<https://www.ncsc.org/resources-courts/generative-ai-future-courts>>.

136 Submission 12 (Victoria Legal Aid).

137 Submission 18 (Northern Community Legal Centre).

138 Submission 16 (Law Institute Victoria).

139 Submission 27 (Federation of Community Legal Centres and Justice Connect).

140 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

- 9.115 Court users expressed strong support for disclosure by courts. But there were mixed views among courts on whether disclosure was necessary. Representatives of the Supreme Court stated:
- The use of AI in administrative processes does not need to be disclosed. The administrative process for listing matters is not disclosed now and AI does not change that. These processes can be a mix of judicial and administrative actions.¹⁴¹
- 9.116 In contrast, representatives of the Coroners Court provided in-principle support for disclosure where AI is used by court staff and judicial officers. But they noted whether disclosure is necessary may depend on the type of AI tool being used.¹⁴²
- 9.117 Some discussion focused on what sorts of uses would require disclosure. Some stakeholders said that AI uses by courts and tribunals that were merely administrative would not need to be disclosed.¹⁴³ In Connecticut, the judicial branch is required to publish an inventory of AI tools. But this does not include products embedded in other systems that pose minimal risks, such as autocomplete functions in email.¹⁴⁴
- 9.118 Another approach taken by some jurisdictions is to limit disclosure to publicly facing tools and distinguish between AI tools used in administrative versus adjudicative roles. In California there is a mandatory requirement for court staff using GenAI for any purpose, and judicial officers using GenAI for tasks outside their adjudicative role, to disclose:
- the use of or reliance on generative AI if the final version of a written, visual, or audio work provided to the public consists entirely of generative AI outputs.¹⁴⁵
- 9.119 There is also a discretionary obligation to consider disclosure if judicial officers use GenAI within their adjudicative role to create content provided to the public. But it is acknowledged that basing disclosure on whether a judicial officer has used AI in their adjudicative role 'could create difficulties for courts'.¹⁴⁶
- 9.120 Disclosure is critical because there is currently a high level of distrust toward AI systems in Australia. A 2025 study by the University of Melbourne and KPMG ranked Australia as one of the lowest countries in the world for trust and acceptance of AI.¹⁴⁷ Only 36 per cent of Australians are willing to trust AI systems.¹⁴⁸
- 9.121 Not only are there high levels of distrust towards AI, but trust in public institutions across Australia has been falling and courts are not immune to that trend.¹⁴⁹ Professor Gabrielle Appleby has warned that:
- In the judicial sphere, the trust that might have been previously reposed in exclusive judicial self-regulation, characterised by informality and opaqueness, no longer exists, or at least, is no longer sufficient.¹⁵⁰
- 9.122 Disclosure of AI tools used in judicial systems has received international support. The UN Special Rapporteur on the independence of judges and lawyers recommended that 'key information about judicial AI systems be made publicly available, to permit legal challenges and oversight by civil society'.¹⁵¹

141 Consultation 32 (Supreme Court of Victoria). See also Submission 26 (Supreme Court of Victoria).

142 Consultation 2 (Coroners Court of Victoria).

143 Submission 17 (Office of Public Prosecutions).

144 State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024) 15.

145 Judicial Council of California, Artificial Intelligence Task Force, *Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work* (Report to the Judicial Council No 25-109, 16 June 2025) 8 <<https://jcc.legistar.com/View.ashx?M=F&ID=14303119&GUID=0C94642A-28D3-47C0-8AE9-1E4DE3A96DFC>>.

146 Ibid 9.

147 Nicole Gillespie et al, *Trust, Attitudes and Use of Artificial Intelligence: A Global Study 2025* (Report, The University of Melbourne and KPMG International, 2025) 28 <<https://doi.org/10.26188/28822919>>.

148 Ibid 32.

149 Nicholas Davis et al, *Artificial Intelligence: Governance and Leadership* (White Paper, Australian Human Rights Commission and World Economic Forum, 2019) 10.

150 Gabrielle Appleby, 'Introduction to the Special Issue on the Judiciary' (2023) 97(9) *Australian Law Journal* 600, 603.

151 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 21 <<https://docs.un.org/en/A/80/169>>.

9.123 If courts want to leverage AI to deliver court services, they need to build public confidence. One report suggested that 'people are more likely to trust AI systems when they believe they understand AI and when and how it is used in common applications and have received AI education or training'.¹⁵² The principles of contestability, transparency and accountability depend upon identifying the appropriate level of disclosure.

Disclosure in an AI inventory for Victoria's courts and VCAT

9.124 At a time when AI technology is still rapidly evolving, it is recommended that all AI tools procured, deployed or developed by Victoria's courts and VCAT should be publicly disclosed in an AI inventory.

9.125 This should include disclosure of any AI tool which is made available to CSV or court and tribunal staff or judicial officers. Disclosure should be aimed at an organisational level to capture tools that have been implemented in Victoria's courts and VCAT for administrative purposes, such as transcription and translation tools. It should also include AI tools made available to judicial officers, such as legal research tools, although this does not require individual judicial officers or court staff to disclose every individual use of AI (see the discussion on judicial officer disclosure in Chapter 8).

9.126 While this may result in the disclosure of low risk uses, transparency is necessary now to build public confidence in the use of AI tools by Victoria's courts and VCAT. Representatives of the Public Record Office Victoria stated that:

We are in a rapidly changing moment with the introduction of AI. It is better for tighter regulations on AI use until things become better understood and practices become more managed ... in terms of governance, we suggest erring on the side of caution including about what you disclose, at least for some time.¹⁵³

9.127 This was supported by other stakeholders who echoed that disclosure 'should apply even if the process in question is in a seemingly mundane area (such as filing) and its use is for administrative rather than judicial purposes'.¹⁵⁴

9.128 It is recognised that there may be difficulties in identifying where AI has been incorporated into existing products because of the growth of embedded AI (discussed in Chapter 3). To make a meaningful disclosure, Victoria's courts and tribunals should take reasonable steps to identify whether new software or technology employs AI. Some stakeholders suggested that this disclosure could involve 'identifying the type of system and where it is being deployed'.¹⁵⁵

9.129 Representatives of the County Court considered several ways courts and tribunals could publish information about AI tools. For example:

- court or tribunal websites
- court or tribunal annual reports
- CSV's annual report if systems are made available across multiple jurisdictions.¹⁵⁶

152 Nicole Gillespie et al, *Trust, Attitudes and Use of Artificial Intelligence: A Global Study 2025* (Report, The University of Melbourne and KPMG International, 2025) 59 <<https://doi.org/10.26188/28822919>>.

153 Consultation 21 (Public Record Office Victoria).

154 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

155 Ibid.

156 Consultation 12 (County Court of Victoria).

- 9.130 As an example, the Coroners Court has published information on its website about the AI pilot program.¹⁵⁷ Representatives of the Public Record Office Victoria were also supportive of Victoria's courts and VCAT developing an AI inventory or register and highlighted that it should be actively maintained and publicly accessible.¹⁵⁸
- 9.131 At a minimum CSV should coordinate the publishing of an AI inventory that captures tools used by all of Victoria's courts and VCAT. Having a coordinated list will help to identify any duplication of AI tools and opportunities for consistency. This will also assist in the identification of potential risks across CSV, courts and tribunals. Individual courts may also choose to publish information on their website or in their annual reports.
- 9.132 As we highlight at paragraph [9.117], an example of how courts can publish information on AI usage would be the Judicial Branch of the State of Connecticut which conducts an annual inventory of all systems used by the Judicial Branch. This inventory is published on their website.¹⁵⁹
- 9.133 It is important for an AI inventory to be regularly updated to ensure it is accurate and comprehensive. The process of courts and tribunals undertaking a regular stocktake serves an equally important function by raising awareness about the status and availability of AI systems within Victoria's courts and VCAT. It is recommended that the AI inventory be updated annually.

Recommendation

20. Court Services Victoria should coordinate an AI inventory, reasonably identifying AI tools designed, developed, deployed or procured by Court Services Victoria, Victoria's courts and VCAT, which should be published and updated annually.

Community consultation on AI use by Victoria's courts and VCAT

- 9.134 In addition to disclosure, some stakeholders supported Victoria's courts and VCAT undertaking community consultation on AI tools.
- 9.135 Consultation is a key feature of international court issued AI policies. In Canada guidance provided to courts emphasises that consultation with the community is critical to planning and assessing the need for, and feasibility of, any AI system.¹⁶⁰
- 9.136 We heard from human rights groups that community consultation was integral to ensuring that AI use in courts and VCAT aligned with a human rights approach. The Human Rights Law Centre recommended that:
- Civil society, legal professionals, and affected communities must be regularly consulted on the use of AI systems in Victoria's courts to ensure these systems reflect the needs and expectations of Victorians.¹⁶¹

157 'Technology at the Court', *Coroners Court of Victoria* (Web Page) <<https://www.coronerscourt.vic.gov.au/technology-court>>.
158 Consultation 21 (Public Record Office Victoria).
159 State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024) 10, 15.
160 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 4 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IA-par-les-tribunaux-eng.pdf>>.
161 Submission 15 (Human Rights Law Centre).

- 9.137 This was supported by community legal centre representatives who said there was value in courts and tribunals conducting consultations and user testing.¹⁶² Additionally, the Office of the Victorian Information Commissioner strongly agreed that 'courts and tribunals should consult with the public before using AI'.¹⁶³
- 9.138 Some court users raised concerns about inadequate consultation when new technologies had previously been implemented in Victoria's courts and VCAT. The Northern Community Legal Centre shared that:
- a recent 2024 review of pre-court information forms by the Magistrates' Court of Victoria provided Northern CLC with a window of only 48 hours to provide a written submission based upon our research with court service users. It is not apparent if courts have tested the accessibility and useability of their online forms with court service users, and particularly those from marginalised cohorts that are more likely to experience difficulties.¹⁶⁴
- 9.139 Some courts recognised the importance of consultation when introducing AI tools. The County Court stated, 'Consultation with key stakeholders will also assist in determining when and how the Court uses AI'.¹⁶⁵
- 9.140 The importance of consultation has been recognised internationally. The UN Special Rapporteur on the independence of judges and lawyers recommended that when considering AI tools, judiciaries should engage in multistakeholder consultations.¹⁶⁶
- 9.141 As discussed in Chapter 6, consultation with the legal profession and court users, particularly those from marginalised or disadvantaged groups, is critical to implementing the principles of transparency and open justice, impartiality and fairness, and efficiency and effectiveness.
- 9.142 Stakeholders highlighted that when consultation may be necessary 'will depend on the intended use of any AI applications and the associated risks'.¹⁶⁷ Not every use of AI will require consultation. The Supreme Court considered lower risk AI uses may not always require consultation:
- in relation to AI that generates backgrounds and cancels out noise in virtual hearings, it would not appear to be necessary for the Court to understand the data that the AI was trained on, to disclose to or consult court users on the use of the AI.¹⁶⁸
- 9.143 Representatives of the Judicial College of Victoria considered that the threshold to consult should be high, for instance where the AI tool may impact people's liberty.¹⁶⁹ They also raised concerns about placing mandatory obligations to consult on courts:
- Courts are different to regulatory agencies and consultation obligations do not fit well with courts. A moral obligation to consult exists. But a duty to consult is worrying from the perspective of needing to preserve courts' independence.¹⁷⁰
- 9.144 To determine when consultation may be necessary, we heard that Victoria's courts and VCAT could build consultation into risk assessments.¹⁷¹ A proposed AI assurance framework to support Victoria's courts and VCAT to assess risks of AI use cases is discussed below (from paragraph [9.183]) it contains considerations for consultation across the AI lifecycle.
- 9.145 How courts and tribunals should consult is dependent on the AI use case being considered. Stakeholders discussed a variety of possible consultation approaches. The Castan Centre recommended the establishment of a standing consultation forum:

162 Consultation 8 (Federation of Community Legal Centres Workshop).

163 Submission 5 (Office of the Victorian Information Commissioner).

164 Submission 18 (Northern Community Legal Centre).

165 Submission 24 (County Court of Victoria).

166 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 21 <<https://docs.un.org/en/A/80/169>>.

167 Submission 24 (County Court of Victoria).

168 Submission 26 (Supreme Court of Victoria).

169 Consultation 7 (Judicial College of Victoria).

170 Ibid.

171 Consultation 31 (Victorian Equal Opportunity & Human Rights Commission).

it is significantly harder for individuals involved in courts and tribunals and grassroots organisations who do not necessarily consider themselves as part of the established justice landscape to be empowered and included within reforms. Therefore, deliberate efforts need to be made to seek out and hear from these voices. This kind of consumer and community engagement is standard practice in health services research and system evaluation, and consistent with a human rights-based approach.¹⁷²

- 9.146 Standing court user groups are already being used in some of Victoria's courts. Representatives of the Coroners Court told us that they have a court user group. They considered that AI could become a standing item on the agenda for that group.¹⁷³
- 9.147 Other legal organisations have implemented standing advisory groups which include membership of people with lived experience. Victoria Legal Aid's Data and Digital Ethics and Human Rights Advisory Group is used to review projects to ensure they meet ethical and human rights obligations and that there are controls in place, to detect things like bias or identify when and how to consult with impacted communities.¹⁷⁴
- 9.148 Consultation and user testing is also a feature of international court and tribunal policies.¹⁷⁵
- 9.149 Victoria's courts and VCAT should consider what consultation mechanism is most appropriate based on the AI use case being considered. Input from a range of relevant stakeholders with diverse backgrounds should be considered. This includes 'court users from marginalised backgrounds and the services who work with them'.¹⁷⁶
- 9.150 We also heard that when testing AI tools there should be a focus on including marginalised individuals and groups. As an example, representatives from the Victorian Advocacy League for Individuals with Disabilities stated that where relevant 'AI tools should be trialled with people with strong to moderate intellectual disability or people with short-term memory issues'.¹⁷⁷
- 9.151 We heard that there is value in ongoing user testing and in providing avenues for court users to give ongoing feedback. The Federation of Community Legal Centres and Justice Connect recommended that:
user feedback should be incorporated to continuously improve AI tools over time. Allowing the public to report issues or inaccuracies with AI-generated advice will ensure that the system can adapt to users' needs and enhance its reliability.¹⁷⁸
- 9.152 Victoria's courts and VCAT should consider implementing processes to ensure there is an accessible avenue for court users to provide meaningful feedback on their experience of AI systems.

172 Submission 10 (Castan Centre for Human Rights Law, Monash University).

173 Consultation 2 (Coroners Court of Victoria).

174 Consultation 35 (Victoria Legal Aid).

175 For example, the Arizona Supreme Court requires that, 'All public facing Generative AI tools must be thoroughly tested before being deployed' Arizona Supreme Court Judicial Branch, *Arizona Code of Judicial Administration* (Code of Practice, 29 January 2025) 'Section 1-509: Use of Generative Artificial Intelligence Technology and Large Language Models' 4 [HI] <https://www.azcourts.gov/Portals/0/0/admcode/pdfcurrentcode/1-509%20Use%20of%20AI%20Tech%20and%20LLMs%2001_2025.pdf?ver=acMF-P2SER0dArzTQohBjQ%3d%3d>.

176 Submission 18 (Northern Community Legal Centre).

177 Consultation 24 (Victorian Advocacy League for Individuals with Disability).

178 Submission 27 (Federation of Community Legal Centres and Justice Connect).

Recommendation

21. Victoria's courts and VCAT should consult with people likely affected by AI tools based on the AI assurance framework (set out in recommendation 23). Consultation should occur before implementing AI tools and throughout the AI lifecycle.

Notification and human oversight considerations for AI decision making

- 9.153 In Chapter 6 we identified considerations for courts and tribunals to ensure that the incorporation of AI does not undermine people's rights to challenge decisions.
- 9.154 These considerations include:
- notifying people whose rights are significantly affected by a decision made or materially influenced by AI
 - ensuring there is human oversight of decisions made or materially influenced by AI.
- 9.155 Each of these are discussed below.

Notification and explanation of AI use

- 9.156 Victoria's courts and VCAT should notify people whose rights are significantly affected by a decision made or materially influenced by AI.
- 9.157 This notification needs to be clear and understandable. Australia's *National framework for the assurance of artificial intelligence in government*, while not specific to courts, provides useful direction. It advises that governments should disclose the use of AI to people who may be impacted and provide clear and simple explanations for how an AI system reaches an outcome.¹⁷⁹ Information should also be tailored to the intended audience so that it is understandable.
- 9.158 However, as we discuss in Chapter 3, complexity and proprietary considerations can limit and even prevent the explainability of AI tools. Representatives of the Monash Digital Law Group stated that while 'it seems on the face of it to be a reasonable request that a human explain' how an AI decision is made, 'it is increasingly difficult to do so'.¹⁸⁰
- 9.159 Despite the opacity of AI tools, the Gradient Institute and the CSIRO have stated that to implement the Australian Government's AI Ethics Principle of contestability it is 'essential to provide impacted individuals with an adequate understanding of how the system decided their outcome and what data the decision was based on so that they have grounds to contest'.¹⁸¹
- 9.160 To enable Victoria's court's and VCAT to provide clear and understandable information about AI decisions, consideration should be given to the explainability of AI tools during their design or procurement.

179 Australian Government et al, *National Framework for the Assurance of Artificial Intelligence in Government: A Joint Approach to Safe and Responsible AI by the Australian, State and Territory Governments* (Report, 21 June 2024) 21.

180 Consultation 28 (Monash University Digital Law Group).

181 Alistair Reid, Simon O'Callaghan and Yaya Lu, *Implementing Australia's AI Ethics Principles: A Selection of Responsible AI Practices and Resources* (Report, Gradient Institute and CSIRO, June 2023) 36.

- 9.161 The UNESCO draft AI guidelines recommend courts adopt 'AI systems that are transparent in terms of how the system was developed, how it operates, its training data, its limitations (its margin of error), its capabilities, and the purpose of the systems'.¹⁸²
- 9.162 Relevantly, the Australian Human Rights Commission has recommended that the:
Australian Government should not make administrative decisions, including through the use of automation or artificial intelligence, if the decision maker cannot generate reasons or a technical explanation for an affected person.¹⁸³
- 9.163 When making decisions about future AI use cases, Victoria's courts and VCAT should exercise caution and avoid using tools where there are technical complexities or proprietary constraints which could prevent them from being able to provide understandable explanations for decisions.
- 9.164 Victoria's courts and VCAT should seek to obtain information about how an AI tool was developed and how it works before implementation and should preference systems that can generate reasons or a technical explanation for decisions.
- 9.165 Contestability and procedural fairness are considered as part of the proposed AI assurance framework for Victoria's courts and VCAT discussed from paragraph [9.183].

Human oversight of AI decisions by courts and tribunals

- 9.166 Victoria's courts and VCAT should retain human oversight of decisions made or materially influenced by AI.
- 9.167 The Centre for the Future of the Legal Profession and UNSW Law and Justice stated that human scrutiny and oversight of AI decisions is necessary to provide reassurance to members of the public and to support trust in the rule of law.¹⁸⁴ The Coroners Court similarly stated 'Human oversight remains a critical component of using emerging technologies'.¹⁸⁵
- 9.168 In Canada, the Office of the Commissioner for Federal Judicial Affairs stated 'Human oversight of AI is essential... at all stages for validating results and making any necessary corrections'.¹⁸⁶
- 9.169 However, the level of human oversight required is context dependent. Necessary human oversight may be informed by the type of tool used, the particular use to which it is applied and the stage of the AI lifecycle. For example, greater oversight may be needed when a tool is at the early stages of development.
- 9.170 The Australian Human Rights Commission has advised that:
There is an important role for people in overseeing, monitoring and intervening in AI-informed decision making. Human involvement is especially important to:
- review individual decisions, especially to correct for errors at the individual level
 - oversee the operation of an AI-informed decision-making system to ensure the system is operating effectively as a whole.¹⁸⁷

182 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Draft Guidelines for the Use of AI Systems in Courts and Tribunals* (Guidelines, May 2025) 15 <<https://unesdoc.unesco.org/ark:/48223/pf0000393682>>.

183 Sophie Farthing et al, *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 62, 194 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>.

184 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

185 Submission 4 (Coroners Court of Victoria).

186 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 3 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IA-par-les-tribunaux-eng.pdf>>.

187 Sophie Farthing et al, *Human Rights and Technology* (Final Report, Australian Human Rights Commission, 2021) 102 <<https://humanrights.gov.au/our-work/technology-and-human-rights/projects/final-report-human-rights-and-technology>>.

- 9.171 Victoria's courts and VCAT should ensure that the introduction of AI does not prevent people significantly affected by a decision made or materially influenced by AI from seeking human intervention. Courts and tribunals should make it clear who is responsible for AI decisions so that people can access human-to-human interventions. This will require Victoria's courts and VCAT to designate individuals with clear responsibility for AI decisions.

Recommendation

22. Victoria's courts and VCAT should:
- a. notify people whose rights are significantly affected by a decision made or materially influenced by AI. Notification should include clear and understandable information on how the decision was made.
 - b. ensure there is human oversight of decisions made or materially influenced by AI. The extent of oversight will depend on the context.

Developing an AI assurance framework

- 9.172 Our terms of reference ask us to consider principles or guidelines that can be used in the future to assess the suitability of new AI systems in Victoria's courts and tribunals.
- 9.173 Assurance frameworks can provide a structured process for assessing risks and the suitability of an AI system. Assurance frameworks can guide decision making at different project phases to support:
- procurement
 - design and development
 - data collection and training
 - deployment and use
 - monitoring and evaluation.
- 9.174 Examples of AI assurance frameworks range from general to court-specific frameworks. While these frameworks vary in content, important common elements include:
- **Identifying risks, benefits and purpose:** Often a series of questions are included to prompt users to identify risks. Many frameworks require users to identify the purpose and benefit to be delivered by the AI use case. Having a clear purpose can help ensure the adoption of AI tools leads to the realisation of benefits through improved processes or outcomes.

- **Categorising and evaluating risks:** AI assurance frameworks categorise risks in different ways. The level of risk can help determine what mitigations are required. Some frameworks assign a risk category (for instance low, medium or high) to specific AI use cases. For example, facial recognition tools may be categorised as high risk. These approaches are simple to apply and provide certainty but remove discretion. Use cases can also become quickly outdated. Other frameworks generate risk ratings by using a risk matrix to assess the likelihood and consequence of risks to principles. This allows decision makers to retain a high level of discretion and is more flexibly applied to emerging technologies. But it can be complex and requires interpretation, which can create inconsistency.
- **Treating risks:** Once risks have been identified and categorised, some frameworks require users to develop a mitigation plan. An organisation's risk tolerance will inform what action is required for each risk category.
- **Monitoring and review:** Most frameworks require continuous monitoring and evaluation and encouraged users to regularly reassess risks.
- **Assigning roles and responsibilities:** AI assurance frameworks often encourage users to designate and document roles and responsibilities which can increase accountability and transparency.

AI assurance frameworks for courts and tribunals

- 9.175 AI assurance frameworks developed to date are largely generic. Many have been developed by governments to apply across all agencies and to many contexts.
- 9.176 AI assessment frameworks have been developed for use by the Australian, New South Wales and Queensland governments.¹⁸⁸ The Commonwealth Scientific and Industrial Research Organisation's *Responsible AI Pattern Catalogue* also includes direction for organisations to conduct responsible AI risk assessments.¹⁸⁹
- 9.177 We also heard that private companies like Microsoft have published AI impact assessment templates.¹⁹⁰
- 9.178 However, some organisations are adapting generic frameworks to better suit their specific needs. We heard that the Office of Public Prosecutions (OPP) is developing an AI Principles Framework and accompanying roadmap to guide and govern the implementation of AI which will align with the Victorian and Australian government AI guidance. It will also consider the specific operating context for the OPP 'to reflect court and community expectations around AI'.¹⁹¹
- 9.179 The UN Special Rapporteur on the independence of judges and lawyers has stated that AI should not be adopted within judicial systems 'without careful assessment of its potential harms, whether these can be eliminated, and whether there are other solutions that are less risky'.¹⁹²

188 Digital Transformation Agency (Cth), *Pilot AI Assurance Framework Guidance* (Web Page, October 2024) <<https://www.digital.gov.au/policy/ai/pilot-ai-assurance-framework/guidance>>; Digital NSW, *NSW Artificial Intelligence Assurance Framework (Updated)* (Guidance, 2024) <<https://www.digital.nsw.gov.au/policy/artificial-intelligence/nsw-artificial-intelligence-assessment-framework>>; Queensland Government, *Foundational Artificial Intelligence Risk Assessment Framework* (Guidance, September 2024) <<https://www.forgov.qld.gov.au/information-technology/queensland-government-enterprise-architecture-qgea/qgea-directions-and-guidance/qgea-policies-standards-and-guidelines/faira-framework>>.

189 'Responsible AI Pattern Catalogue', *CSIRO Data 61 Software Systems* (Web Page, 2024) <<https://research.csiro.au/ss/science/projects/responsible-ai-pattern-catalogue/>>.

190 Consultation 25 (Microsoft); See Microsoft, *Microsoft Responsible AI Standard v2 General Requirements* (Standard, June 2022) 4.

191 Provided as supplementary information (August 2025) to Consultation 6 (Office of Public Prosecutions).

192 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 19 <<https://docs.un.org/en/A/80/169>>.

- 9.180 Some AI assurance frameworks have been specifically designed for courts and tribunals. Examples include:
- England and Wales: Illustrative Framework Assessment Tool¹⁹³
 - European Commission for the Efficiency of Justice (CEPEJ): *Assessment Tool for the Operationalisation of the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment*¹⁹⁴
 - State of Connecticut: *Judicial Branch Artificial Intelligence Responsible Use Framework*.¹⁹⁵
- 9.181 The Australia New Zealand Policing Advisory Agency has also released a Responsible and Ethical Artificial Intelligence Framework to support police and forensic services by detailing how AI ethics principles can be operationalised.¹⁹⁶
- 9.182 Adopting an AI assurance framework can support Victoria's courts and VCAT to identify the objective of an AI use case and to assess and mitigate risks.

An AI assurance framework for Victoria's courts and tribunals

- 9.183 An AI assurance framework could support Victoria's courts, VCAT and CSV to make decisions about developing or purchasing closed AI tools (closed AI tools are discussed in Chapter 3). This could complement an AI policy by providing direction on how to assess the risk of AI use cases.
- 9.184 Many stakeholders supported the development of an AI assurance framework to assist Victoria's courts and VCAT to assess potential AI use cases, as illustrated in Table 23.

Table 23: Stakeholder views on an AI assurance framework to assess risk

Stakeholder	Views on AI assurance frameworks for Victoria's courts and VCAT
Coroners Court	The Court 'supports the development of a guideline or framework to assist courts and tribunals in identifying, assessing and managing risks of AI specific to their jurisdiction. Such a framework must be sufficiently flexible and adaptable to enable courts and tribunals to explore opportunities to use AI in ways appropriate for the relevant jurisdiction. It should not be overly prescriptive or rigid, given the rapidly evolving nature of AI ... this could take the form of a checklist of matters that jurisdictions may take into account or consider in approaching use of AI in their jurisdiction'. ¹⁹⁷
Office of the Victorian Information Commissioner	'an AI assessment framework for courts and tribunals should be developed ... in developing a framework, OVIC recommends reviewing existing guidance and resources'. ¹⁹⁸
Judicial College of Victoria	'A framework for thinking about risk could be enormously valuable because it starts breaking down the granularity of AI and increasing awareness that not all AI is the same ... This would provide a framework that courts might find useful for thinking about AI risk that provides more rigour'. ¹⁹⁹

193 Sophia Adams Bhatti, *AI in Our Justice System* (Report, JUSTICE, January 2025) 49 <<https://justice.org.uk/ai-in-our-justice-system/>> Annex 1.

194 European Commission for the Efficiency of Justice (CEPEJ), *Assessment Tool for the Operationalisation of the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (CEPEJ(2023)16final, Council of Europe, 4 December 2023).

195 State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024).

196 Australia New Zealand Policing Advisory Agency (ANZPAA), *Australia New Zealand Responsible and Ethical Artificial Intelligence Framework* (Report, 22 July 2025) <<https://www.anzpa.org.au/products/products/australia-new-zealand-responsible-and-ethical-artificial-intelligence-framework>>.

197 Submission 4 (Coroners Court of Victoria).

198 Submission 5 (Office of the Victorian Information Commissioner).

199 Consultation 7 (Judicial College of Victoria).

Pilot Victorian Public Service AI Assurance Framework

- 9.185 In 2025, the Victorian Government began piloting the *VPS AI Assurance Framework* (the VPS Framework) across government departments and agencies. The framework is based on and localises Australia's *National framework for the assurance of artificial intelligence in government*.²⁰⁰
- 9.186 CSV decided to pilot the VPS Framework to assess AI tools for court administrative purposes.²⁰¹ We heard from representatives of VCAT that the pilot VPS Framework is being used by the AI Working Group to assess Microsoft CoPilot.²⁰² We heard that the Magistrates' Court is also piloting the VPS Framework.²⁰³
- 9.187 The pilot VPS Framework is:
- designed to support the safe and responsible delivery of AI in the VPS by promoting transparency and accountability, and a common approach to identifying, evaluating, communicating, and managing the ethics and risks associated with AI use cases
 - comprised of a self-assessment tool and guidance material, and adopts *Australia's AI Ethics Principles*,²⁰⁴ consistent with the National Framework as mentioned above.
- 9.188 The self-assessment tool is comprised of three sections:
- 1) capturing basic information about the AI use case
 - 2) an initial assessment to identify the highest residual risk rating of the use case against specific criteria
 - 3) a more detailed assessment of how the AI use case complies with *Australia's AI Ethics Principles*, where one or more of the residual risks identified in the initial assessment is rated medium or higher.
- 9.189 The pilot VPS Framework does not replace existing policies, frameworks or practices for procuring, developing or delivering Victorian Government technology projects. It aims to support delivery of AI use cases by ensuring the use of AI is safe, responsible and in line with community expectations.
- 9.190 The VPS Framework is currently a pilot. Whether it will be amended and formally adopted is dependent on feedback from the pilot process. Additionally, any AI assurance framework will need to be reconsidered if the Australian government adopts a risk-based approach to AI regulation (see discussion in Chapter 4).²⁰⁵

Using the pilot VPS AI Assurance Framework to develop a bespoke approach for Victoria's courts and VCAT

- 9.191 There is an opportunity to use the pilot VPS Framework as a foundation to build a tool that is specific to the context of Victoria's courts and VCAT.
- 9.192 As noted above, CSV and some court jurisdictions are already considering or are actively piloting the VPS Framework. Representatives from VCAT told us there could be value in applying the VPS Framework to assess AI uses. It was noted that:

The VPS tool seems to have the right questions ... Having something off the shelf is better than starting from scratch. No significant issues have been raised about the VPS tool so far, but it hasn't been tested in any detail yet.²⁰⁶

200 Australian Government et al, *National Framework for the Assurance of Artificial Intelligence in Government: A Joint Approach to Safe and Responsible AI by the Australian, State and Territory Governments* (Report, 21 June 2024).

201 Consultation 22 (Court Services Victoria).

202 Consultation 9 (Victorian Civil and Administrative Tribunal).

203 Consultation 15 (Magistrates' Court of Victoria).

204 'Australia's AI Ethics Principles', *Department of Industry, Science and Resources* (Web Page, 11 October 2024) <<https://www.industry.gov.au/publications/australias-artificial-intelligence-ethics-principles/australias-ai-ethics-principles>>; as highlighted by Consultation 22 (Court Services Victoria).

205 Department of Industry, Science and Resources (Cth), *Safe and Responsible AI in Australia: Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings* (Proposals Paper, September 2024) 15–17.

206 Consultation 9 (Victorian Civil and Administrative Tribunal).

- 9.193 A benefit of the pilot VPS Framework is that it allows for the discretion of decision makers to be maintained. It allows users to assess the level of risk in the context within which they operate. It does not prohibit any AI system or risk category but leaves it up to each agency to set their own risk appetite. This would mean that use of the VPS Framework would be less likely to infringe the independence of judicial decision-making compared to a framework that prohibits certain AI uses.
- 9.194 Providing a list of high risk or prohibited AI uses is not recommended by the Commission because such a list will quickly become outdated, given the pace of technological advancements. The Commission is of the view the principle-based risk assessment matrix in the pilot VPS Framework strikes the right balance between consistency and flexibility.
- 9.195 However, the current pilot VPS Framework does not directly consider risks and opportunities of AI use cases that are unique to courts and tribunals. It is also based on *Australia's AI Ethics Principles* rather than the Commission's principles (see Chapter 6). Although there are substantial similarities between these principles, there are also gaps. The Commission's principles incorporate core principles of justice that are not directly captured by the Australian principles, being:
- judicial independence
 - open justice
 - procedural fairness
 - access to justice.
- 9.196 There is an opportunity to adapt the pilot VPS Framework so that it can be appropriately applied in Victoria's courts and VCAT by:
- incorporating the Commission's principles, which are widely supported by stakeholders and will help provide a foundation for maintaining public trust in the courts.
 - expanding how the pilot VPS Framework considers and assesses the impact of AI uses by Victoria's courts and VCAT on human rights, information security and privacy.
- 9.197 As discussed in Chapter 5, legislative change is not currently recommended in relation to the protection of privacy and human rights. However, we discussed non-legislative mechanisms to help increase public trust in the use of AI in courts and tribunals such as:
- human rights impact assessments
 - privacy impact assessments.
- 9.198 A human rights and privacy impact assessment should be referred to in, and complement, a courts and VCAT-specific AI assurance framework.
- 9.199 Table 24 provides an example of questions that could be included in a courts and VCAT-specific AI assurance framework risk rating questionnaire. If a user answered yes to any of the proposed questions, they would need to consider the consequence and likelihood of the risk and assign each risk a rating that would be prescribed by the courts and VCAT-specific AI assurance framework. If one or more medium or high residual risk ratings are identified, then a more detailed assessment of how the AI use case complies with the Commission's principles should be completed.

Table 24: Example questions for a courts and VCAT-specific AI assurance framework

The Commission's principle	The Commission's proposed questions
<p>Impartiality and fairness</p>	<ul style="list-style-type: none"> • Is there a risk of the AI use case producing biased or unfairly discriminatory outcomes against individuals, communities or groups? (Consider who designed the system, and why, what data the system is trained on, and the quality and relevance of that data). • Is there a risk the AI use case is not compliant with applicable human rights laws, including the <i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic)? For guidance refer to <i>The Charter of Human Rights and Responsibilities: A Guide for Victorian Public Sector Workers</i> which provides practical steps to consider human rights before making decisions such as: <ul style="list-style-type: none"> i) identify which human rights are relevant to the AI use case across the AI lifecycle ii) identify any interference or limitation to those rights iii) identify possible impacts of the AI use case on a person's rights, particularly in terms of the right to a fair trial, non-discrimination and privacy iv) consider whether the AI use case can be justified and balances all interests to evaluate whether any limitation on human rights is reasonable, justifiable and proportionate.²⁰⁷
<p>Accountability and independence</p>	<ul style="list-style-type: none"> • Is there a risk associated with how the AI use case could influence or be perceived to influence judicial independence (personal or institutional)? • Is there a risk that it will be unclear who within the court/tribunal is responsible for the operation of the AI tool and for any outputs or decisions it makes?
<p>Transparency and open justice</p>	<ul style="list-style-type: none"> • Is there a risk that the court or tribunal will not be able to provide clear, understandable explanations for how the AI tool works (for example because of complexity or proprietary interests)?
<p>Contestability and procedural fairness</p>	<ul style="list-style-type: none"> • Is there a risk the AI use case will undermine people's existing rights to challenge decisions?

207

Victorian Equal Opportunity & Human Rights Commission, *The Charter of Human Rights and Responsibilities: A Guide for Victorian Public Sector Workers (3rd Edn)* (Report, Victorian Equal Opportunity & Human Rights Commission, January 2024) 14 <<https://www.humanrights.vic.gov.au/resources/https-resources-charter-guide-for-vps-2024/>>.

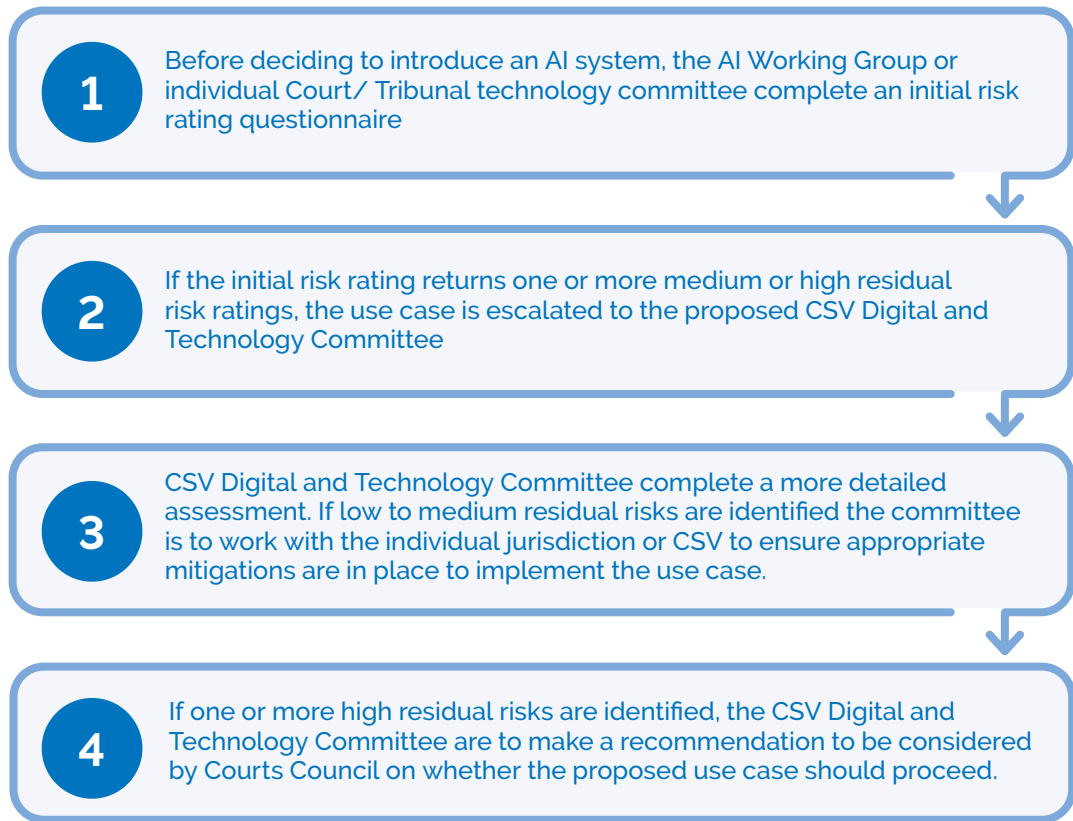
The Commission's principle	The Commission's proposed questions
Privacy and data security	<ul style="list-style-type: none"> • Is there a risk that the AI use case will impact the confidentiality, integrity or availability of information held by courts and tribunals? Courts and tribunals should: <ol style="list-style-type: none"> i) consider privacy and security by design principles²⁰⁸ ii) consider what risks are inconsistent with the <i>Privacy and Data Protection Act 2014 (Vic)</i> Information Privacy Principles for collection, use and disclosure of personal information. When considering privacy implications, it may be useful to refer to the Office of the Victorian Information Commissioner's Privacy Impact Assessment guide and template.²⁰⁹
Access to justice	<ul style="list-style-type: none"> • Is there a risk of the AI use case negatively affecting public accessibility or inclusivity of court and tribunal services? • Is there a risk of the AI use case creating or exacerbating barriers to justice such as the digital divide? • Is there a risk the AI use case will be inconsistent with Indigenous Data Sovereignty rights?
Efficiency and effectiveness	<ul style="list-style-type: none"> • Is there a risk that the use case will decrease efficiency or quality of services, or result in worse outcomes (compared to traditional services) for court users? • Is there a risk that the estimated efficiencies of the AI use case do not account for full direct and indirect costs, including wider societal or environmental costs?
Human oversight and monitoring	<ul style="list-style-type: none"> • Is there a risk implementation of the AI use case will replace the option for court users to access human supports? • Is there a risk that proprietary interests or complexity of the AI use case will restrict continual monitoring and evaluation over time?

208 For an explanation of privacy by design and implementation examples see Office of the Victorian Information Commissioner (OVIC), *Privacy by Design* (Guidance No D21/24515, January 2022) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/privacy-by-design/>>; For an example of security by design see for example 'Essential Eight Explained', *Australian Signals Directorate* (Web Page, 27 November 2023) <<https://www.cyber.gov.au/resources-business-and-government/essential-cybersecurity/essential-eight/essential-eight-explained>>; For international examples also see International Organization for Standardization (ISO), 'ISO/IEC 27001:2022 Information Security, Cybersecurity and Privacy Protection — Information Security Management Systems — Requirements' <<https://www.iso.org/standard/27001>>; National Institute of Standards and Technology (NIST), *The NIST Cybersecurity Framework (CSF) 2.0* (NIST CSWP 29, U.S. Department of Commerce, 26 February 2024) <<https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.29.pdf>>.

209 Office of the Victorian Information Commissioner (OVIC), *Privacy Impact Assessment Guide: Guide for Completing OVIC's Template* (Guide No D20/6442, April 2021) <<https://ovic.vic.gov.au/privacy/resources-for-organisations/privacy-impact-assessment/>>.

9.200 A proposed process is set out below in Figure 7 to show how a courts and VCAT-specific framework could be used to support decision making about whether CSV, courts and tribunals should develop or procure AI systems.

Figure 7: Proposed process for Victoria's courts, VCAT and CSV to use a courts and VCAT-specific assurance framework



9.201 The framework could support decision making on whether Victoria's courts and VCAT develop or procure an AI system, whereas everyday uses of AI by court or tribunal staff and judicial officers should be guided by the proposed guidelines.

9.202 A courts and VCAT-specific framework should be principles-based to allow for flexibility in its application. This would allow the framework to be applied to judicial and administrative uses.

9.203 Victoria's courts and VCAT also have record management obligations under the *Public Records Act 1973* (Vic). Representatives of the Public Record Office Victoria told us that where Victoria's courts and VCAT create or manage records with the use of AI, they need to clearly document the use of those AI tools and record-keeping requirements need to be built into governance structures.²¹⁰ In line with this feedback, CSV, Victoria's courts and VCAT should retain AI assurance material to inform existing risk registers and individual project plans for AI uses that progresses past early experimentation.

210

Consultation 21 (Public Record Office Victoria). See also Public Record Office Victoria, *Recordkeeping Policy: Artificial Intelligence Technologies and Recordkeeping* (Policy, 29 February 2024) <https://prov.vic.gov.au/sites/default/files/files/documents/ai_tech_and_recordkeeping_policy_v1_2024.pdf>.

Types of AI should be considered in assessment

- 9.204 In Chapter 3 we outlined the distinction between public and closed AI tools and how they carry different types and scales of risk.
- 9.205 When assessing AI use cases, Victoria's courts and VCAT should be aware that some closed AI tools can better protect privacy rights compared to public AI tools.²¹¹ This is because closed tools can often be negotiated to not remember user prompts, not allow user data to be used to train the underlying model or to ensure user data remains within Victoria.
- 9.206 Comparatively, developed closed AI tools carry the least privacy risks. This is because they are not reliant on third-party suppliers to store and manage court and tribunal data. The OPP stated that Victoria's courts and VCAT should focus on procuring, developing or deploying closed AI tools.²¹²
- 9.207 Developing closed AI tools will give Victoria's courts and VCAT control over the tool and how information and data is managed. To reduce privacy risks, Victoria's courts and VCAT should preference closed AI tools above public tools.
- 9.208 However, there can be benefits in outsourcing the development of closed AI tools to companies that have the relevant resources and expertise. Additionally, the cost of designing closed AI tools in-house can be very high.²¹³
- 9.209 Yet the UN Special Rapporteur on the independence of judges and lawyers has recommended that judiciaries proceed cautiously when entering agreements for the provision of AI services with for-profit private actors, which may seek 'to monetize data extracted from judicial systems'.²¹⁴ If Victoria's courts and VCAT engage third parties to provide closed procured or hybrid AI tools they must exercise caution during the procurement process (the different types of AI are explained in Chapter 3).
- 9.210 Peak international standards organisations suggests that in addition to existing technology procurement processes, when engaging third-party AI suppliers organisations should:
- seek information on the transparency of system functions (such as training data, training and inference algorithms, assumptions and limitations). The Australian Government also recommends that as part of the procurement process for third-party AI suppliers, organisations should agree to 'transparency mechanisms required for the AI system or component' and reflect this in contracts and project documentation.²¹⁵
 - test third-party AI systems
 - set clear and complete instructions for third-party system usage
 - address supply chain, full product lifecycle and associated processes, consider legal, ethical, and other issues concerning procurement and use of third-party software or hardware systems and data.²¹⁶
- 9.211 Importantly, courts and tribunals will also need to consider data governance and ownership across the AI lifecycle when contracting for any AI tools.²¹⁷

211 Consultations 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses), 34 (Human Technology Institute). Submission 10 (Castan Centre for Human Rights Law, Monash University).

212 Consultation 6 (Office of Public Prosecutions).

213 Kalliopi Terzidou, 'The Use of Artificial Intelligence in the Judiciary and Its Compliance with the Right to a Fair Trial' (2022) 31(3) *Journal of Judicial Administration* 154, 160–61 <<https://search.informit.org/doi/10.3316/agispt.20220401064756>>.

214 Margaret Satterthwaite, Special Rapporteur, *AI in Judicial Systems: Promises and Pitfalls: Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Margaret Satterthwaite, UN Doc A/80/169 (16 July 2025) 20 <<https://docs.un.org/en/A/80/169>>.

215 Department of Industry, Science and Resources (Cth), National Artificial Intelligence Centre, and CSIRO, *Voluntary AI Safety Standard* (Report, August 2024) 33 <<https://www.industry.gov.au/sites/default/files/2024-09/voluntary-ai-safety-standard.pdf>>.

216 National Institute of Standards and Technology (NIST), *AI RMF Playbook* (Report, U.S. Department of Commerce, 2024) 32 <https://airc.nist.gov/AI_RMF_Knowledge_Base/Playbook>.

217 Conference of State Court Administrators (COSCA), *Generative AI & the Future of the Courts: Responsibilities and Possibilities* (Policy Paper, National Center for State Courts, August 2024) 7 <<https://www.ncsc.org/resources-courts/generative-ai-future-courts>>.

Consultation should be included in the assessment

- 9.212 As discussed, (from paragraph [9.134]) consultation should form part of the assessment of AI use cases. Under the pilot VPS Framework people who may be affected by an AI use case must be identified and documented.
- 9.213 This process should be included in a courts and VCAT-specific assurance framework. In applying the framework, if medium or high risks are identified, consultation and user testing should be held with people likely affected by the AI use case, before it is implemented.

Assessments should be ongoing

- 9.214 As discussed, (paragraph [9.7]) we heard that Victoria's courts and VCAT should implement continuous monitoring and periodic review of AI systems.²¹⁸
- 9.215 The pilot VPS Framework directs that the assessment of AI use cases should be reviewed as they move along the AI lifecycle and where any material changes occur. It also recommends use case be reviewed periodically after deployment in line with identified risks.
- 9.216 Similarly, a courts and VCAT-specific assurance framework should be used throughout the AI use case lifecycle to identify and monitor risks and make appropriate improvements.

Recommendation

23. Court Services Victoria should develop an AI assurance framework aligned with the Commission's principles to manage the ethics and risks associated with AI use cases for Victoria's courts and VCAT, based on the pilot *VPS AI Assurance Framework*.

CHAPTER
10

Promoting awareness and education to support safe use of AI

264 Overview

264 AI education underway

265 Education and skills for the safe use of AI

268 Training should be formalised and ongoing

273 Raising public awareness

10. Promoting awareness and education to support safe use of AI

Overview

- Many of our recommendations can only be effective if supported by education and training. This will involve various kinds of training programs for different court users.
- Education and training are needed to:
 - inform people about court and tribunal guidelines on the use of AI and how this intersects with professional obligations
 - build digital skills and capabilities among court users to support the safe use of AI.
- Courts and legal professional bodies should provide education and training to ensure a comprehensive approach across the sector.

AI education underway

- 10.1 AI education and training activities have been occurring across Victoria's courts and the Victorian Civil and Administrative Tribunal (VCAT) since 2023.
- 10.2 In 2023, the Judicial College of Victoria ran a program called 'ChatGPT: Being alert but not alarmed' which provided an overview of how AI operates and its uses.¹ In 2024, it ran a seminar with the County Court on deepfakes.² In 2025, the Judicial College of Victoria provided seminars on AI and evidence,³ and on AI in the future of the judicial role.⁴
- 10.3 Court Services Victoria (CSV) is implementing an education and support program.⁵ This includes an awareness campaign focused on digital competence and workshops about the safe use of AI. CSV is also developing training for its digital technical support staff to support court staff more generally.
- 10.4 The Law Library of Victoria has provided:
- a digital literacy webinar for lawyers and the judiciary
 - training on the transformative impact of AI on lawyers
 - research guides on AI use in courts
 - a roadshow providing live demonstrations highlighting the latest AI products from legal publishers.⁶

1 'ChatGPT: Being Alert but Not Alarmed', *Judicial College of Victoria* (Web Page, 24 October 2024) <<https://judicialcollege.vic.edu.au/events/chatgpt-being-alert-not-alarmed>>.

2 Consultation 7 (Judicial College of Victoria).

3 'AI and the Future of Evidence', *Judicial College of Victoria* (Web Page, 2 September 2025) <<https://judicialcollege.vic.edu.au/events/ai-and-future-evidence>>.

4 'AI and the Future of Judging', *Judicial College of Victoria* (Web Page, 24 September 2025) <<https://judicialcollege.vic.edu.au/events/ai-and-future-judging>>.

5 Submission 25 (Court Services Victoria).

6 Submissions 9 (Law Library Victoria), 26 (Supreme Court of Victoria).

- 10.5 The Law Institute of Victoria has created an 'Artificial Intelligence Hub' and guidelines on the use of AI in relation to professional ethical obligations.⁷ It is planning to incorporate AI components across its professional development programs.⁸
- 10.6 Training programs to support Continuous Professional Development (CPD) are periodically offered by education providers such as the Leo Cussen Centre for Law and the College of Law. This includes topics such as AI prompting for lawyers, AI technology in legal practice and AI in contract drafting and interpretation.⁹ The College of Law sponsors the Centre for Legal Innovation, which provides resources and delivers a range of events to lawyers about digital and new technologies.¹⁰ The Victorian Bar has held several CPD sessions on AI-related topics in 2025.
- 10.7 The Supreme Court delivers training to judicial officers and associates.¹¹ We also heard that the County Court has embedded AI into its education agenda and has held training sessions for judges on the risks and safe use of AI.¹² AI was also featured at the County Court Judge's Conference in 2024. Training in other courts is at various stages of development and delivery.

Education and skills for the safe use of AI

- 10.8 As use of AI in Victoria's courts and VCAT increases, education and training for court users will need to be expanded and adapted. The safe use of AI requires education and knowledge of:
- digital competence and AI skills
 - courts guidelines and policies
 - legal and professional obligations
 - AI use in evidence.
- 10.9 While not everyone requires detailed knowledge of AI tools and systems, 'Education at all levels in the justice system is crucial for mitigating risk and improving effective and safe AI use.'¹³

Digital competence and AI skills

- 10.10 Education and training are needed to assist people within courts and court users to understand AI in practice, ranging from:
- basic digital competence (literacy) such as how AI works, its capabilities and limitations
 - knowledge about the types of AI used in court contexts and how it can be used safely
 - specialised skills necessary to obtain the full benefits of AI and to support the introduction of AI technology by courts.¹⁴

7 'Artificial Intelligence Hub', *Law Institute of Victoria* (Web Page) <<https://www.liv.asn.au/aihub>>; Law Institute Victoria, *Ethical and Responsible Use of Artificial Intelligence Guideline* (Ethical Guideline, 13 August 2025) <<https://www.liv.asn.au/download.aspx?DocumentVersionKey=69158983-87f3-4c1d-be99-8c300b5c7afd>>.

8 Consultation 11 (Law Institute of Victoria).

9 'Mastering Contract Interpretation and AI Drafting with Confidence', *College of Law* (Web Page) <<https://www.collaw.edu.au/course-catalogue/live-courses/webinars/mastering-contract-interpretation-and-ai-drafting-with-confidence/>>; 'College of Law Introduces Legaltech Training to Their Future Lawyers', *Josef* (Web Page, 7 March 2023) <<https://joseflegal.com/blog/college-of-law-puts-hundreds-of-future-lawyers-through-legaltech-training/>>; 'AI Prompting for Lawyers – Effective Skills for Legal Practice', *Leo Cussen Centre for Law* (Web Page) <<https://store.leocussen.edu.au/product/ai-prompting-for-lawyers-effective-skills-for-legal-practice-o25072>>; 'AI Technology in Legal Practice', *Leo Cussen Centre for Law* (Web Page) <<https://store.leocussen.edu.au/product/ai-technology-in-legal-practice-o25029>>.

10 'Centre for Legal Innovation', *Centre for Legal Innovation, College of Law* (Web Page) <<https://www.cli.collaw.com/>>.

11 Consultation 32 (Supreme Court of Victoria).

12 Submission 24 (County Court of Victoria).

13 Ibid.

14 Submissions 5 (Office of the Victorian Information Commissioner), 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice), Consultation 7 (Judicial College of Victoria).

- 10.11 The need for staff expertise and training has been identified as a barrier to the take up of legal technology.¹⁵ Findings from the Victorian Legal Services Board and Commissioner (VLSB+C) census found that a large proportion of lawyers would like further training on:
- how AI can enhance workflow and efficiency (73.8 per cent)
 - safe and ethical use of AI (70.4 per cent)
 - writing effective prompts (65.7 per cent)
 - how AI works (60.4 per cent)
 - selecting or assessing AI products (44.6 per cent).
- 10.12 Training should raise general awareness about the risks and limitations that lead to improper uses of AI in courts and tribunals.¹⁶ The Supreme Court noted users are not aware of the limitations of AI tools and so do not take steps to address those limitations. Education can help to mitigate this risk.¹⁷ We heard training about privacy and confidentiality considerations was particularly important for people using public AI tools.¹⁸
- 10.13 Specific training is also needed within courts and tribunals as new AI tools are adopted.¹⁹ As the Canadian Judicial Council advised, 'AI should not be employed without users undergoing a comprehensive educational process and understanding best practices for interacting with the technology'.²⁰
- 10.14 Private companies, professional bodies and public sector organisations told us that education and training was an internal priority and important in helping organisations to benefit from new AI technologies.²¹ Representatives of Microsoft said a key finding from the 2024 whole-of-government trial of Microsoft 365 Copilot was that training helped build understanding and confidence amongst staff, which increased how effectively an AI tool was being used.²²

Understanding and using guidelines

- 10.15 Principles and guidelines will not be useful unless they are supported by education and training.²³ The VLSB+C census estimated that fewer than one-third of lawyers in Victoria responding to the survey (29.1 per cent) had read the Supreme or County Court AI guidelines by April 2025. The survey indicated that fewer than one-third (29.2 per cent) were familiar with the *Joint Statement on the Use of AI in Australian Legal Practice*.²⁴
- 10.16 Education and training should highlight guidelines and how they are relevant to court users. It should also highlight where specific courts have tailored AI policies.²⁵ Representatives of the UTS Human Technology Institute stated that the risk of non-compliance with guidance is so significant that monitoring of the legal profession may be required.²⁶

15 Julian Webb and Jeannie Paterson, 'The Evolution of Legal Knowledge Work in An Age of Brilliant(?) Technologies: From Robo-Lawyer to Digital Law Clerk' [2025] *ANU Journal of Law & Technology* (forthcoming), 11 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5371536>.

16 Consultation 35 (Victoria Legal Aid). Victoria Legal Aid highlighted that their approach changed based on type of AI, so that their awareness raising was focused on the use of public General Purpose AI systems.

17 Submission 26 (Supreme Court of Victoria).

18 Submission 5 (Office of the Victorian Information Commissioner). Consultation 35 (Victoria Legal Aid).

19 Submissions 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice), 26 (Supreme Court of Victoria). Consultation 14 (Office of the Victorian Information Commissioner).

20 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 9 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

21 Consultations 6 (Office of Public Prosecutions), 7 (Judicial College of Victoria), 11 (Law Institute of Victoria), 25 (Microsoft), 29 (Cenitex), 35 (Victoria Legal Aid).

22 Consultation 25 (Microsoft); Digital Transformation Agency (Cth), *Evaluation of the Whole-of-Government Trial of Copilot for Microsoft 365: Summary of Evaluation Findings* (Report, 2024).

23 Consultation 23 (Dr Fabian Horton). Submission 11 (Dr Armin Alimardani).

24 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 10.

25 Submission 26 (Supreme Court of Victoria). Consultation 2 (Coroners Court of Victoria). For instance, the Magistrates Court were considering tailoring Supreme and County Court guidelines due to their jurisdiction's volume intense focus: Consultation 15 (Magistrates' Court of Victoria).

26 Consultation 34 (Human Technology Institute).

- 10.17 Education and training should draw attention to human rights. The Human Rights Law Centre recommended training programs for judicial officers and court staff so they can critically evaluate AI outputs and address potential human rights concerns.²⁷ This includes how human rights are prioritised through court guidelines and policies, such as the proposed AI assurance framework discussed in Chapter 9.

Compliance with legal professional obligations

- 10.18 Education and training are required to demonstrate how the use of AI aligns with legal professional obligations.²⁸ This was a common view across courts and professional bodies. There is a clear gap in lawyers' understanding about how AI use may lead to breaches of professional obligations. While we heard that existing obligations were broad enough to cover any misuse of AI, the increasing numbers of court cases where lawyers have incorrectly relied on AI highlights this gap.²⁹
- 10.19 Legal professional bodies are responsible for overseeing compliance with legal professional obligations. In Chapter 7 we proposed court-issued guidelines for court users. However, issuing practical guidance remains an important role for legal professional bodies. It is appropriate for legal professional bodies to provide guidance about lawyers' obligations to clients and to courts. Legal professional bodies will need to review and regularly update guidance to the profession as AI technology risks and uses evolve.
- 10.20 In Chapter 5 we stated that existing legal professional conduct rules may not need to be amended. But their intersection with safe and appropriate AI use needs to be supported by comprehensive and ongoing training. The Centre for the Future of the Legal Profession and UNSW Law and Justice said:
- Existing professional obligations are adequate to address risks relating to AI, but the intersection between the obligations and AI risks needs to be better communicated and understood.³⁰
- 10.21 Education should also raise awareness of the legal obligations of court staff that require sensitive or personal information not to be published.

AI and evidence

- 10.22 The use of AI in evidence will require increased capabilities by judicial officers and lawyers to:
- understand how AI tools might be used in evidence (for example by experts)³¹
 - recognise and evaluate AI-generated or informed evidence³²
 - question limitations of AI evidence relating to bias, inaccuracy and provenance.³³
- 10.23 We heard that there is a lack of AI literacy in relation to evidence.³⁴ In Chapter 5 we discussed how the use of AI may interact with the *Evidence Act 2008* (Vic) and what supporting materials may be necessary to assist judicial officers and lawyers to consider AI-generated evidence.

27 Submission 15 (Human Rights Law Centre).

28 Submissions 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice), 26 (Supreme Court of Victoria).

29 For example, *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95; *Director of Public Prosecutions v GR* [2025] VSC 490; *Murray on behalf of the Wamba Wamba Native Title Claim Group v State of Victoria* [2025] FCA 731; *Handa & Mallick* [2024] FedCFamC2F 957; *Dayal* [2024] FedCFamC2F 1166.

30 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

31 The AiLECS lab discussed this in terms of their EXPLAIN project, which is looking at how to provide everyday explanations about the use of AI tools in cross-examination: Consultation 20 (AI for Law Enforcement and Community Safety Lab). For a US perspective, see also Kevin Frazier, 'An "F" in Judicial Education: Why Emerging Technologies and New Risks Demand Judicial Education Reform' (2024) 50(1) *Ohio Northern University Law Review* Article 2, 33–35.

32 Submission 5 (Office of the Victorian Information Commissioner). Consultation 12 (County Court of Victoria).

33 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

34 Consultation 20 (AI for Law Enforcement and Community Safety Lab).

- 10.24 Education and training are needed to support expert witnesses. Training programs for experts could focus on compliance with the relevant practice notes, such as the Practice Note *Expert Evidence in Criminal Trials*.³⁵

Training should be formalised and ongoing

- 10.25 Education and training should be ongoing to respond to changes in AI technology,³⁶ as well as new uses of AI tools.³⁷ The Office of the Victorian Information Commissioner highlighted that information security training requires 'upkeep' over time.³⁸ This view is endorsed by the Canadian Office of the Commissioner for Federal Judicial Affairs, which said there should be 'initial and ongoing training on AI and its implications on court activities'.³⁹
- 10.26 It is important that ongoing AI education is provided to court staff and judicial officers,⁴⁰ and during induction processes.⁴¹ The Coroners Court supported internal training at the induction stage.⁴² Ongoing education and training is also important when AI tools are introduced or updated.
- 10.27 Training should be tailored and coordinated across the legal profession. Those providing formalised education and training should not be conflicted by a commercial interest in the sale of AI tools.⁴³ Some commercial providers may downplay risks or overstate the reliability of their product.
- 10.28 Education and training should focus on specific skills and competencies required for different users of AI.⁴⁴ This will require a coordinated approach across the legal sector. Courts, education providers, professional bodies and employers all have responsibility for education and training for use of AI in Victoria's courts and VCAT.

Training for judicial officers and court staff

- 10.29 The Supreme Court told us training should be provided to judges and judges' associates.⁴⁵
- 10.30 We heard that training could focus on:
- general digital literacy, digital competence and safe and proper use⁴⁶
 - awareness of judicial guidelines (proposed in Chapter 8), and advice for judicial officers on the risks and safe use of AI⁴⁷
 - understanding how AI tools might be used in evidence,⁴⁸ and issues relating to bias, accuracy and reliability.⁴⁹

35 County Court of Victoria, *Practice Note: Expert Evidence in Criminal Trials* (Practice Note No PNCR 1-2025, June 2025); Supreme Court of Victoria, *SC CR 3 - Expert Evidence in Criminal Trials* (Practice Note, 1 June 2025) <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-3-expert-evidence-in-criminal-trials>>.

36 Consultations 11 (Law Institute of Victoria), 33 (Law Firms Australia).

37 Consultation 23 (Dr Fabian Horton).

38 Consultation 14 (Office of the Victorian Information Commissioner).

39 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) 5 <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IAA-par-les-tribunaux-eng.pdf>>.

40 Submission 5 (Office of the Victorian Information Commissioner).

41 Consultation 32 (Supreme Court of Victoria). Court Services Victoria stated that short reminders were already being provided to new starters as part of Courts Group wide induction: Submission 25 (Court Services Victoria).

42 Consultation 2 (Coroners Court of Victoria).

43 Submission 6 (Victorian Legal Services Board and Commissioner).

44 Submissions 5 (Office of the Victorian Information Commissioner), 8 (Damian Curran), 11 (Dr Armin Alimardani).

45 Consultation 32 (Supreme Court of Victoria). Also, representatives of the Coronial Council stated, 'Judicial officers are members of the legal community and it is key to educate them': Consultation 10 (Coronial Council of Victoria).

46 Consultations 7 (Judicial College of Victoria), 12 (County Court of Victoria). Submissions 5 (Office of the Victorian Information Commissioner), 15 (Human Rights Law Centre).

47 Consultations 2 (Coroners Court of Victoria), 7 (Judicial College of Victoria), 15 (Magistrates' Court of Victoria).

48 Consultation 7 (Judicial College of Victoria).

49 Submission 15 (Human Rights Law Centre). For a US perspective, see also Kevin Frazier, 'An "F" in Judicial Education: Why Emerging Technologies and New Risks Demand Judicial Education Reform' (2024) 50(1) *Ohio Northern University Law Review* Article 2, 33-35.

- 10.31 The Judicial College of Victoria has a critical role to play in judicial training.⁵⁰ To support judicial education, changes to the national *Guide to Judicial Conduct*⁵¹ could provide further guidance on the appropriate use of AI by judicial officers, as discussed in Chapter 8.⁵²
- 10.32 Court staff require training for general digital competence and dedicated training if new AI tools are introduced.⁵³ As the Canadian Judicial Council suggested, court administration has a critical role in the provision of technical support for AI integration.⁵⁴
- 10.33 We heard CSV has an important responsibility to ensure appropriate training and resources on digital literacy.⁵⁵

Recommendations

24. AI education and training for judicial officers and VCAT members should continue to be developed and expanded by the Judicial College of Victoria.
25. Induction and ongoing AI training for judicial officers, VCAT members and support staff should be provided by Victoria's courts and VCAT.
26. Court Services Victoria should continue to develop induction and ongoing training for staff, including when new AI tools are implemented.

50 Submissions 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice), 24 (County Court of Victoria), 26 (Supreme Court of Victoria). Consultation 15 (Magistrates' Court of Victoria).

51 Australian Institute of Judicial Administration (AIJA), *Guide to Judicial Conduct, Third Edition (Revised)* (Guide, December 2023) <https://aija.org.au/wp-content/uploads/2024/04/Judicial-Conduct-guide_revised-Dec-2023-formatting-edits-applied.pdf>.

52 Consultation 2 (Coroners Court of Victoria).

53 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).

54 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) 9 <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>.

55 Submission 27 (Federation of Community Legal Centres and Justice Connect).

Training for lawyers

- 10.34 Only half of lawyers surveyed by the VLSB+C in Victoria had participated in AI-focused education and training in the previous year. More than two-thirds (69.1 per cent) indicated a need for additional learning and support.⁵⁶ Training is particularly needed to help lawyers understand how the risks of AI intersect with existing professional obligations.⁵⁷ The Ethics Guidelines developed by the Law Institute of Victoria encourage lawyers to exercise caution in using AI until they have received appropriate training.⁵⁸
- 10.35 While law practices and employers have a role in providing training and education,⁵⁹ 45 per cent of lawyers responding to the VLSB+C census are in workplaces that have not developed internal AI guidelines.⁶⁰ Some larger organisations provide comprehensive and sometimes mandatory training for employees. However, access to training varies widely across organisations. A coordinated approach by the regulator and professional bodies is needed to address gaps in education and training.⁶¹
- 10.36 As outlined in Chapter 5, the Legal Profession Uniform Law scheme outlines the ethical and professional standards required of lawyers in Victoria, New South Wales and Western Australia. The Law Council of Australia periodically prepares and updates a *Commentary on the Australian Solicitors Conduct Rules* to provide guidance to lawyers on the application of the rules in specific situations.⁶²
- 10.37 Representatives from Law Firms Australia suggested commentary provided by the Law Council of Australia could be expanded to explain how the conduct rules for solicitors and barristers may apply when using AI.⁶³ Additions to the commentary could provide consistent and practical advice applicable to both solicitors and barristers about how to comply with their existing professional duties. As part of its periodic review of the Australian Solicitors Conduct Rules, the Commission recommends the Law Council update its commentary in relation to AI.
- 10.38 Legal professional bodies have an important role to play in raising awareness about AI risks and professional obligations. For example, considerations about communication between lawyers and clients do not form part of the guidelines proposed in Chapter 7, as it is not directly relevant to use of AI in courts and tribunals. The joint guidance by VLSB+C, Law Society of NSW and the Legal Practice Board of Western Australia notes that lawyers should be transparent about the use of AI by:

properly recording and disclosing to their clients (and where necessary or appropriate, the court and fellow practitioners) when and how they have used AI in a matter and how the use of AI is reflected in costs, if requested by the client.⁶⁴

Disclosure to clients is also recommended in the Law Institute of Victoria's Ethics Guidelines.⁶⁵ Education and training should raise awareness of these guidelines and provide in-depth advice about AI and professional obligations.

56 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025).

57 Submissions 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice), 24 (County Court of Victoria), 26 (Supreme Court of Victoria).

58 Law Institute Victoria, *Ethical and Responsible Use of Artificial Intelligence Guideline* (Ethical Guideline, 13 August 2025) 2 <<https://www.liv.asn.au/download.aspx?DocumentVersionKey=69158983-87f3-4c1d-be99-8c300b5c7afd>>.

59 Submission 27 (Federation of Community Legal Centres and Justice Connect).

60 F Abedi and NJ Balmer, *AI Use in the Legal Profession: Findings from the 2025 Victorian Lawyer Census* (Report, Victorian Legal Services Board and Commissioner, forthcoming 2025) 7.

61 Submission 27 (Federation of Community Legal Centres and Justice Connect). Consultation 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses).

62 Law Council of Australia, *Australian Solicitors' Conduct Rules: Commentary* (Report, March 2024) <<https://lawcouncil.au/files/pdf/policy-guideline/ASCR%20Commentary.pdf>>.

63 Consultation 33 (Law Firms Australia).

64 The Law Society of NSW, Legal Practice Board of Western Australia, and Victorian Legal Services Board and Commissioner, *Statement on the Use of Artificial Intelligence in Australian Legal Practice* (Statement, 26 March 2025) 2 <<https://lsbc.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

65 Law Institute Victoria, *Ethical and Responsible Use of Artificial Intelligence Guideline* (Ethical Guideline, 13 August 2025) 2 <<https://www.liv.asn.au/download.aspx?DocumentVersionKey=69158983-87f3-4c1d-be99-8c300b5c7afd>>.

- 10.39 Although the education of students is outside our Terms of Reference, law schools have a central role in educating future lawyers about AI.⁶⁶ It is worth noting that the UNSW Centre for the Future of the Legal Profession and UNSW Law and Justice told us that law schools have less flexibility than other professions in setting the curriculum, and suggested AI should not be a standalone subject.⁶⁷
- 10.40 In reflecting on emerging risks from the use of GenAI in Australian courts, barrister Claire Roberts suggests that lawyers also have a role in educating their clients and other witnesses about the risks of AI. She notes lawyers should 'be alert to the possibility that their clients and other witnesses may be tempted to use generative AI and [to] caution against its use'.⁶⁸ She adds the 'possible use of AI by an opponent witness may also be a topic to consider exploring in correspondence to their solicitors, or during cross-examination'.⁶⁹

Professional development programs

- 10.41 Lawyers need to participate in education and training about AI to understand their ethical and legal obligations. The role of CPD and proposals for a mandatory technology requirement, as covered in Chapter 5, were raised in some submissions and consultations. It is increasingly common for US lawyers who have been found to cite fake cases to be directed to attend accredited professional development programs as part of the penalty against them.⁷⁰
- 10.42 Representatives of the Law Institute of Victoria, the UNSW Centre for the Future of the Legal Profession and UNSW Law and Justice stated training should be compulsory.⁷¹ This could provide a universal approach to emerging risks and potential misuses of AI.⁷²
- 10.43 The UNSW Centre for the Future of the Legal Profession and UNSW Law and Justice provided two alternatives to raise AI awareness amongst lawyers—a mandatory technology competence for CPD or a technology certification for lawyers.⁷³
- 10.44 The Uniform Rules require lawyers to complete CPD training across each of the following categories:
- ethics and professional responsibility
 - practice management and business skills
 - professional skills (or barristers' skills)
 - substantive law.
- 10.45 The VLSB+C stated that these categories are broad enough to support lawyers undertaking education about AI.⁷⁴ For example, training on AI could fall under ethics and professional responsibility or business skills.
- 10.46 The VLSB+C suggested the profession would be largely motivated to undertake AI training to practice effectively in their areas of legal expertise, and they would do this before using CPD to learn about AI.⁷⁵ Representatives of Law Firms Australia said that the focus should be on the availability of AI-related training, and that a mandatory module would lower engagement from the profession.⁷⁶

66 Consultations 4 (Victorian Legal Services Board and Commissioner), 11 (Law Institute of Victoria).
 67 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice).
 68 Claire Roberts, 'Generative AI in Australian Courts: Early Cases, Emerging Risks' (2025) 27(5–6) *Internet Law Bulletin* 79, 81.
 69 Ibid.
 70 *Bunce v Visual Technology Innovations, Inc.* (ED Pa, Civ No 23-1740, Feb 27, 2025) slip op 7; *Dehghani v Castro*, (D NM, cv00052, Apr 02, 2025) slip op 11; *In re Marla C Martin*, (Bankr ND Ill, 24 B 13368, Jul 18, 2025) slip op 17.
 71 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice). Consultations 11 (Law Institute of Victoria), 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses).
 72 Consultation 11 (Law Institute of Victoria).
 73 Submission 22 (Centre for the Future of the Legal Profession and UNSW Law and Justice). Consultation 27 (UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses). A representative at the Community Legal Centres workshop suggested AI should only be used by those who have undergone proper training: Consultation 8 (Federation of Community Legal Centres Workshop).
 74 Submission 6 (Victorian Legal Services Board and Commissioner).
 75 Consultation 4 (Victorian Legal Services Board and Commissioner).
 76 Consultation 33 (Law Firms Australia).

- 10.47 The Law Institute of Victoria advised that it had already incorporated AI education throughout its professional development program.⁷⁷ It will continue to inform the profession on the key risks and opportunities associated with new ways of working through the adoption of AI tools.⁷⁸
- 10.48 Given the views of the regulator and the flexibility of the current CPD rules, the Commission does not recommend mandatory dedicated AI training at this stage. Self-directed training on AI is important for the safe use of AI in Victoria's courts and VCAT, but this can be accommodated within the existing CPD obligations.

Recommendations

27. Guidance for Victorian lawyers on AI use and its intersection with professional obligations should continue to be developed and updated by the Victorian Legal Services Board and Commissioner.
28. The Law Institute of Victoria and the Victorian Bar should continue to provide education to members about AI and legal practice. The educational program should be formalised and expanded to meet ongoing challenges.
29. The Law Council of Australia should update the *Commentary to the Solicitor's Conduct Rules* in relation to AI.

Raising public awareness

- 10.49 Given the risks associated with unsafe and improper uses of AI tools, public-facing education and training in Victoria's courts and VCAT is necessary to:
- encourage the safe and proper use of AI by court users
 - promote understanding about AI guidelines for self-represented litigants and witnesses
 - preserve transparency and public trust in the justice system.
- 10.50 We heard that information about guidelines should be accessible to all court users⁷⁹ and information may need to be provided in different formats. A representative of the Eastern Community Legal Centre suggested online videos could outline the risks of using AI for drafting court documents.⁸⁰ Courts should also consider how guidelines are communicated to culturally and linguistically diverse communities, self-represented litigants and other groups experiencing barriers to justice.
- 10.51 While professional bodies will provide education and training for lawyers, there is a gap in information provided to self-represented litigants. Court registries provide some assistance to self-represented litigants and may have a dedicated self-represented litigant coordinator.⁸¹ These functions could be expanded to provide education and guidance about the use of AI in Victoria's courts and VCAT. Other bodies with legal education functions could be funded to provide an educative function to self-represented litigants.

Recommendations

30. Victoria's courts and VCAT should:
- a. ensure people within court registries can assist court users with the use of court-based AI systems
 - b. develop AI-related public awareness resources for people from diverse backgrounds.

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Submission 27 (Federation of Community Legal Centres and Justice Connect).
Consultation 30 (Eastern Community Legal Centre) 6.

'Self Represented Litigants - I Need Help', *County Court of Victoria* (Web Page, 5 July 2022) <<https://www.countycourt.vic.gov.au/going-court/self-represented-litigants/i-need-help>>; 'Representing Yourself', *Supreme Court of Victoria* (Web Page, 2025) <<http://www.supremecourt.vic.gov.au/going-to-court/help-with-court-processes/representing-yourself>>.

Appendices

276 Appendix A: Submissions

277 Appendix B: Consultations

279 Appendix C: International guidelines for court users, judicial officers and court staff

289 Appendix D: Principles

Appendix A: Submissions

- 1 Name withheld
- 2 Associate Professor Marcus Smith
- 3 Confidential
- 4 Coroners Court of Victoria
- 5 Office of the Victorian Information Commissioner
- 6 Victorian Legal Services Board and Commissioner
- 7 Dr Natalia Antolak-Saper
- 8 Damian Curran
- 9 Law Library of Victoria
- 10 Castan Centre for Human Rights Law, Monash University
- 11 Dr Armin Alimardani
- 12 Victoria Legal Aid
- 13 Name withheld
- 14 Centre for Artificial Intelligence and Digital Ethics, University of Melbourne
- 15 Human Rights Law Centre
- 16 Law Institute of Victoria
- 17 Office of Public Prosecutions
- 18 Northern Community Legal Centre
- 19 Juries Commissioner
- 20 Deakin Law Clinic
- 21 Confidential
- 22 Centre for the Future of the Legal Profession and UNSW Law and Justice
- 23 Victorian Bar Association
- 24 Confidential
- 25 Court Services Victoria
- 26 Supreme Court of Victoria
- 27 Federation of Community Legal Centres and Justice Connect
- 28 Confidential
- 29 Court Services Victoria supplementary submission

Appendix B: Consultations

The Commission conducted consultations with the individuals and organisations listed below. We met with some stakeholders more than once.

- 1 Juries Victoria
- 2 Coroners Court of Victoria
- 3 Victoria Police
- 4 Victorian Legal Services Board and Commissioner
- 5 Victorian Bar Association
- 6 Office of Public Prosecutions
- 7 Judicial College of Victoria
- 8 Federation of Community Legal Centres workshop
- 9 Victorian Civil and Administrative Tribunal
- 10 Coronial Council of Victoria
- 11 Law Institute of Victoria
- 12 County Court of Victoria
- 13 Federal Circuit and Family Court of Australia
- 14 Office of the Victorian Information Commissioner
- 15 Magistrates' Court of Victoria
- 16 Maria Dimopoulos AM and Eva Hussain
- 17 Digital Rights Watch
- 18 Law Library of Victoria
- 19 Professor Ian Freckelton AO KC
- 20 AI for Law and Enforcement Community Safety Lab
- 21 Public Record Office Victoria
- 22 Court Services Victoria
- 23 Dr Fabian Horton
- 24 Victorian Advocacy League for Individuals with Disability
- 25 Microsoft
- 26 inTouch Multicultural Family Violence Service
- 27 UNSW's Centre for the Future of the Legal Profession and Professor Lyria Bennett Moses
- 28 Monash University Digital Law Group
- 29 Cenitex
- 30 Eastern Community Legal Centre
- 31 Victorian Equal Opportunity and Human Rights Commission

- 32 Supreme Court of Victoria
- 33 Law Firms Australia
- 34 Human Technology Institute
- 35 Victoria Legal Aid

Federation of Community Legal Centres workshop representatives

- 1 Barwon Community Legal Service
- 2 Brimbank Melton Community Legal Service
- 3 Disability Discrimination Legal Service
- 4 Eastern Community Legal Centre
- 5 Gippsland Community Legal Centre
- 6 Justice Connect
- 7 Mallee Family Care Community Legal Centre
- 8 Mental Health Legal Centre
- 9 Northern Community Legal Centre
- 10 Peninsula Community Legal Centre
- 11 Seniors Rights Victoria
- 12 Victorian Aboriginal Legal Service
- 13 Women's Legal Service
- 14 Young Workers Centre
- 15 Youthlaw

Appendix C: International guidelines for court users, judicial officers and court staff

Court user guidelines

Table 25: Interjurisdictional court user guidelines on AI

Jurisdiction	Court user guidelines
Canada	<p>In May 2024, the Federal Court of Canada issued a <i>Notice to the parties and the profession: The Use of Artificial Intelligence in Court Proceedings</i>.¹ This requires court users to disclose AI-generated content. The Court of King's Bench of Manitoba and Supreme Court of Yukon have similar requirements to declare AI use.²</p> <p>Other courts in Canada have released guidelines that do not mandate pre-emptive disclosure. This includes Alberta, Newfoundland and Labrador, Nova Scotia and Quebec.³ These courts do not require disclosure but strongly encourage court users to exercise caution when referring to legal authorities or analysis derived from AI.</p> <p>The Canadian Bar Association developed an AI toolkit that includes guidelines relating to the use of AI for barristers.⁴ It raises risks associated with AI and how barristers should manage those risks in line with their professional obligations. Several law societies in Canada have also released guidelines on how lawyers should use AI in line with their professional obligations.⁵</p>

- 1 Federal Court of Canada, *Notice to Parties and the Profession - The Use of Artificial Intelligence in Court Proceedings* (Notice, 7 May 2024).
- 2 Court of King's Bench of Manitoba, *Practice Direction: Re: Use of Artificial Intelligence in Court Submissions* (Practice Direction, 23 June 2023); Supreme Court of Yukon, *Use of Artificial Intelligence Tools* (Practice Direction General No 29, 26 June 2023).
- 3 Court of Appeal of Alberta, Court of King's Bench of Alberta and Alberta Court of Justice, *Notice to the Profession & Public - Ensuring the Integrity of Court Submissions When Using Large Language Models* (Notice, 6 October 2023) <<https://albertacourts.ca/kb/resources/announcements/notice-to-the-profession-public---use-of-ai-in-citations-submissions>>; Court of Quebec, *Notice to the Legal Community and the Public - Maintaining the Integrity of Submissions before the Court When Using Large Language Models* (Notice, 26 January 2024) <<https://courduquebec.ca/en/article/notice-to-the-legal-community-and-the-public-maintaining-the-integrity-of-submissions-before-the-court-when-using-large-language-models>>; Nova Scotia Courts, *Use of Artificial Intelligence (AI) in Proceedings before the Nova Scotia Court of Appeal* (Report, 14 March 2025) <<https://www.courts.ns.ca/resources/notices/use-of-artificial-intelligence-ai-proceedings-nova-scotia-court-of-appeal>>; Supreme Court of Newfoundland and Labrador, *Notice to the Profession and the General Public Ensuring the Integrity of Court Submissions When Using Large Language Models* (Notice, 12 October 2023).
- 4 Canadian Bar Association, *Ethics of Artificial Intelligence for the Legal Practitioner - Toolkit* (Guide, 2025) '3. Guidelines Relating to Use' <<https://cba.org/resources/practice-tools/ethics-of-artificial-intelligence-for-the-legal-practitioner/3-guidelines-relating-to-use/>>.
- 5 Law Society of British Columbia, *Guidance on Professional Responsibility and Generative AI* (Practice Resource, October 2023); Law Society of Ontario, *Generative AI: Your Professional Obligations* (Practice Note, 11 April 2024); Law Society of Saskatchewan, *Guidelines for the Use of Generative Artificial Intelligence in the Practice of Law* (Guidelines, February 2024) <<https://www.lawsociety.sk.ca/wp-content/uploads/Law-Society-of-Saskatchewan-Generative-Artificial-Intelligence-Guidelines.pdf>>; The Law Society of Alberta, *The Generative AI Playbook* (Guide, January 2024) <<https://www.lawsociety.ab.ca/resource-centre/key-resources/professional-conduct/the-generative-ai-playbook/>>; The Law Society of Manitoba, *Generative Artificial Intelligence: Guidelines for Use in the Practice of Law* (Guidelines, April 2024) <<https://educationcentre.lawsociety.mb.ca/wp-content/uploads/sites/2/2024/04/Generative-Artificial-Intelligence-Guidelines-for-Use-in-the-Practice-of-Law.pdf>>.

Jurisdiction	Court user guidelines
Caribbean	The Caribbean Court of Justice released a practice direction on the <i>Use of Generative Artificial Intelligence Tools in Court Proceedings</i> . It does not require court users to disclose their use of AI in every case. But it highlights that court users should disclose if asked by the court and explain what steps they took to confirm the accuracy of AI-generated outputs. ⁶
England and Wales	In England and Wales, the Courts and Tribunals Judiciary released the <i>Artificial Intelligence (AI) Guidance for Judicial Office Holders</i> , which was updated in April 2025. ⁷ This guidance aims to assist the judiciary, their clerks, and support staff on the use of AI. The guideline also makes remarks about the use of AI by court users. It states that: 'Provided AI is used responsibly, there is no reason why a legal representative ought to refer to its use, but this is dependent upon context'. ⁸ The Law Society of England and Wales has a guide on the use of GenAI. This includes a checklist for lawyers to consider before using AI, and considerations for risk management. ⁹
European Union	The Council of Bars and Law Societies of Europe and the European Lawyers Foundation jointly published the <i>Guide on the use of Artificial Intelligence-Based Tools by Lawyers and Law Firms in the EU</i> in 2022. ¹⁰ It sets out opportunities and risks that AI tools may hold for lawyers. It explains key terms and outlines opportunities for lawyers to use AI in their legal practice. It also illustrates risks AI use poses to lawyers' professional obligations.
Ireland	Ireland's Law Society Library has a starter guide on <i>Artificial Intelligence in Legal Practice</i> . ¹¹ This outlines the basic concepts of AI and AI policy and regulation issues.
Malaysia	The Malaysian Bar Council released an informative document to members, <i>The Risks and Precautions in Using Generative Artificial Intelligence in the Legal Profession, Specifically ChatGPT</i> . ¹² It outlines benefits and risks of use of GenAI tools and directs lawyers to verify outputs of GenAI systems.

6 Caribbean Court of Justice, *Practice Direction No. 1 of 2025: The Use of Generative Artificial Intelligence Tools in Court Proceedings* (Practice Direction, 14 February 2025) 3 <<https://ccj.org/wp-content/uploads/2025/02/PRACTICE-DIRECTION-NO.-1-OF-2025-THE-USE-OF-GENERATIVE-ARTIFICIAL-INTELLIGENCE-TOOLS.pdf>>

7 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>

8 Ibid 7.

9 The Law Society of England and Wales, *Generative AI – the Essentials: Checklist* (Guide, The Law Society of England and Wales, 17 November 2023) <<https://www.lawsociety.org.uk/en/Topics/AI-and-lawtech/Guides/Generative-AI-the-essentials>>

10 Peter Homoki, *Guide on the Use of Artificial Intelligence-Based Tools by Lawyers and Law Firms in the EU* (Report, Council of Bars and Law Societies of Europe (CCBE) and European Lawyers Foundation (ELF), 2022) <https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Reports_studies/EN_ITL_20220331_Guide-AI4L.pdf>

11 Law Society of Ireland Library, *Artificial Intelligence (AI) in Legal Practice* (Guidance, February 2024) <https://lawsociety.libguides.com/ld.php?content_id=35197930>

12 Bar Council Malaysia, *The Risks and Precautions in Using Generative Artificial Intelligence in the Legal Profession, Specifically ChatGPT* (Circular No 342/2023, 24 November 2023) <<https://www.malaysianbar.org.my/document/members/circulars/2020--2024/2023&rid=46578>>

Jurisdiction	Court user guidelines
New Zealand	<p>The Courts of New Zealand issued <i>Guidelines for use of generative artificial intelligence in courts and tribunals</i> for lawyers,¹³ and separate guidelines for non-lawyers.¹⁴ Under these guidelines, disclosure is not required unless asked by the court or tribunal.</p> <p>The New Zealand Law Society Te Kāhui Ture o Aotearoa issued guidance on <i>Lawyers and Generative AI</i>.¹⁵ It provides information about GenAI and how to manage risks and contains a checklist of things lawyers should think about before using or procuring AI.</p>
Scotland	<p>The Law Society of Scotland published a <i>Guide to Generative AI</i>.¹⁶ The guide explains key AI concepts and highlights concerns to be wary of when using GenAI. It discusses when lawyers may wish to consider informing their clients that they are using GenAI.¹⁷ It also links lawyers existing professional obligations to the use of AI.¹⁸</p>
Singapore	<p>The Supreme Court of Singapore released a <i>Guide on the Use of Generative Artificial Intelligence Tools by Court Users</i>.¹⁹ This applies to all state courts in Singapore and is directed to court users. It does not prohibit the use of GenAI. It requires court users to check the outputs of GenAI for accuracy and relevance.²⁰ Court users are not required to disclose where GenAI is used. However, the court can ask about use and court users may be asked to declare they have complied with the guideline.²¹ The guideline also lists remedies if a court user fails to comply with the guidelines, including ordering costs against the person.</p>

13 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Lawyers* (Guidelines, 7 December 2023).

14 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Non-Lawyers* (Guidelines, 7 December 2023).

15 Law Society of New Zealand, *Lawyers and Generative AI* (Guidance, March 2024) <<https://www.lawsociety.org.nz/assets/Professional-practice-docs/Rules-and-Guidelines/Lawyers-and-AI-Guidance-Mar-2024.pdf>>.

16 Law Society of Scotland, *Guide to Generative AI* (Guide, October 2024) <<https://www.lawscot.org.uk/members/business-support/lawscottech/resources/guide-to-generative-ai/>>.

17 Ibid 12.

18 Ibid 16–18.

19 Supreme Court of Singapore, *Guide on the Use of Generative Artificial Intelligence Tools by Court Users* (Registrar’s Circular No 1 of 2024, 1 October 2024) <<https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/guide-on-the-use-of-generative-ai-tools-by-court-users.pdf>>.

20 Ibid [5.3].

21 Ibid [8].

Jurisdiction	Court user guidelines
<p>United States</p>	<p>Some district courts in California,²² Texas,²³ and Pennsylvania,²⁴ have issued standing orders requiring court users to sign and submit a form pre-emptively disclosing if they used any form of AI for legal research or drafting in connection with a case and certifying the accuracy of filed documents.</p> <p>The Illinois <i>Supreme Court Policy on Artificial Intelligence</i> states that AI use by court users should not be discouraged, and that disclosure of AI use should not be required.²⁵ Similarly, cases before a particular Magistrate in the Northern District Court of Illinois do not require disclosure.²⁶</p> <p>The Supreme Court of Missouri published an informal opinion which sets out key ethical considerations for lawyers if they choose to use GenAI.²⁷</p> <p>The American Bar Association has released information for lawyers on GenAI use. It highlights the connection between GenAI use and legal ethical obligations and duties.²⁸ The New York Bar Association released guidelines for lawyers, following publication of a special taskforce report in April 2024.²⁹ These include the benefits and risks of AI and impacts on professional obligations. The report states the Bar Association should establish a standing committee to oversee AI updates, and makes broader recommendations about education and gaps in existing legislation.³⁰ Other legal professional bodies have also released guidance to lawyers, including bar associations in California, Florida, Kentucky, Pennsylvania and Philadelphia.³¹ The National State Centre for State Courts also released an <i>Artificial Intelligence Guidance for Use of AI and Generative AI in Courts</i>.³²</p>

22 Orange County Superior Court, *Orange County Superior Court Department C31: Pre-Trial Order and Standing Order Re: Artificial Intelligence* (Guidance, 25 January 2024) <<https://www.occourts.org/system/files?file=civil/knillprocedures.pdf>>.

23 394th Judicial District Court (Texas), *Standing Order Regarding Use of Artificial Intelligence* (Standing Order, 1 August 2024) <<https://img1.wsimg.com/blobby/go/2f8cb9d7-adb6-4232-a36b-27b72fdcd38/downloads/Standing%20order%20Regarding%20Use%20of%20Artificial%20Int.pdf?ver=1720638374301>>; County Courts at Law Judges in and for Collin County, Texas, *Standing Order No. 3: Use of Artificial Intelligence for Any Court Filing* (Standing Order, 3 July 2024) <<https://topics.txcourts.gov/LocalRulesPublic/PreviewAttachment/2030>>; District Courts & County Courts at Law, Wichita County, Texas, *Standing Order Regarding Use of Artificial Intelligence* (Standing Order, 26 March 2024) <<https://wichtacountytx.com/download/standing-order-regarding-use-of-artificial-intelligence/>>; Gray County Court, Texas, *Standing Order Regarding Use of Artificial Intelligence* (Standing Order, 17 July 2024) <<https://topics.txcourts.gov/LocalRulesPublic/PreviewAttachment/2014>>; Hudspeth County Court, Texas, *Standing Order Regarding Use of Artificial Intelligence* (Standing Order, 12 July 2024) <<https://topics.txcourts.gov/LocalRulesPublic/PreviewAttachment/1997>>.

24 United States District Court for the Eastern District of Pennsylvania, *Standing Order Re Artificial Intelligence ('AI') in Cases Assigned to Judge Baylson* (Standing Order, 6 June 2023) <<https://www.paed.uscourts.gov/sites/paed/files/documents/locrules/standord/Standing%20Order%20Re%20Artificial%20Intelligence%206.6.pdf>>.

25 Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025) 2.

26 United States District Court for the Northern District of Illinois, *Standing Order for Civil Cases Before Magistrate Judge Fuentes* (Standing Order, 31 May 2023) <[https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20\(002\).pdf](https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20(002).pdf)>.

27 Office of Legal Ethics Counsel & Advisory Committee of the Supreme Court of Missouri, *Informal Opinion Number: 2024-11* (Report, 25 April 2024) <<https://mo-legal-ethics.org/informal-opinion/2024-11/>>.

28 American Bar Association, Standing Committee on Ethics and Professional Responsibility, *Formal Opinion 512: Generative Artificial Intelligence Tools* (Report, 29 July 2024) <https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf>.

29 New York State Bar Association Task Force on Artificial Intelligence, *Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence* (Report, April 2024).

30 Ibid.

31 Florida Bar, *Florida Bar Ethics Opinion: Opinion 24-1* (Guidance, 19 January 2024) <<https://www.floridabar.org/etopinions/opinion-24-1/>>; Kentucky Bar Association, *Ethics Opinion KBA E-457* (Guidance, 15 March 2024) <<https://nationalcenterforstatecourts.app.box.com/s/Of5iqvlvcgyaumn7wvl10sku8mon3q41f>>; Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility and Philadelphia Bar Association Professional Guidance Committee, *Joint Formal Opinion 2024-200: Ethical Issues Regarding the Use of Artificial Intelligence* (Guidance, 2024) <<https://www.lawnext.com/wp-content/uploads/2024/06/Joint-Formal-Opinion-2024-200.pdf>>; The State Bar of California Standing Committee on Professional Responsibility and Conduct, *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* (Guidance, 16 November 2023) <<https://www.calbar.ca.gov/Portals/O/documents/ethics/Generative-AI-Practical-Guidance.pdf>>.

32 AI Rapid Response Team, *Artificial Intelligence: Guidance for Use of AI and Generative AI in Courts* (Guidance, National Centre for State Courts, 7 August 2024) <<https://www.ncsc.org/sites/default/files/media/document/AI-Courts-NCSC-AI-guidelines-for-courts.pdf>>.

Judicial officer and court/tribunal staff guidelines

Table 26: Interjurisdictional judicial officer and court/tribunal staff guidelines on AI

Jurisdiction	Judicial officer and court/tribunal staff guidelines
Brazil	The Brazilian National Council of Justice approved a set of rules for the use of AI in the judiciary. ³³ The rules set out that judges can use AI systems to support their functions but the final decision will remain their responsibility.
Canada	<p>The Canadian Judicial Council issued <i>Guidelines for the Use of Artificial Intelligence in Canadian Courts</i>.³⁴ The guidelines are directed to the judiciary to support their understanding of how they can use AI. Importantly, the guidelines direct that a judges' decision-making authority should never be delegated to AI.³⁵</p> <p>The Office of the Commissioner for Federal Judicial Affairs Canada released guidance about the use of AI in court operations by courts.³⁶ It also released guidance to support courts in responding to the use of AI by court users and to help courts monitor AI risks and use effectively.³⁷</p> <p>The Federal Court of Canada has in place <i>Interim Principles and Guidelines on the Court's Use of Artificial Intelligence</i>.³⁸ This includes principles and guidelines for the use of AI by members of the Court.</p>
Colombia	Colombia's Superior Council of the Judiciary partnered with UNESCO to create <i>Guidelines for the Responsible and Safe Use of Generative AI in the Judicial Branch</i> . Colombia's guidelines require that court staff and judicial officers clearly disclose if, how and which AI tools were used in judicial decisions. ³⁹ These guidelines are based on the draft guidelines that UNESCO is developing for courts and tribunals (discussed below). ⁴⁰

33 'Brazilian National Council of Justice Approves New Regulation for the Use of Artificial Intelligence by the Judiciary', *Instituto Dannemann Siemsen* (Web Page, 6 March 2025) <<https://ids.org.br/en/news-post/brazilian-national-council-of-justice-approves-new-regulation-for-the-use-of-artificial-intelligence-by-the-judiciary/>>.

34 Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (Guidelines, September 2024) <<https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>>. Ibid 3–4.

35 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of Artificial Intelligence by Courts to Enhance Court Operations* (Statement, 20 November 2024) <<https://fja-cmf.gc.ca/COVID-19/pdf/Use-of-AI-by-Courts-Utilisation-de-IIA-par-les-tribunaux-eng.pdf>>.

36 Office of the Commissioner for Federal Judicial Affairs Canada, Action Committee on Modernizing Court Operations, *Use of AI by Court Users to Help Them Participate in Court Proceedings* (Statement, 20 November 2024) <<https://fja-cmf.gc.ca/COVID-19/Use-of-AI-by-Court-Users-Utilisation-de-IIA-par-les-usagers-des-tribunaux-eng.html>>.

37 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

38 'Justice Meets Innovation: Colombia's Groundbreaking AI Guidelines for Courts', *UNESCO* (Web Page, 1 April 2025) <<https://www.unesco.org/en/articles/justice-meets-innovation-colombias-groundbreaking-ai-guidelines-courts>>.

39 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Draft Guidelines for the Use of AI Systems in Courts and Tribunals* (Guidelines, May 2025) <<https://unesdoc.unesco.org/ark:/48223/pf0000393682>>.

Jurisdiction	Judicial officer and court/tribunal staff guidelines
England and Wales	In England and Wales, the Courts and Tribunals Judiciary released the <i>Artificial Intelligence (AI) Guidance for Judicial Office Holders</i> , which was updated in April 2025. ⁴¹ It aims to assist the judiciary, their clerks, and support staff when using AI. Judges are not obliged to describe the research or preparatory work which may have been done to produce a judgment. It is stated that: 'Provided these guidelines are appropriately followed, there is no reason why generative AI could not be a potentially useful secondary tool.' ⁴² It also contains examples of tasks where AI is potentially useful and tasks where the use of AI is not recommended. ⁴³
European Commission for the Efficiency of Justice	The European Commission for the Efficiency of Justice developed the <i>European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment</i> , which adopts five key principles on the use of AI. It provides information on the use of AI in the judicial systems of Council of Europe states. Appendix II provides examples of uses of AI in judicial systems ranging from uses to be encouraged through to uses to be considered with extreme reservations. ⁴⁴
Hong Kong	The Hong Kong Judiciary released <i>Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary</i> . ⁴⁵ The guidelines set general rules and guiding principles for judges, judicial officers and support staff when using GenAI for judicial or administrative duties. One principle is that judicial officers should continue to make all judicial decisions independently and personally, and should allow GenAI to perform their judicial functions. ⁴⁶ The guidelines also raise limitations of AI and provide examples of how AI may be used by judges and court staff.
India	The High Court of Kerala released guidelines for the judiciary on AI use which prohibit the use of AI for decision making or legal reasoning. It directs courts to maintain an audit of all instances where AI tools are used and the human verification process that was adopted. ⁴⁷
New Zealand	The Courts of New Zealand issued <i>Guidelines for use of generative artificial intelligence in courts and tribunals</i> for judges, judicial officers, tribunal members and judicial support staff. ⁴⁸ Judicial officers do not need to disclose their use of GenAI but court staff are encouraged to discuss with their supervising judicial officer if they are using GenAI tools and take steps to mitigate risks. ⁴⁹ It also includes a list of potential uses of AI and examples of uses that require extra care, such as legal research and analysis. ⁵⁰

41 Courts and Tribunals Judiciary (UK), *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (Guidance, 14 April 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version.pdf>>.

42 Ibid 7.

43 Ibid 8.

44 European Commission for the Efficiency of Justice (CEPEJ), *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (2019, adopted at the 31st plenary meeting of the CEPEJ, Strasbourg, 3–4 December 2018).

45 Hong Kong Judiciary Administration, *Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff of the Hong Kong Judiciary* (Guidelines, July 2024).

46 Ibid [6].

47 'AI Tools Not for Decision Making: Kerala HC Guidelines to District Judiciary on AI Usage', *The Economic Times* (online, 20 July 2025) <<https://economictimes.indiatimes.com/tech/artificial-intelligence/ai-tools-not-for-decision-making-kerala-hc-guidelines-to-district-judiciary-on-ai-usage/articleshow/122794562.cms?from-mdr>>.

48 Courts of New Zealand, *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (Guidelines, 7 December 2023) <<https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf>>.

49 Ibid 3.

50 Ibid 5–6.

Jurisdiction	Judicial officer and court/tribunal staff guidelines
Scotland	The Scottish Courts and Tribunals Service policy on the development and use of AI ⁵¹ contains seven guiding principles to ensure the use of AI is ethical and beneficial. It provides for governance and oversight through a hierarchy of control across different governance bodies. It also makes commitments to training, development, monitoring and review. It specifies that contracts with suppliers will include clauses that specify ethical AI use and compliance with relevant laws and standards, including data protection and privacy.
Spain	The Ministry of Justice and Court Relations released a <i>Policy on the use of AI in the Administration of Justice</i> . ⁵² It incorporates the <i>European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment's</i> five ethical principles. ⁵³ It contains rules for the use of AI in the administration of justice. It also creates obligations to set responsibility for AI use, development, implementation, quality control and auditing. It contains examples of AI uses that are permitted through to uses that are prohibited.
The Vatican	The Vatican released <i>Guidelines on Artificial Intelligence</i> . ⁵⁴ The guidelines distinguish between permissible and impermissible uses of AI in the judiciary. ⁵⁵
UNESCO	UNESCO released draft <i>Guidelines for the Use of AI Systems in Courts and Tribunals</i> . ⁵⁶ The draft guidelines were open to public consultation in 2024. ⁵⁷ It offers comprehensive guidance to courts and tribunals when deploying AI technologies, to ensure alignment with the fundamental principles of justice, human rights and the rule of law. ⁵⁸ The draft guideline contains 13 principles that members of the judiciary should consider when adopting or using AI. ⁵⁹ It encourages judicial organisations to consult with stakeholders before adopting AI systems. ⁶⁰ The guidelines also state the judiciary should proactively disclose key information about their use of AI systems. ⁶¹

51 Scottish Courts and Tribunals Service, *Scottish Courts and Tribunals Service: Our Approach to the Development of Services Using Artificial Intelligence* (Policy, April 2025) <<https://www.scotcourts.gov.uk/media/xalno3ff/scts-ai-policy.pdf>>.

52 Minister of the Presidency, Justice and Relations with the Courts (Spain), *Policy on the Use of Artificial Intelligence in the Administration of Justice* (Policy, 2024) <https://www.mjusticia.gob.es/es/JusticiaEspana/ProyectosTransformacionJusticia/Documents/Spains_Policy_on_the_use_of_AI_in_the_Justice_Administration.pdf>.

53 European Commission for the Efficiency of Justice (CEPEJ), *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (2019, adopted at the 31st plenary meeting of the CEPEJ, Strasbourg, 3–4 December 2018).

54 The Pontifical Commission for the State of the Vatican City, *Decreto Della Pontificia Commissione per Lo Stato Della Città Del Vaticano Recante "Linee Guida in Materia Di Intelligenza Artificiale"* [Decree of the Pontifical Commission for the Vatican City State Containing 'Guidelines on Artificial Intelligence' (English Translation)] (Decree No N. DCCII, 16 December 2024) <<https://www.vaticanstate.va/images/N.%20DCCII.pdf>>.

55 Centre for AI and Digital Policy, *CAIDP's Comments on Artificial Intelligence and Judicial Systems For the Special Rapporteur on the Independence of Judges and Lawyers, United Nations Office of the High Commissioner for Human Rights* (Report, 2 May 2025) 5.

56 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Draft Guidelines for the Use of AI Systems in Courts and Tribunals* (Guidelines, May 2025) <<https://unesdoc.unesco.org/ark:/48223/pf0000393682>>.

57 Ibid.

58 Ibid 1.

59 Ibid 9.

60 Ibid 12.

61 Ibid 13–4.

Jurisdiction	Judicial officer and court/tribunal staff guidelines
<p>United States</p>	<p>In Arizona, the Supreme Court has a Code of Judicial Administration which contains a section for court personnel and provides direction on the use of GenAI and large language models.⁶² It sets out permitted uses of AI systems and prohibits court staff from inputting non-public content into non-approved AI systems.⁶³ It also states a list of approved tools, and the type of permitted use will be maintained and regularly updated.⁶⁴</p> <p>In California, the Judicial Council of California agreed to adopt California Rules of Court, rule 10.430 and California Standards of Judicial Administration, standard 10.80, to address the use of GenAI for court-related work.⁶⁵ Under rule 10.430, any court that does not prohibit the use of GenAI by court staff or judicial officers must adopt a policy that applies to the use of GenAI by court staff for any purpose, and by judicial officers for any task outside their adjudicative role. Details are provided on what policies should contain, for instance prohibiting the entry of confidential or non-public information into public GenAI tools and setting out specific disclosure requirements. Standard 10.80 covers the use of GenAI by judicial officers for tasks within their adjudicative role, and its provisions are similar to those in rule 10.430.</p> <p>In Connecticut, the State of Connecticut Judicial Branch released an <i>Artificial Intelligence Responsible Use Framework</i>.⁶⁶ It contains information about AI, guiding principles and procedures for the different phases, including intake and exploration, impact assessment, procurement and implementation.⁶⁷</p> <p>In Delaware, the Delaware Courts have an <i>Interim Policy on the Use of Generative AI by Judicial Officers and Court Personnel</i>.⁶⁸ It applies to judicial officer's court employees and volunteers. It contains a direction that judicial officers and court staff 'may not delegate their decision-making function'.⁶⁹ There is also a prohibition of inputting non-public information into non-approved GenAI systems.</p> <p>In Illinois, the Illinois Supreme Court released the <i>Supreme Court Policy on Artificial Intelligence</i>⁷⁰ and <i>Judicial Reference Sheet</i>.⁷¹ This contains information for judges on GenAI, considerations for use and risks to be aware of. It also emphasises that 'judges remain ultimately responsible for their decisions, irrespective of technological advancements'.⁷²</p>

62 Arizona Supreme Court Judicial Branch, *Arizona Code of Judicial Administration* (Code of Practice, 29 January 2025) 'Section 1-509: Use of Generative Artificial Intelligence Technology and Large Language Models' <https://www.azcourts.gov/Portals/0/O/admcode/pdfcurrentcode/1-509%20Use%20of%20AI%20Tech%20and%20LLMs%2001_2025.pdf?ver=acMF-P2SER0dArzTQohBjQ%3d%3d>.

63 Ibid 3.

64 Ibid 4.

65 Judicial Council of California, Artificial Intelligence Task Force, *Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work* (Report to the Judicial Council No 25-109, 16 June 2025) <<https://jcc.legistar.com/View.ashx?M=F&ID=14303119&GUID=0C94642A-28D3-47C0-8AE9-1E4DE3A96DFC>>.

66 State of Connecticut Judicial Branch, *Artificial Intelligence Responsible Use Framework* (JBAPPM Policy 1013, 1 February 2024).

67 Ibid 6-7.

68 Delaware Courts, Judicial Branch, *Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel* (Interim Policy, 22 October 2024) <<https://www.courts.delaware.gov/forms/download.aspx?id=266838>>.

69 Ibid 1.

70 Supreme Court of Illinois, *Illinois Supreme Court Policy on Artificial Intelligence* (Policy, 1 January 2025).

71 Supreme Court of Illinois, *Supreme Court Policy on Artificial Intelligence: Judicial Reference Sheet* (Reference Sheet, 1 January 2025) <<https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/cb3d6da3-66c7-469d-97f3-41568bdeee8c/ISC%20AI%20Policy%20Bench%20Card.pdf>>.

72 Ibid 1.

Jurisdiction	Judicial officer and court/tribunal staff guidelines
<p>United States</p>	<p>In Maryland, the Judiciary released <i>Guidelines for the Acceptable Use of Artificial Intelligence (AI) Tools and Platforms</i>.⁷³ The guidelines apply to judiciary employees. They contain directions such as not to input confidential, sensitive or personal information into public tools, and to only use approved GenAI tools.⁷⁴ It also directs employees to seek approval from their supervisor before using GenAI tools.⁷⁵</p> <p>In Nevada, the Supreme Court created an <i>Artificial Intelligence Guide for Courts and Judicial Officers</i>.⁷⁶ It explains how AI may impact judicial officers and contains directions on how to use AI. It also contains a list of things judicial officers should watch out for such as hallucinations and deepfakes.</p> <p>In Ohio, the district court of Toledo has an AI Policy.⁷⁷ It applies to all court employees. It states employees remain ultimately responsible for work and directs staff not to input non-public case information into AI tools.⁷⁸</p> <p>In Utah, the Judicial Council has in place <i>Interim Rules on the Use of Generative AI</i>.⁷⁹ It states that judicial officers and court employees remain responsible for the content generated by AI and can only use approved AI tools for approved purposes.⁸⁰</p> <p>In South Carolina, the Supreme Court released a policy applying to all judicial officers and employees of the South Carolina Judicial Branch.⁸¹ It sets out that only approved GenAI tools can be used. It also states judicial officers and staff 'may not use Generative AI to draft memoranda, orders, opinions, or other human documents without direct human oversight and approval'.⁸²</p> <p>In South Dakota, the Supreme Court released <i>Generative Artificial Intelligence Guidance</i>.⁸³ It contains practical directions for staff on how to use GenAI for work purposes and provides examples.</p> <p>The New York City Bar Association's Working Group on Judicial Administration and Artificial Intelligence investigated the potential impact of AI on the New York state judiciary and produced the <i>Artificial Intelligence and The New York State Judiciary: A Preliminary Path</i>.⁸⁴ It raises issues for judges to be aware of, including the use of AI by lawyers, self-represented litigants and in evidence. It also makes a recommendation for the judiciary to consider disclosing their use of AI in decision making.⁸⁵</p>

73 Maryland Judiciary, *Guidelines for the Acceptable Use of Artificial Intelligence (AI) Tools and Platforms* (Guidelines, 15 April 2024).

74 Ibid 1.

75 Ibid.

76 Nevada Courts, *Artificial Intelligence: A Guide for Judicial Officers* (Guide, February 2025) <https://nvcourts.gov/_data/assets/pdf_file/0028/46693/AI_Guide_for_Judicial_Officers.pdf>.

77 Toledo Municipal Court, *Toledo Municipal Court AI Policy* (Policy, 18 December 2024).

78 Ibid 1.

79 Judicial Council, Utah, *Interim Rules on the Use of Generative AI* (Interim Rules, 25 October 2023) <<https://nationalcenterforstatecourts.app.box.com/s/px0vzpzg6n42ng10i4lya4a10mwjhhqq>>.

80 Ibid.

81 The Supreme Court of South Carolina, *Interim Policy on the Use of Generative Artificial Intelligence* (Policy, 25 March 2025) <<https://www.sccourts.org/media/courtOrders/PDFs/2025-03-25-01.pdf>>.

82 Ibid 2.

83 Supreme Court of South Dakota, *South Dakota Unified Judicial System Generative Artificial Intelligence Guidance* (Guidance, June 2024).

84 Working Group on Judicial Administration and Artificial Intelligence (JAAI), New York City Bar, *Artificial Intelligence and the New York State Judiciary: A Preliminary Path* (Report, 3 June 2024) <<https://nationalcenterforstatecourts.app.box.com/s/dwtvpyv4vadgwwryz872382xglj9svh>>.

85 Ibid 7.

Jurisdiction	Judicial officer and court/tribunal staff guidelines
United States	The Federal Justice Centre's <i>Introduction to AI for Federal Judges</i> ⁸⁶ provides a technical background on core concepts of AI and highlights potential legal issues. It aims to assist judges to ask questions and determine whether to admit AI applications into evidence or use AI in their judicial functions.
South Korea	The Court Artificial Intelligence Research Society announced the <i>Guidelines on the Use of Artificial Intelligence in the Judiciary</i> in February 2025. ⁸⁷ It contains key principles judges should consider when using AI. It emphasises that judges should not rely 'exclusively on AI to find facts and interpret and apply the law. In particular, judges must provide appropriate and sufficient information regarding their AI use in matters that significantly affects the defendants' rights to defense and counsel in criminal proceedings.' ⁸⁸

86 James E Baker, Laurie N Hobart and Matthew Mittelsteadt, *An Introduction to Artificial Intelligence for Federal Judges* (Report, Federal Judicial Centre, 2023).

87 Bae Kim & Lee LLC et al, 'Announcement of Guidelines on Use of Artificial Intelligence in Judiciary', *Lexology* (Web Page, 19 March 2025) <<https://www.lexology.com/library/detail.aspx?g=3de965db-8c9c-4938-af8c-5e4bc09c02dc>>.

88 Ibid.

Appendix D: Principles

Table 27: Examples of justice-focused AI principles across Australia and internationally

Jurisdiction	Justice focused AI principles
Australia (Victoria) <i>Victoria Police Artificial Intelligence Ethics Framework</i> ⁸⁹	<ul style="list-style-type: none"> • Human rights • Community benefit • Fairness • Privacy and security • Transparency • Accountability • Human oversight • Skills and knowledge
Australia and New Zealand <i>Australia New Zealand Policing Advisory Agency Police Artificial Intelligence Principles</i> ⁹⁰	<ul style="list-style-type: none"> • Transparency • Human oversight • Proportionality and justifiability • Explainability • Fairness • Reliability • Accountability • Skills and knowledge • Privacy and security

89 Victoria Police, *Victoria Police Artificial Intelligence Ethics Framework* (Policy, 20 March 2024) <<https://www.police.vic.gov.au/victoria-police-artificial-intelligence-ethics-framework>>.

90 Australia New Zealand Policing Advisory Agency (ANZPAA), *Australia New Zealand Police Artificial Intelligence Principles* (Report, 14 July 2023) <<https://www.anzpaa.org.au/resources/publications/australia-new-zealand-police-artificial-intelligence-principles>>.

Jurisdiction	Justice focused AI principles
<p>Canada</p> <p><i>Interim Principles and Guidelines on the Court's Use of Artificial Intelligence</i>⁹¹</p>	<ul style="list-style-type: none"> • Accountability • Accuracy • Cybersecurity • "Human in the loop" • Non-discrimination • Respect of fundamental rights • Transparency
<p>European Union</p> <p><i>European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment</i>⁹²</p>	<ul style="list-style-type: none"> • Respect for fundamental rights • Non-discrimination • Quality and security • Transparency, impartiality and fairness • "Under user control"
<p>Scotland</p> <p><i>Scottish Courts and Tribunals Service: Our Approach to the Development of Services Using Artificial Intelligence</i>⁹³</p>	<ul style="list-style-type: none"> • Public good • Safety and security • Transparency and accountability • Privacy and data protection • Equality and fairness • Control and empowerment • Accountability
<p>South Korea</p> <p><i>Guidelines on the Use of Artificial Intelligence in the Judiciary</i>⁹⁴</p>	<ul style="list-style-type: none"> • Guaranteeing fundamental rights and constitutional values • Reliability • Legality • Responsibility • Transparency • Future orientation

91 'Interim Principles and Guidelines on the Court's Use of Artificial Intelligence', *Federal Court of Canada* (Guidelines, 20 December 2023) 2 <<https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>>.

92 European Commission for the Efficiency of Justice (CEPEJ), *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment* (2019, adopted at the 31st plenary meeting of the CEPEJ, Strasbourg, 3-4 December 2018) 7.

93 Scottish Courts and Tribunals Service, *Scottish Courts and Tribunals Service: Our Approach to the Development of Services Using Artificial Intelligence* (Policy, April 2025) 2-3 <<https://www.scotcourts.gov.uk/media/xalno3ff/scts-ai-policy.pdf>>.

94 Bae Kim & Lee LLC et al, 'Announcement of Guidelines on Use of Artificial Intelligence in Judiciary', *Lexology* (Web Page, 19 March 2025) <<https://www.lexology.com/library/detail.aspx?g=3de965db-8c9c-4938-af8c-5e4bc09c02dc>>.

Jurisdiction	Justice focused AI principles
<p>Spain</p> <p><i>Policy on the use of AI in the Administration of Justice</i>⁹⁵</p>	<ul style="list-style-type: none"> • Respect for fundamental rights • Non-discrimination • Quality and security • Transparency, impartiality and fairness • “Under user control” • Equity and universal access • Prevention of bias and discrimination • Privacy and personal data protection • Responsible innovation and continuous evaluation • Training • Co-governance
<p>UNESCO</p> <p><i>Draft UNESCO Guidelines for the Use of AI Systems in Courts and Tribunals</i>⁹⁶</p>	<ul style="list-style-type: none"> • Protection of human rights • Proportionality • Feasibility of benefits • Safety • Information security • Accuracy and reliability • Explainability • Auditability • Transparent and open justice • Awareness and informed use • Responsibility • Accountability and contestability • Human oversight and decision making • Human-centric and participatory design • Multi-stakeholder governance and collaboration

95 Minister of the Presidency, Justice and Relations with the Courts (Spain). *Policy on the Use of Artificial Intelligence in the Administration of Justice* (Policy, 2024) 4–5 <https://www.mjusticia.gob.es/es/JusticiaEspana/ProyectosTransformacionJusticia/Documents/Spains_Policy_on_the_use_of_AI_in_the_Justice_Administration.pdf>.

96 United Nations Educational, Scientific and Cultural Organization (UNESCO). *Draft Guidelines for the Use of AI Systems in Courts and Tribunals* (Guidelines, May 2025) 13–16 <<https://unesdoc.unesco.org/ark:/48223/pf0000393682>>.

Jurisdiction	Justice focused AI principles
United States (Connecticut) <i>Artificial Intelligence Responsible Use Framework</i> ⁹⁷	<ul style="list-style-type: none">• Purposeful• Accuracy• Privacy• Equity and fairness• Transparency• Understandable• Accountability• Adaptability• Aligned to standards• Human enhancing• Safety and security

Table 28: Examples of broad AI principles across Australia and internationally

Jurisdiction	Broad AI principles
<p>Australia</p> <p><i>Australia's AI Ethics Principles</i>⁹⁸</p>	<ul style="list-style-type: none"> • Human, societal and environmental wellbeing • Human-centred values • Fairness • Privacy protection and security • Reliability and safety • Transparency and explainability • Contestability • Accountability
<p>Australia (New South Wales)</p> <p><i>Artificial Intelligence Assurance Framework</i>⁹⁹</p>	<ul style="list-style-type: none"> • Community benefit • Fairness • Privacy and security • Transparency • Accountability
<p>Brazil</p> <p><i>National Strategy for Artificial Intelligence (EBIA)</i>¹⁰⁰</p>	<ul style="list-style-type: none"> • Inclusive growth • Sustainable development and wellbeing • Human-centred values and fairness • Transparency and explainability • Robustness, security and safety • Accountability
<p>Canada</p> <p><i>Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI System</i>¹⁰¹</p>	<ul style="list-style-type: none"> • Accountability • Safety • Fairness and equity • Transparency • Human oversight and monitoring • Validity and robustness

98 'Australia's AI Ethics Principles', *Department of Industry, Science and Resources* (Web Page, 11 October 2024) <<https://www.industry.gov.au/publications/australias-artificial-intelligence-ethics-principles/australias-ai-ethics-principles>>.

99 Digital NSW, *NSW Artificial Intelligence Assurance Framework (Updated)* (Guidance, 2024) <<https://www.digital.nsw.gov.au/policy/artificial-intelligence/nsw-artificial-intelligence-assessment-framework>>.

100 Ministry of Science, Technology, and Innovations (MCTI), 'Brazilian AI Strategy', *OECD AI Policy Observatory* (Web Page, 15 July 2021) <<https://oecd.ai/en/wonk/documents/brazil-brazilian-ai-strategy-2021>>; We note in Chapter 4 that Brazil has new AI legislation PL 2338/2023 [Bill No. 2338, of 2023] (Brazil) We note that this legislation would replace this list with twelve principles, adding principles such as self-determination; human participation and supervision; justice, equity and inclusion due process, prevention and mitigation of systemic risks and proportionality.

101 'Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems', *Innovation, Science and Economic Development Canada* (Web Page, September 2023) <<https://ised-isde.canada.ca/site/ised/en/voluntary-code-conduct-responsible-development-and-management-advanced-generative-ai-systems>>.

Jurisdiction	Broad AI principles
<p>Council of Europe</p> <p><i>Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law</i>¹⁰²</p>	<ul style="list-style-type: none"> • Human dignity and individual autonomy • Transparency and oversight • Accountability and responsibility • Equality and non-discrimination • Privacy and personal data protection • Reliability • Safe innovation, fostering innovation while avoiding adverse impacts on human rights, democracy and the rule of law
<p>EU</p> <p><i>Ethics guidelines, European Commission</i>¹⁰³ (referred to by EU AI Act¹⁰⁴)</p>	<ul style="list-style-type: none"> • Human agency and oversight • Technical robustness and safety • Privacy and data governance • Transparency • Diversity, non-discrimination and fairness • Societal and environmental wellbeing • Accountability
<p>Japan</p> <p><i>Act on the Promotion of Research and Development and the Utilization of AI-Related Technologies</i>¹⁰⁵</p>	<ul style="list-style-type: none"> • Alignment • Promotion • Comprehensive advancement • Transparency • International leadership
<p>New Zealand</p> <p><i>Trustworthy AI in Aotearoa – AI Principles</i>¹⁰⁶</p>	<ul style="list-style-type: none"> • Fairness and justice • Reliability, security and privacy • Transparency • Human oversight and accountability • Wellbeing

102 Council of Europe, *Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law* opened for signature 5 September 2024, CETS No. 225, 4–5 <<https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence>>.

103 High-Level Expert Group on Artificial Intelligence (AI HLEG), *Ethics Guidelines for Trustworthy AI: Shaping Europe's Digital Future* (Guidelines, European Commission, 8 April 2019) 14 <<https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai>>.

104 *Regulation (EU) 2024/1689 (Artificial Intelligence Act)* [2024] OJ L 2024/1689, recital 27.

105 Dominic Paulger, 'Understanding Japan's AI Promotion Act: An "Innovation-First" Blueprint for AI Regulation', *Future of Privacy Forum* (Web Page, 5 July 2025) <<https://fpf.org/blog/understanding-japans-ai-promotion-act-an-innovation-first-blueprint-for-ai-regulation/>>; *Jinkou Chinou Kanren Gijutsu No Kenkyuu Kaihatsu Oyobi Katsuyou No Suishin Nikansuru Houritsu* [Act on Promotion of Research and Development and Utilization of Artificial Intelligence-Related Technologies (English Translation)] Act No. 53 of 2025 (Japan).

106 AI Forum New Zealand, *Trustworthy AI in Aotearoa: AI Principles* (Report, March 2020) 4 <<https://aiforum.org.nz/wp-content/uploads/2020/03/Trustworthy-AI-in-Aotearoa-March-2020.pdf>>.

Jurisdiction	Broad AI principles
<p>OECD</p> <p><i>Recommendation of the Council on Artificial Intelligence</i>¹⁰⁷</p>	<ul style="list-style-type: none"> • Inclusive growth, sustainable development and wellbeing • Respect for rule of law, human rights and democratic values, including fairness and privacy • Transparency and explainability • Robustness, security and safety • Accountability <p>The principles have informed other guidance for example Scotland's AI Strategy.¹⁰⁸ Over 47 countries are adherents to the OECD's principles on AI.¹⁰⁹</p>
<p>Singapore</p> <p><i>AI Verify Testing Framework: For Traditional and Generative AI.</i>¹¹⁰</p>	<ul style="list-style-type: none"> • Transparency • Explainability • Repeatability/reproducibility • Safety • Security • Robustness • Fairness • Data governance • Accountability • Human agency and oversight • Inclusive growth, societal and environmental wellbeing

107 Organisation for Economic Co-operation and Development (OECD), *Recommendation of the Council on Artificial Intelligence*, OECD/LEGAL/0449, 3 May 2024, 8–9 <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>>.

108 Digital Scotland, *Scotland's Artificial Intelligence Strategy: Trustworthy, Ethical and Inclusive* (Report, March 2021) 20 <<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2021/03/scotlands-ai-strategy-trustworthy-ethical-inclusive/documents/scotlands-artificial-intelligence-strategy-trustworthy-ethical-inclusive/scotlands-artificial-intelligence-strategy-trustworthy-ethical-inclusive/govscot%3Adocument/scotlands-artificial-intelligence-strategy-trustworthy-ethical-inclusive.pdf>>.

109 'OECD AI Principles Overview', *OECD Policy Observatory* (Web Page, 2025) <<https://oecd.ai/en/principles>>, Organisation for Economic Co-operation and Development (OECD), *OECD Updates AI Principles to Stay Abreast of Rapid Technological Developments* (Press Release, 3 May 2024) <<https://www.oecd.org/en/about/news/press-releases/2024/05/oecd-updates-ai-principles-to-stay-abreast-of-rapid-technological-developments.html>>.

110 AI Verify Foundation, *AI Verify Testing Framework: For Traditional and Generative AI* (Report, AI Verify) 2 <<https://file.go.gov.sg/aivtf-pdf.pdf>> Note: AI Verify is a not-for profit foundation, which sits under the Infocomm Media Development Authority of Singapore.

Jurisdiction	Broad AI principles
<p>South Korea</p> <p><i>National Guidelines for AI Ethics</i>¹¹¹</p>	<p>Basic principles:</p> <ul style="list-style-type: none"> • Respect for human dignity • Common good of society • Proper use of technology <p>Key requirements:</p> <ul style="list-style-type: none"> • Safeguarding human rights • Protection of privacy • Respect for diversity • Public good • Solidarity • Data management • Accountability • Safety • Transparency
<p>United Kingdom</p> <p><i>A Pro-Innovation Approach to AI Regulation</i>¹¹²</p>	<ul style="list-style-type: none"> • Safety, security and robustness • Appropriate transparency and explainability • Fairness • Accountability and governance • Contestability and redress
<p>UNESCO</p> <p><i>Recommendation on the Ethics of Artificial Intelligence</i>¹¹³</p>	<ul style="list-style-type: none"> • Proportionality and do no harm • Safety and security • Fairness and non-discrimination • Sustainability • Right to privacy and data protection • Human oversight and determination • Transparency and explainability • Responsibility and accountability • Awareness and literacy • Multi-stakeholder and adaptive governance and collaboration

111 Ministry of Science and ICT (MSIT) and Korea Information Society Development Institute, 'The National Guidelines for AI Ethics', *AI Ethics Communications Channel* (Web Page, 23 December 2020) <<https://ai.kisdi.re.kr/eng/main/contents.do?menuNo=500011>>.

112 Department for Science, Innovation and Technology (UK) and Office for Artificial Intelligence (UK), *A Pro-Innovation Approach to AI Regulation* (Policy Paper No CP 815, March 2023) 6.

113 United Nations Educational, Scientific and Cultural Organization (UNESCO), *Recommendation on the Ethics of Artificial Intelligence* (2022, adopted on 23 Nov 2021) 20–23 <<https://unesdoc.unesco.org/ark:/48223/pf0000381137>>.

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- *Advisory Committee on Evidence Rules Agenda Book* (Report, Judicial Conference of the United States, 19 April 2024) <https://www.uscourts.gov/sites/default/files/2024-04_agenda_book_for_evidence_rules_meeting_final_updated_5-8-2024.pdf>
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Artificial Intelligence in Victoria's Courts and Tribunals

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