



Inquiry into Artificial Intelligence in Victoria's Courts and Tribunals

1. The Supreme Court provides the following response to the Victorian Law Reform Commission's inquiry into Artificial Intelligence in Victoria's Courts and Tribunals.

Introduction

2. As the Court noted in its 'Guidelines for litigants: responsible use of artificial intelligence in litigation' (the Guidelines), AI is a broad concept encompassing many ways in which computer systems collate, synthesise, catalogue and generate selected information, and AI already supplements many computer based search engines and information management systems including those used by the legal profession and courts. The Court recognises that the assistance offered by technology, including AI technology, is important for the efficient administration of justice and conduct of litigation.
3. 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. As stated in the Commission's consultation paper, the adoption of AI systems requires financial investment in acquiring systems, training staff, and maintaining and monitoring those systems.
4. Court Services Victoria (CSV) provides administrative support to the courts in the form of staff, contracted service and digital infrastructure. The Court understands CSV is providing information to the Commission on matters affecting all jurisdictions such as information security, ICT infrastructure and architecture, and ICT governance and risk management.
5. This submission is confined to the use of technology, including AI and automation, in the Supreme Court. It focuses on use by judicial officers and CSV staff at the Supreme Court.

AI and automation in the Supreme Court

Current uses of AI and automation

6. AI is currently available for use by Supreme Court judicial officers and staff in:
 - a. Video meeting platforms (Teams, Zoom, Webex). AI is able to be used in backgrounds, noise cancellation, 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.

- b. Legal research databases (LexisNexis, AustLII, WestLaw). AI is used in natural language search, citation analysis (eg NoteUp in AustLII), and Rules as Code chatbot functions. Some databases feature more advanced AI functions, but these are currently not available under the Court's subscription. Law Library of Victoria staff are arranging trial access for Librarians for the purpose of evaluating LexisNexis and Westlaw advanced AI products.
- c. Microsoft tools (Word, Editor, Windows features). AI is used in grammar/spell check, text prediction, cybersecurity (eg spam detection). Advanced AI features (eg Microsoft Copilot) are not generally available under the Court's subscription.
- d. Other tools (eg Adobe, google search, Siri). AI is used in optical character recognition (OCR), autocomplete and virtual assistance.

7. The current uses of AI are incidental in the sense that AI is a feature of a program or service used by the Court, and the AI feature is not the primary purpose of using the program or service.

8. In 2023 and 2024, the Court's Registry undertook a 'Business Process Redesign Automation Project' to generate efficiencies in administrative processes. This included:

- a. reducing the time taken by Registry staff to process opt-out notices in group proceedings. The automated process has been implemented and is used in group proceedings unless the judge hearing the group proceeding considers it should not be used in the particular proceeding;
- b. development of an automation tool to enhance workflow efficiency in the orders generation through to authentication process. Work on this aspect continues.

9. The Court has also recently implemented automation in the processing of objections to proposed settlements of group proceedings, where appropriate.

10. The Court notes 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.

Potential future uses

11. The Court's focus in terms of future uses of technology is the potential for automation (whether or not involving AI) to reduce the time and cost of administrative tasks. Automation could produce efficiencies in:

- maintaining court records, including integrity checks;
- document life cycle management, from creation to archiving/disposal;
- staff meetings, eg note-taking and action item tracking;
- responding to common inquiries from court users, eg via a chatbot;
- transcription;

- extraction of data for regular data reporting, eg to the Sentencing Advisory Council and the Australian Bureau of Statistics;
- generating reminders or compliance alerts;
- assisting with the efficient allocation of resources like courtrooms; and
- populating information into forms.

12. The Court notes that the Law Library of Victoria received a grant from the Victorian Legal Services Board (VLSB) to procure a generative AI tool and facilitate access by the legal profession. The Law Library has selected an 'off-the-shelf' AI tool developed overseas and is currently negotiating with the developer with the VLSB's assistance. The selected AI tool is a task-focused productivity tool. It would enhance lawyers' productivity in specific tasks, such as comparing multiple witness statements and producing a timeline pointing out any differences between the statements. The Law Library is working with the VLSB to develop guidelines for use of the tool, and will have an ongoing role in terms of education. The Law Library has held webinars and in-person training sessions on emerging technologies, and the legal profession has attended in large numbers.

13. 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.

Regulating the use of AI in Victorian courts

14. The paper outlines various regulatory responses to the use of AI in Australian and overseas jurisdictions.

15. 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.

16. 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.

17. The Court sees value in the Commission drawing on work from across other Australian jurisdictions when considering and recommending principles that may be considered by the courts and CSV when investigating potential uses of AI, and when developing policies, guidelines, practice notes or rules around use of AI. There is considerable sharing among jurisdictions of their respective approaches to AI through different fora. The Commission may wish to consider ways in which this can be further fostered.

The Commission's proposed principles

18. When considering principles to guide the safe use of AI in the courts, it is important to differentiate between administrative functions relating to the administration of courts, administrative functions that are connected with or adjacent to judicial functions,¹ and judicial functions. The risks and opportunities of using AI differ across those functions. If individual principles are intended to relate to some but not all functions, that should be clear.
19. There are well established processes for the procurement, implementation and oversight of new technologies in the Court. The Court sees merit in those existing processes being supplemented by a set of principles specific to AI systems, especially when the primary purpose of adopting a new technology is the use of AI. Subject to the comments below, the Court considers that the Commission's eight proposed principles would assist the Court when considering the use of certain AI systems.
20. Some of the principles recognise that the degree of relevance of the principle may vary depending on the particular use of AI. The Court considers that the principles as a whole should reflect that not all aspects will be relevant to all uses of AI. For instance, 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, or to have specific accountability and monitoring arrangements. Where the AI system is simply a minor or inconsequential feature of a technology that has been adopted in the Court, resort to the principles may not be necessary.
21. Governance and accountability are important considerations when implementing new technologies in courts. The appropriate arrangements may vary depending on the technology being implemented. When the Court's Registry undertook the Business Process Redesign Automation Project, it developed governance and accountability arrangements tailored to the specific project. These included consultation, testing, training/education, reporting and oversight.
22. The Court sees benefit in a governance and accountability structure that is capable of being applied to a breadth of AI technologies. The Court notes that CSV's approach to risk assessment and management includes developing an AI Framework that will provide consistent risk assessment methodology across jurisdictions.
23. The principles should recognise that when considering the risks of adopting an AI technology, it will be necessary to 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. The balance of risks is likely to change over time as AI technologies are constantly being further developed and people are becoming more skilled at using AI both within and outside the justice system.

¹ An example of an administrative function that is connected with a judicial function is a decision under the Rules of Court by the Prothonotary or the Registrar whether to seal or accept a document for filing. As to the nature of a decision not to accept a document for filing, see *Re Thorpe* [2024] VSCA 172, [14].

24. The Commission has asked about governance arrangements for the implementation and monitoring of any principles or guidelines the Commission may recommend. The Commission has asked whether CSV, Courts Council, the Judicial College or the Judicial Commission may have a role.
25. The Court considers that CSV could play an important role in raising awareness of any principles and promoting consistency among jurisdictions. The Judicial College has a role in providing information and programs for judicial officers relating to AI technologies and concepts, and the use of AI in proceedings. It would be important for the Judicial College to be resourced to develop such material.
26. The Court notes that, with the endorsement of Courts Council, CSV and the jurisdictions have formed a joint AI working group. The working group would also have a role in raising awareness of principles or guidelines.

Guidelines to judicial officers

27. The Court's knowledge and understanding of the potential uses of AI in relation to the judicial function is inchoate.
28. 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.
29. 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.
30. 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.

Guidelines to court users

31. Some jurisdictions have issued guidelines, practice notes or notices to the profession that restrict the use of AI, or require practitioners to disclose to the court the use of AI, particularly generative AI. While this is a matter for individual jurisdictions in terms of regulating practice and procedure, there is an opportunity to avoid inconsistencies in approach and duplication of time and effort across jurisdictions.
32. The Guidelines take the approach of educating court users about the limitations of AI, and reminding legal practitioners of their professional obligations including their duty to the Court. A significant risk with AI tools is that users are not aware of the limitations and so do not take steps to address those limitations. Education mitigates this risk. The Court emphasises the importance of education around AI capabilities, limitations and risks, which enables an understanding of how existing regulation and professional ethics guide its use, rather than bespoke regulation. Training to improve the legal profession's skill at using appropriate AI technologies will also be important.
33. When developing its current Guidelines, the Court took the view that prohibitions or disclosure requirements were not necessary. The Guidelines encourage self-represented litigants and witnesses who use generative AI to prepare a court

document to identify that in the document. The Court has experienced isolated incidents with the use of generative AI.²

34. The Court intends to regularly review the Guidelines concerning the use of AI. The use of AI is a rapidly evolving area of considerable importance in the administration of justice. It is critical that the response of the Court from time to time to the use of AI is consistent with the overarching purpose provided for in s 7 of the *Civil Procedure Act 2010*.

Court staff

35. CSV employees' terms of employment include duties relating to confidentiality, which is reinforced in various ways. There are also CSV IT policies that apply to Court staff, and CSV provides information to staff regarding the use of AI. In January 2025, CSV advised staff that it is implementing a two tiered approach to AI across courts, involving:

- some high-risk generative AI websites being blocked from access, to protect the security of court systems and data; and
- a reminder message on how to use generative AI appropriately (including that only publicly available information should be used on publicly available tools), which will appear when accessing generative AI websites that are not blocked. This aspect is in line with the 'Administrative Guideline for the safe and responsible use of Generative Artificial Intelligence in the Victorian Public Sector' issued by the Department of Government Services. It is noted that the Administrative Guideline does not apply to courts or CSV.

Current laws and regulation

36. The paper lists current legislation and regulations relevant to AI in the courts. To that list may be added the *Evidence (Miscellaneous Provisions) Act 1958* (provisions relating to the use of audio-visual links, recording of evidence, transcript), the *Supreme Court Act 1986* (provisions relating to rules, assessors, group proceedings) and constituting legislation for other jurisdictions, the *Court Security Act 1980* (provisions relating to recordings), and legislation restricting the publication or disclosure of information, including the *Health Records Act 2001*, *Spent Convictions Act 2021*, *Crimes Act 1914* (Cth), and the *Judicial Proceedings Reports Act 1958*.

37. In terms of privacy and data security requirements, as noted in the paper there are exemptions for judicial officers and court staff in relation to judicial and quasi-judicial functions (*Privacy and Data Protection Act 2014* s 10; and *Health Records Act 2001* s 14). Those exemptions exist having regard to the principles of open justice which take primacy. Where the exemptions apply, the Court still aims to follow best practice in data security and consider privacy issues where not incompatible with other obligations. The Court ensures that confidential or sensitive court information is only disclosed outside the Court in limited circumstances, such as where a person is permitted to inspect a court file pursuant to the Rules. When

² For instance, the Court of Appeal heard a matter where a party had appeared to rely on generative AI because their written materials referred to non-existent cases – see *Kaur v Royal Melbourne Institute of Technology* [2024] VSCA 264, [26]. The Court of Appeal did not reproduce the citations, lest that contribute to the problem of AI inventing case citations.

considering the adoption of AI technologies, a key consideration would be the impact of the technology on the Court's non-public data, and ensuring the technology does not result in that data being used in models for other entities, or otherwise being disclosed to entities other than the provider of the AI technology. These are considerations when the Court considers any ICT project.

38. The paper states that because AI is new and complex, consideration may need to be given to the best ways for judges to assess expert evidence in relation to AI. The paper refers to court appointed experts, single joint experts, and concurrent evidence. The Court notes that in addition to those arrangements, courts have a range of express powers in Part 4.6 of the *Civil Procedure Act 2010* and the *Supreme Court Act 1986* concerning expert evidence including power to:

- a. direct expert witnesses to hold a conference of experts and/or prepare a joint experts report;
- b. refer a question to a special referee;
- c. call in the assistance of one or more specifically qualified assessors.