Victoria Legal Aid

12 December 2024

The Hon Jennifer Coate AO
Acting Chair, Victorian Law Reform Commission
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By email : ████████████████████████████████

Dear Commissioners

Submission on Artificial Intelligence in Victoria's Courts and Tribunals

Thank you for your letter inviting Victoria Legal Aid (VLA) to participate in the VLRC Review on the use of artificial intelligence (AI) in Victoria's courts and tribunals.

As the largest public legal service in Victoria providing a range of services across the state, VLA is uniquely positioned to comment on the impact on the justice sector of rapid change in the digital environment and specifically AI. In 2023-2024, we provided more than 111,000 duty lawyer services at courts and tribunals across the state whilst also representing clients in a broad range of complex ongoing legal matters in criminal law, civil law, family law, family violence and child protection jurisdictions. We are committed to efficiently managing limited resources whilst maintaining quality service provision. We recognise the significant benefits of AI outlined in the consultation paper and AI's successful alignment with the legal sector in administering justice with independence and accountability.

As an organisation, we are in the early stages of AI scoping and planning, and appreciate the potential for it to support access to justice by reducing the use of our limited resources on administrative processes and tasks which rely on formulas and do not require nuanced assessment or independent decision-making. In developing our own AI policy, we express support for controlled exploration of AI. We are conscious that this should be done in a way which does not interfere with the role of legal practitioners and the judiciary. Any engagement with AI must be consistent with the preservation of relevant obligations of lawyers and the judiciary as paramount in upholding the rule of law and the rights and freedoms of individuals.

Lack of impartiality and bias in current AI systems resulting from reliance on incorrect assumptions in machine learning presents a significant challenge for the justice sector when engaging in AI. Legal practitioners must develop a strong understanding of the capabilities and limitations of AI to reduce the risk of misuse or improper application. Courts and tribunals must also develop strong awareness of these issues to support fair decision making.

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 including but not limited to women and First Nations people who are particularly prone to systemic gender and race-based bias and discrimination. This consultation may assist to mitigate against risks of inadvertent stereotyping and cultural safety, ensuring AI uptake benefits all in the community equally.

In recognition of the need for courts and tribunals to remain accountable for decisions and to support avenues for contest and appeal, we support the eight principles proposed by the VLRC. We are particularly supportive of principle 3 which addresses 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.

Accountable use and development of AI functionality is further supported by a strong governance framework which ensures appropriate checks and balances are put in place to mitigate against misuse or inappropriate application. While early in our journey, we are currently working to improve our governance by expanding beyond our internal AI Steering Committee and working group to develop consultation groups to inform responsible use of AI in legal practice. Our First Nations Services team also plays a pivotal role in identifying actions and decisions which have specific impact for First Nations people, including the way in which we manage records to support Indigenous Data Sovereignty.

A key part of our governance of AI is our maturing cyber and data protection response which engages both protective and defensive mechanisms. Induction and training is a key feature of our response to counter the risk of human error in the use of complex digital systems. Courts and tribunals are particularly vulnerable to cyber compromise given the sensitive information held about individuals and the potential for misuse and exploitation. We therefore suggest that together with consideration of AI, cyber and information protections be prioritised.

In summary, while we support meaningful exploration of AI and the exciting possibilities offered to improve efficiency and the community's experience of the judicial and legal system. AI cannot replace the role of human decision making which requires careful ethical, legal and forensic judgement. Uptake of AI by courts and tribunals should be considered but done so thoughtfully and with consciousness of its current limitations and awareness of risks associated with its use, in particular inadvertent bias and discrimination. Managing the risks and limitations requires appropriate levels of transparency, community engagement and a highly developed governance structure, designed to be adaptable to sudden changes in the digital landscape.

Thank you for the opportunity to contribute to this important discussion. We welcome the opportunity for further engagement on this important issue.

Yours faithfully

ROWAN MCRAE
Acting Chief Executive Officer