

Human
Rights
Law
Centre.

Submission to the Victorian Law Reform
Commission's project on artificial intelligence in
Victoria's courts and tribunals.

9 December 2024 / David Mejia-Canales

[REDACTED]

[REDACTED]

Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

[REDACTED]

Contents

| | | |
|-----------|--|-----------|
| 1. | Executive Summary | 4 |
| 2. | Recommendations | 5 |
| 3. | Introduction | 7 |
| 4. | Human rights concerns | 8 |
| 4.1 | The right to privacy | 8 |
| 4.2 | Non- discrimination | 8 |
| 4.3 | Fair trial and procedural justice | 8 |
| 4.4 | Judicial independence | 9 |
| 4.5 | Accountability and transparency | 9 |
| 4.6 | Proactive safeguards and governance | 9 |
| 4.7 | The Victorian Charter of Human rights and Responsibilities | 9 |
| 5. | Safeguarding human rights | 11 |
| 5.1 | Embedding human rights in design and development | 11 |
| 5.2 | Algorithmic impact assessments | 11 |
| 5.3 | Transparency and explainability | 11 |
| 5.4 | Human oversight | 11 |
| 5.5 | Privacy and data protection | 12 |
| 5.6 | Public participation and multi-stakeholder governance | 12 |
| 5.7 | Ongoing monitoring and auditing | 12 |
| 6. | Conclusion | 13 |

1. Executive Summary

Artificial Intelligence (AI) presents significant opportunities for improving efficiency and accessibility in Victoria's judiciary. However, its deployment in judicial settings involves high risks, including potential human rights infringements, bias, and lack of transparency.

This submission highlights the necessity of embedding human rights as the cornerstone of AI regulation in Victorian courts and tribunals. Drawing on principles established by the United Nations and the United Nations Educational, Scientific, and Cultural Organisation (UNESCO), we advocate for safeguards that ensure fairness, accountability, transparency, and the protection of rights.

Key recommendations include mandatory human oversight, rigorous risk assessments, and robust transparency mechanisms.

2. Recommendations

The following recommendations are submitted to the Victorian Law Reform Commission to guide the safe, ethical, and human rights-compliant integration of Artificial Intelligence (AI) in the state's judicial system.

1. Embed human rights in AI design and development

- All AI systems used in Victorian courts must be explicitly designed to align with the principles of the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**), ensuring the prioritisation of fairness, non-discrimination, privacy, and procedural justice in the development, deployment, and ongoing review and assessment of these systems.
- AI developers must conduct human rights impact assessments as part of their algorithmic impact assessments at the pre-design and deployment stages to proactively identify and mitigate risks to *Charter*-protected rights. Where possible, these assessments should be publicly available in the interest of transparency and in alignment with the principles of open justice. In cases where these assessments contain proprietary or commercially sensitive information, a redacted version that excludes confidential details should be released to ensure accountability while protecting legitimate confidentiality concerns.

2. Ensure comprehensive transparency and explainability

- All AI systems used in judicial settings must be transparent and explainable to lay-people. Each must provide clear documentation of training data, algorithmic logic, and decision-making processes. Where possible, this data should be publicly available in the interest of transparency and in alignment with the principles of open justice. In cases where doing so may reveal proprietary or commercially sensitive information, a redacted version that excludes confidential details should be released to ensure accountability while protecting legitimate confidentiality concerns.
- A mandatory disclosure framework should be established for AI use in court processes, requiring that affected individuals are informed when AI has materially influenced a judicial decision. This framework should focus on cases where AI significantly impacts decision-making or the outcome, ensuring that individuals understand the rationale behind the AI's contributions while excluding routine administrative or drafting uses that do not affect the outcome of a case.

3. Mandate robust oversight and accountability

- Human oversight must be maintained in all AI-supported decision-making processes, ensuring judicial officers retain ultimate authority and discretion over AI system decisions.
- Independent auditing mechanisms must be established to regularly review AI systems for compliance with the *Charter* and international human rights standards. Where possible, these audits should be publicly available in the interest of transparency and in alignment with the principles of open justice. In cases where these audits contain proprietary or commercially sensitive information, a redacted version that excludes confidential details should be released to ensure accountability while protecting legitimate confidentiality concerns.

4. Protect privacy and data integrity

- All AI systems must adhere to strict privacy standards, including principles of data minimisation, anonymisation, and informed consent, as required by Section 13 of the *Charter*.
- Robust data governance frameworks must be developed to prevent unauthorised access to, or misuse of, sensitive judicial data, with substantial punishment for breaches.

5. Ensure non-discrimination and equity

- The use of AI systems that perpetuate systemic biases or produce discriminatory outcomes must be prohibited, ensuring compliance with Section 8 of the *Charter*, which guarantees equality before the law.
- Regular algorithmic audits must be conducted to identify and address any biases in AI outputs, ensuring equitable treatment of all individuals. Where possible, these audits should be publicly available in the interest of transparency and in alignment with the principles of open justice. In cases where these audits contain proprietary or commercially sensitive information, a redacted version that excludes confidential details should be released to ensure accountability while protecting legitimate confidentiality concerns.

6. Develop clear guidelines and protocols

- 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.
- Comprehensive and ongoing training for judicial officers and court staff must be provided on AI literacy, enabling them to critically evaluate AI outputs and address potential human rights concerns.

7. Foster public participation and engagement

- Civil society, legal professionals, and affected communities must be regularly consulted on the use of AI systems in Victorian courts to ensure these systems reflect the needs and expectations of Victorians.
- Formal mechanisms for public feedback on the use of AI in judicial processes should be established to enhance transparency and accountability.

8. Commit to ongoing monitoring and improvement

- A system of continuous monitoring and periodic review of AI systems must be established to ensure they adapt to evolving legal, societal, and technological contexts.
- Courts should publish annual reports on the performance, impact, and human rights compliance of all AI systems in use in Victorian courts.

3. Introduction

The integration of AI in judicial systems represents both an opportunity and a challenge for the administration of justice in Victoria.

AI technologies, when deployed effectively, can streamline court processes, improve access to legal information, and enhance case management. However, these technologies also pose significant risks, including infringing fundamental human rights, entrenching systemic biases, and threatening judicial independence.

The importance of establishing a robust regulatory framework for AI in the judiciary is underscored by international efforts to govern AI responsibly.

The United Nations Secretary-General’s *Roadmap for Digital Cooperation* emphasises that AI governance must be rooted in respect for human rights, the rule of law, and principles of transparency, accountability, and inclusivity.¹

UNESCO’s draft *Guidelines for the Use of AI Systems in Courts and Tribunals* (**UNESCO Draft Guidelines**) similarly advocates for AI adoption that aligns with these principles, recognising the critical role of human oversight and the potential for AI misuse.² The UNESCO Draft Guidelines also stress that AI tools are not a substitute for qualified legal reasoning, human judgement, or tailored legal advice.³

Victoria’s adoption of AI in courts must align with international human rights obligations, including the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, and of course, the Victorian *Charter of Human Rights and Responsibilities Act* (2006) (**the Charter**). These human rights frameworks combined affirm the rights to privacy, non-discrimination, and a fair trial—all of which are central to safeguarding the integrity of judicial processes in the digital age.⁴

¹ United Nations, *Human Rights in the Administration of Justice: Report of the Secretary-General*, UN Doc A/79/296 (7 August 2024) 5, 54-56. See also: UNESCO, *Draft Guidelines for the Use of AI Systems in Courts and Tribunals*, CI/DIT/2024/GL/01 (2024).

² UNESCO has provided these draft guidelines for public consultation, the public consultation period closed on 25 September 2024. The guidelines are developed as part of the UNESCO’s Global Toolkit on AI and the Rule of Law funded by the European Commission project on “*Supporting Member States in Implementing UNESCO’s Recommendation on the Ethics of AI through Innovative Tools*”. For more information, see: UNESCO, ‘*UNESCO Launches Open Consultation on New Guidelines for AI Use in Judicial Systems*’ (Web Page, 2024) <https://www.unesco.org/en/articles/unesco-launches-open-consultation-new-guidelines-ai-use-judicial-systems>.

³ UNESCO, *Draft Guidelines for the Use of AI Systems in Courts and Tribunals*, CI/DIT/2024/GL/01 (2024) 8-10.

⁴ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 14, 16, 17, 26.

4. Human rights concerns

The deployment of AI in judicial systems intersects directly with several core human rights, necessitating careful governance to prevent harm and ensure equity. These include:

4.1 The right to privacy

AI technologies, particularly those involving data processing, risk infringing on individuals' right to privacy.

The United Nations Human Rights Council, which monitors compliance with the *International Covenant on Civil and Political Rights*, has highlighted that the collection and use of personal data by AI systems, and indeed any interference with the right to privacy, must be consistent with the principles of legality, necessity, and proportionality.⁵

The United Nations Human Rights Council has also recommended that business enterprises, including AI system developers and deployers, comply with the UN *Guiding Principles on Business and Human Rights*, which stress the corporate responsibility to respect human rights, prevent harm, and provide remedies for rights infringements in the entirety of a company's operations.⁶

Furthermore, safeguards such as anonymisation of sensitive data and robust data governance protocols are essential to protect sensitive personal information.⁷

4.2 Non-discrimination

One of the primary risks associated with AI in judicial processes is the perpetuation of systemic biases.

AI systems trained on historical data may replicate or even exacerbate existing inequalities, disproportionately affecting marginalised groups. Recognising this, Australia sponsored a resolution at the United Nations General Assembly on 21 March 2023 titled *Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development*. The resolution emphasises that AI must be designed and deployed to avoid reinforcing structural biases or producing discriminatory outcomes.⁸

4.3 Fair trial and procedural justice

AI systems, if poorly designed or implemented, risk undermining procedural fairness and the right to a fair trial.

The "black box" nature of many AI systems makes it difficult to ensure transparency and accountability, jeopardising individuals' ability to challenge decisions or understand the rationale behind AI-driven outcomes.

International human rights instruments, including the *International Covenant on Civil and Political Rights*, mandate that judicial processes remain intelligible and contestable.⁹

⁵ Human Rights Council, *Promotion and Protection of Human Rights and the Implementation of the 2030 Agenda for Sustainable Development*, UN Doc A/HRC/RES/42/15 (26 September 2019) 4–6.

⁶ *Ibid.*

⁷ UNESCO, *Draft Guidelines for the Use of AI Systems in Courts and Tribunals*, CI/DIT/2024/GL/01 (2024) 9–11 [1.4, 2.2.4].

⁸ United Nations General Assembly, *Enhancing the Role of the International Community in Supporting the Implementation of the 2030 Agenda for Sustainable Development*, UN Doc A/78/L.49 (2024) 5–6.

⁹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 14.

Additionally, the UNESCO Draft Guidelines underscore the importance of explainable AI systems to uphold procedural fairness.¹⁰

4.4 Judicial independence

The integrity of judicial decision-making must be preserved in the face of technological advancements.

The UNESCO Draft Guidelines caution against over-reliance on AI, particularly in decision-making processes that could erode judicial independence.¹¹

A United Nation's report on judicial independence also stresses the importance of human oversight and the prevention of undue influence in judicial processes.¹²

4.5 Accountability and transparency

The adoption of AI in courts must prioritise transparency, allowing individuals to understand when and how AI systems are being used in judicial processes. The UNESCO Draft Guidelines advocate for transparency in AI systems, including through audits and public disclosures.¹³

4.6 Proactive safeguards and governance

To ensure alignment with human rights, AI systems in the judiciary must be subject to continuous oversight, algorithmic audits, and regular risk assessments.

The European Union's *AI Act* provides a model for categorising high-risk applications and implementing stringent safeguards commensurate with the risk they pose.¹⁴ The *AI Act* is premised on a risk-based approach, categorising AI systems into four levels of risk - unacceptable, high, limited, and minimal, each with corresponding regulatory requirements.

Similarly, The UNESCO Draft Guidelines recommend robust monitoring mechanisms to identify and address risks throughout an AI system's lifecycle.¹⁵

4.7 The Victorian Charter of Human rights and Responsibilities

The *Charter* is a cornerstone of Victoria's commitment to human rights. It outlines the rights, freedoms, and responsibilities of individuals and public authorities within the state. The *Charter* mandates that all public authorities, including courts and tribunals, act in ways that are compatible with human rights.

In the context of AI deployment within judicial settings, courts must ensure that such technologies operate in harmony with the *Charter's* provisions. This involves:

1. **Ensuring Fair Hearings:** AI systems used in court processes must uphold the right to a fair hearing as stipulated in Section 24 of the *Charter*. It follows that this includes maintaining

¹⁰ UNESCO, *Draft Guidelines for the Use of AI Systems in Courts and Tribunals*, CI/DIT/2024/GL/01 (2024) 9-10.

¹¹ *Ibid.* 9-11.

¹² Human Rights Council, *Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers*, UN Doc A/HRC/53/31 (2023) [19–21].

¹³ UNESCO, *Draft Guidelines for the Use of AI Systems in Courts and Tribunals*, CI/DIT/2024/GL/01 (2024) 13-15.

¹⁴ *Regulation (EU) 2023/1230 of the European Parliament and of the Council of 21 June 2023 Laying Down Harmonised Rules on Artificial Intelligence (AI Act) and Amending Certain Union Legislative Acts [2023] OJ L 234/1*, art 6.

¹⁵ UNESCO, *Draft Guidelines for the Use of AI Systems in Courts and Tribunals*, CI/DIT/2024/GL/01 (2024) 14-15.

transparency in AI decision-making processes to allow for proper understanding and contestation by affected parties.

2. **Protecting Privacy:** The right to privacy and reputation, outlined in Section 13 of the *Charter*, must be safeguarded when AI systems handle personal data. Courts should ensure that AI applications do not infringe upon individuals' right to privacy through unauthorised data collection or misuse.
3. **Preventing Discrimination:** Section 8 of the *Charter* emphasises recognition and equality before the law. AI systems must be designed and implemented to prevent discriminatory outcomes, ensuring equal treatment for all individuals.

Comprehensive assessments of AI systems are essential to identify and mitigate risks, safeguarding against rights infringements and maintaining the highest legal and ethical standards. By adhering to the *Charter's* mandates, courts can effectively integrate AI technologies into judicial processes while upholding the fundamental human rights and dignity of all people.

5. Safeguarding human rights

The safeguarding of human rights must be at the core of any framework governing the deployment of AI in judicial settings. The risks posed by AI systems—ranging from bias and discrimination to a lack of transparency—can directly affect fundamental rights such as privacy, procedural fairness, and access to justice.

This section outlines key safeguards to ensure that human rights are protected throughout the lifecycle of AI systems in the judiciary.

5.1 Embedding human rights in design and development

The design and development of AI systems must explicitly account for human rights obligations.

The UNESCO Draft Guidelines emphasise the importance of developing AI systems in compliance with human rights. Particularly important in the judicial context are rights in relation to non-discrimination, privacy, fairness, procedural fairness, informed use and data protection.¹⁶

5.2 Algorithmic impact assessments

Algorithmic impact assessments (**AIA**s) are a critical safeguard to identify potential risks and ensure AI systems do not adversely impact human rights.

AIA's are a structured evaluation conducted before deploying an AI system to identify potential risks, including bias, fairness, and transparency, and to propose measures for risk mitigation. These assessments must be expanded to include an analysis of the system's impact on the enjoyment of fundamental human rights such as privacy, non-discrimination, and procedural fairness.

UNESCO's Draft Guidelines specifically recommend human rights-based AIAs before deploying AI in judicial processes, calling for comprehensive analyses to address privacy concerns, procedural fairness, and risks of discrimination.¹⁷

5.3 Transparency and explainability

Transparency is essential to ensuring that judicial AI systems comply with human rights standards.

The UNESCO Draft Guidelines stress the importance of explainable AI, that is AI that can be explained to a layperson simply and accurately. This includes ensuring all systems have clear documentation of their training data as well as their algorithmic logic, and any potential limitations of the system.¹⁸

Explainability not only upholds procedural fairness but also ensures individuals can contest AI-driven decisions that affect their rights.

5.4 Human oversight

Maintaining human oversight over AI-driven decision-making processes is a fundamental safeguard against errors, biases, and a lack of accountability.

¹⁶ UNESCO, *Draft Guidelines for the Use of AI Systems in Courts and Tribunals*, CI/DIT/2024/GL/01 (2024) 9-10.

¹⁷ *Ibid.* 12-14.

¹⁸ *Ibid.* 10, 1.6-1.8.

The UNESCO Draft Guidelines highlight that human involvement is crucial to ensure AI tools do not replace judicial discretion but instead act as supportive mechanisms.

Additionally, judicial officers must retain the ability to override or challenge AI outputs where necessary.¹⁹

5.5 Privacy and data protection

Privacy safeguards must be integral to AI systems, particularly given the sensitive nature of judicial data.

The UNESCO Draft Guidelines recommend implementing strong data governance frameworks, including anonymisation techniques, data minimisation, and robust consent protocols.²⁰

As noted above, a recent United Nations Human Rights Council resolution on the right to privacy further emphasised that AI systems must adhere to the principles of legality, necessity, and proportionality in data collection and usage.²¹

5.6 Public participation and multi-stakeholder governance

AI governance frameworks should incorporate input from a diverse range of stakeholders, including civil society, legal practitioners, and affected communities.

The UNESCO Draft Guidelines underscore the importance of engaging marginalised groups to ensure AI systems do not exacerbate inequalities.²²

5.7 Ongoing monitoring and auditing

Safeguards must extend beyond initial deployment, with ongoing monitoring and auditing of AI systems to ensure they continue to meet human rights standards.

The UNESCO Draft Guidelines recommend regular algorithmic audits to identify and mitigate emerging risks, particularly in areas such as bias, fairness, and accountability.²³

¹⁹ Ibid. 14-15.

²⁰ Ibid. 11, 14 [2.2.4].

²¹ Human Rights Council, *Promotion and Protection of Human Rights and the Implementation of the 2030 Agenda for Sustainable Development*, UN Doc A/HRC/RES/42/15 (26 September 2019) [6–7].

²² UNESCO, *Draft Guidelines for the Use of AI Systems in Courts and Tribunals*, CI/DIT/2024/GL/01 (2024) 10, 1.13.

²³ Ibid. 13-14, 2.1.7-2.1.9.

6. Conclusion

The integration of AI in Victoria's judicial system presents an opportunity to enhance access to justice and court efficiency, but this must not ever come at the expense of protecting and affirming fundamental human rights.

AI systems must be designed, implemented, and monitored with safeguards that prioritise transparency, accountability, and compliance with the *Charter*.

By embedding robust oversight, fostering public engagement, and ensuring rigorous risk assessments, Victoria's courts can create a framework that leverages the benefits of AI while upholding the principles of fairness, equality, and justice.

The Victorian Law Reform Commission has a vital role in guiding this transition, ensuring that technological advancements support, rather than undermine, the integrity of the judicial process.