

**Submission to Victoria Law Reform Commission consultation on Artificial intelligence
in Victoria's courts and tribunals**

20 December 2024

Northern Community Legal Centre

About Northern Community Legal Centre (Northern CLC)

Northern CLC's purpose is to ensure equal access to justice for all in the Melbourne North-West region through the provision of legal services, community legal education and law reform initiatives. Northern CLC prioritises the legal needs of people living with multiple forms of disadvantage and marginalisation, including refugee and newly arrived people, victim survivors of family violence, people with mental illness and other forms of disability, young people, people experiencing homelessness, Aboriginal and Torres Strait Islander peoples, and the LGBTQIA+ community.

Northern CLC was formed in 2016 from the merger of two legal services with a 50-year history in Melbourne's North-West. Our catchment of Merri-bek, Hume, and Mitchell Shire is home to communities that experience the most structural and systemic disadvantage in Victoria. A keystone to our success has been working closely with our community to identify barriers to access to justice and engaging in advocacy to achieve systemic change that is effective and responsive. Our vision is that the people of Melbourne's North-West region have access to justice through the provision of free legal information, advice, duty lawyer services, casework assistance, education and community development activities.

Introduction

Northern CLC designs and implements community development and legal service delivery projects that address access to justice issues. In partnership with community and multicultural services as appropriate, our integrated projects aim to prevent and respond to systemic discrimination perpetuated by the justice system. Current initiatives:

- The *Take the First Step Project* trains groups of local migrant and refugee women to become family violence peer educators so that they can, in turn, provide accurate information on legal rights to other women in their communities.¹
- The *RISE (Rights, Independence, Self-Empowerment) Project* provides targeted financial abuse legal support, education, and personal development skills to young women under 25 who are experiencing family violence.²
- The *Take the Next Step Project* trains young women to become peer educators so they can support other young women in making informed choices regarding their relationships, bodies, and economic security.³
- The *Safe Landing Project* provides wrap-around family violence and migration support to women on temporary visas (previously piloted at the 'Indian Women's Family Violence Project').⁴
- The *NWEP Project* provides wrap-around family violence support to women connected to maternal child health services in the North-West.⁵
- The *Financial Divide Project* facilitates lawyer-assisted property mediations for victim survivors of family violence who are at risk of homelessness.
- The *Working Women's Centre*, in partnership with Women's Legal Service Victoria, South-East Monash Legal Service and Westjustice, provides women and non-binary people with employment legal advice and advocacy.

¹ 'Take the First Step', *Northern Community Legal Centre* <<https://www.northernclc.org.au/take-the-first-step-project>>.

² 'RISE (Rights, Independence, Self-Empowerment) Project', *Northern Community Legal Centre* <<https://www.northernclc.org.au/young-womens-economic-empowerment>>.

³ 'Take the Next Step', *Northern Community Legal Centre* <<https://www.northernclc.org.au/take-the-next-step>>.

⁴ 'Safe Landing Project (Extension)', *Northern Community Legal Centre* <<https://www.northernclc.org.au/safe-landing>>.

⁵ 'North-West Enhanced Pathways', *Northern Community Legal Centre* <<https://www.northernclc.org.au/north-west-enhanced-pathways>>.

- The *Safe Steps to Legal Rights Project* provides wrap-around family violence legal support to those residing in family violence refuges in the North.

Northern CLC has also conducted research to ascertain the impacts of technological reforms in courts on the accessibility of Family Violence Intervention Orders (FVIOs). In March 2024, Northern CLC released two reports highlighting the additional challenges faced by victim survivors following technological reform in courts, particularly for migrant and refugee women. This includes the introduction of online application forms, online pre-court information forms, and online hearing processes.

- *Barriers to Access: Migrant and refugee women’s experiences of the online family violence intervention order process (Barriers to Access Project)*⁶
- *Justice at Home: And exploration of family violence victim survivors’ experience of remote hearings for family violence intervention orders (Justice at Home Project)*⁷

Both reports are available at: <https://www.northernclc.org.au/law-reform-and-advocacy>

As a generalist community legal centre, Northern CLC provides legal advocacy in state jurisdictions including support with family violence, child protection, crime, employment, tenancy, debts, fines and victims’ compensation areas of law. Northern CLC engages with state courts and tribunals including the Victorian Civil and Administrative Tribunal and Magistrates’ Court of Victoria. Although outside of the scope of this review, Northern CLC also provides support in relation to federal jurisdictions including family law and migration law and subsequently engages with the Administrative Review Tribunal and the Federal and Family Circuit Court of Australia.

Northern CLC provides this submission drawing upon our service delivery experience, evaluations and research projects. Our primary concern with courts and tribunals adopting artificial intelligence is the negative impacts on access to justice and bias in decision-making.

Consultation Questions

a. What are the most significant benefits and risks for the use of AI by Victorian courts and tribunals?

Use for administrative practices

Northern CLC is concerned about the potential negative impacts for those most marginalised if courts and tribunals increase their reliance on technology, including AI, to gather and categorise information provided by users. Northern CLC has already documented the impacts of the Magistrate’s Court of Victoria introducing online forms for family violence intervention orders and gathering information about parties’ needs during court hearings (e.g. access to an interpreter or lawyer). Northern CLC’s *Barriers to Access* research project found that the introduction of these forms has impacted victim survivors of family violence, particularly those who speak English as a second language or have disabilities, due to the rigidity of the forms and subsequent reduction in court staffing to assist victim survivors in completing these forms. We note that online forms must be completed to request an electronic hearing within the Federal Circuit and Family Court of Australia, which may exclude migrant and refugee women from access. If AI is to be incorporated into court and tribunal administrative processes, there must be a consideration as to the impacts on those most marginalised in society.

It is well recognised that family violence acts to disempower victim survivors and disempowerment is also often a byproduct of engagement with the justice system.⁸ However, providing greater choice in how victim survivors engage with the justice system has the potential to reduce disempowering

⁶ Cristina Tambasco et al, *Barriers to Access: Migrant and Refugee Women’s Experiences of the Online Intervention Order Process* (Northern Community Legal Centre, 2024).

⁷ Cristina Tambasco et al, *Justice at Home: An Exploration of Family Violence Victim survivors’ Experience of Remote Hearings for Family Violence Intervention Orders* (Northern Community Legal Centre, 2024).

⁸ Heather Douglas, ‘Domestic and Family Violence, Mental Health and Well-Being, and Legal Engagement’ (2017) 25(3) *Psychiatry, Psychology, and Law*.

systematic impacts.⁹ While there is evidence to suggest that victim survivors generally would like to have technologically facilitated processes available to them, this is not consistently the case. In Northern CLC's *TEALS Project*, we found that community members from culturally diverse backgrounds were not comfortable disclosing their information online. It was also apparent that ensuring that tools are available in a preferred language (the pilot included an Arabic language triage tool) did not increase the uptake of the tool.¹⁰ Accessibility strategies need to do more than increase the number of languages available to clients. There is a risk that the more the justice system moves towards online processes, the need for in person options will be overlooked. Victim survivors want choice, they don't want a move towards technology to be a change in option, rather than an expansion of options.

While there is evidence to suggest that some court users would like the option of technology facilitated processes, not all victim survivors can access them even if they want to. The Australian Digital Inclusion Index (2023) found that overall, Australians are experiencing an increased access to and ability to use technology, but increased access is not equitable. Those who are lower socio-economic, 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.¹¹ These cohorts represent some of those with the highest legal need and high levels of justiciable problems, including family violence.¹² Many victim survivors are living in unstable accommodation and therefore do not have access to reliable internet connections.¹³ Perpetrators use of technology to perpetrate coercive control leads to victim survivors being reluctant to use technology, even if they have the means and ability to access it.¹⁴ Victim survivors may use their children's devices or need a support service to facilitate their access if no other opportunities avail themselves.¹⁵ This illustrates the need for an ongoing commitment to improving in person court processes, including access to free legal support, not solely relying on technology facilitated processes to take their place.

Access to technology is also futile if there is a lack of capability to use the technology. The Victoria Law Foundation (VLF) has conducted research that highlights that increasingly people need to have a high digital legal capability if they are to access justice. Of those who completed VLF's PULS survey, 25.8% required major support in order to complete online tasks.¹⁶ Cohorts that experience higher levels of need for support include those who do not speak English as a main language (33.3%), those who have not completed year 12 (42.6%) and those with high mental distress (30%).¹⁷ There is a high correlation between those who require greater support to access technology, those with high legal needs and those at increased risk of experiencing family violence.

The information available to us indicates that technological reforms has impacted whether marginalised groups can access courts meaningfully, or at all. There is some evidence to suggest that the increased reliance on online forms, and reduction in support staff, results in victim survivors disengaging from processes altogether.¹⁸ Those who have managed to navigate online forms and submit, may have done so without an informed understanding of how their application would be shared with others or what information might have been incorporated to better inform the court of their experiences and needs. Consequently, our duty lawyers are spending additional time correcting the information before the

⁹ Tambasco et al (n 7) 22.

¹⁰ Tambasco et al (n 6).

¹¹ Julian Thomas et al, *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2023* (RMIT University, Telstra, Swinburne University, 2023) 5–6.

¹² Nigel J Balmer et al, *Everyday Problems and Legal Need* (No 1, Victoria Law Foundation) 14.

¹³ Leavides Domingo-Cabarrubias et al, 'The Role of Technology in Improving Access to Justice for Victims of Family Violence: Challenges and Opportunities' (2023) 5(1) *Law, Technology and Humans* 1, 1.

¹⁴ Dr Bridget Harris, 'Technology, Domestic and Family Violence: Perpetration, Experiences and Responses' [2020] (4) *QUT Centre for Justice Briefing Paper* 1.

¹⁵ Tambasco et al (n 7) 24.

¹⁶ Balmer et al (n 26) 149.

¹⁷ *Ibid* 151.

¹⁸ Tambasco et al (n 6).

court so that the court is appropriately informed to make decisions. This results in lengthy court processes and greater scrutiny of victim survivors' narratives that could have been avoided. The inaccessibility of the online forms results in a less trauma informed court experience and delays to getting family violence legal protections in place.¹⁹

In Victoria, the court's shift towards online systems, including FVIO application forms, has resulted in a reduction of court staff who provide support and has subsequently increased pressure on services to fill the gap for refugee and migrant women who find the online systems inaccessible.²⁰ Northern CLC is concerned that further technological developments in courts may further reduce perceived staffing needs by courts but result in increased staffing pressure on other sector services. Many family violence services are now pushing back on providing this assistance which is ultimately a court responsibility. If the implementation of AI led to further reductions of court staff, those who already experience systemic disadvantage will be further marginalised.

If efficiency is to be a guiding principle of the introduction of AI into courts, efficiency must be calculated with a consideration of the efficiency of the justice system in its entirety. Without a broader analysis, a false narrative of efficiency for the court user is established. There is already evidence to suggest that the accessibility and quality of court processes may be negatively impacted. Particularly if expediency in one part of the process is prioritised above overall efficiency. Efficiency should be clearly defined to include the impact on the length of court proceedings as well as the efficacy of reaching just outcomes. There needs to be a consideration of the increased pressures on other sectors including the legal assistance sector, community sector and police.

A further concern is whether AI is adequately sophisticated to interpret the nuances in the information provided. Northern CLC works with victim survivors, with the support of interpreters, to understand experiences that may not have a direct translation into English, or may not individually constitute family violence, but when considered as a whole paint a picture of coercive control. This reasoning processes is complex and requires a specialised knowledge of trauma in different cultural contexts. Northern CLC is concerned that AI is not sufficiently advanced to undertake this analysis.

Northern CLC is concerned that the implementation of technology in courts has not included comprehensive monitoring and evaluation with adequate consultation and feedback from court users and/or the legal assistance sector. For example, a recent 2024 review of pre-court information forms by the Magistrate's 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.²¹ 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. Northern CLC is concerned that technological reforms continue to be implemented without proper consultation or regular monitoring for effectiveness. 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.

Use for interpretive services

Introducing AI interpretive services into court hearings has the potential to increase access to justice but Northern CLC cautions against such software being incorporated without consideration of their quality, privacy ramifications and how court proceedings may be impacted by their incorporation. Northern CLC's *Justice at Home* research project found that the incorporation of remote hearing software into FVIO proceedings did not account for the impacts on court users using interpretive services. The use of interpretive services, AI or otherwise, cannot create an assumption that

¹⁹ Ibid.

²⁰ Ibid 25.

²¹ 'Pre-Court Information Form - Applicant and Affected Family Member | Magistrates Court of Victoria' <<https://www.mcv.vic.gov.au/pre-court-information-form-applicant-and-affected-family-member>>.

information has been adequately conveyed. Court proceedings must be conducted in a manner that facilitates the effective use of interpretative services, including allowing time for clarification when direct translations are not available. This clarificatory process may be further complicated when using AI rather than in person interpreters. In part due to the court not allowing time for interpretive processes and in part due to the limitations on AI interpretive services to date. Northern CLC would recommend a staged approach to the incorporation of AI interpretive software that allows court users to select their preference for AI or in-person interpretive services, that more common languages are trialled in first instance and that strict monitoring of a pilot project is undertaken.

Use for decision making

Decision-making processes currently allow for discretion, in recognition of the elasticity of the English language and variable application depending on the specific facts of an individual case. The words chosen in legislation are not stagnant, they are alive and open to new interpretation. As social and cultural contexts change, the web of related legislature also evolves, and new meanings may be derived with a fresh consideration of context and purpose.²² Automated Decision Making (ADM) to date, whether rules-based or part of a machine learning mechanism, has not demonstrated a capability to incorporate the wealth of contextual information that a human decision-maker may apply. ADM is restricted by its rigid interpretation of words in the data that it is fed, and by the process of simplifying the English language to produce code. If ADM is to be regulated in public decision-making, there needs to be a consideration of when it may be appropriate or desired.

ADM is a banner term applied to decisions that are made in part or full by AI. There are different risks and pitfalls of the varying levels of AI participating in decision making. ADM that includes a human decision maker that uses AI to inform their decision, relies on the human decision maker having a level of comprehension of what information the AI is using and its decision-making matrix. Without this knowledge, the human decision maker may rely heavily on the information provided by AI with adverse effects.²³ Quasi-automated decision making is promoted as a pathway to ensuring there remains a human element, a human decision maker that can overcome the shortfalls of AI, while still reaping the potential benefits of AI. This approach falls short however, when the AI is flawed and the human decision maker is not able to discern its flaws, instead placing an unwarranted faith in the system. If quasi-automated decision-making is to ensure humans retain responsibility for decisions and error is minimised, human decision makers would require substantial training and processes to test and regulate.²⁴

The data held by courts and tribunals reflects Australia's past practices, including those fixed in discrimination and bias. Australia has a legal and social history of inequality, providing greater rights and privileges to certain cohorts. While there is ongoing law reform to increase equality in society, this is not reflected in the data available to teach ADM systems. To use this data as a roadmap for future decisions, would replicate discriminatory practices rather than moving towards a more equal society. Amnesty International has cautioned that, "All too often, AI systems are trained on massive amounts of private and public data—data which reflects societal injustices, often leading to biased outcomes and exacerbating inequalities."²⁵ AI is becoming more complex but there are still limitations on its ability to appreciate the unique context of each and every individual and to read what information they have not received.²⁶ Rather than looking at an individual case, AI instead relies upon patterns in

²² Will Bateman, 'Algorithmic Decision-Making and Legality: Public Law Dimensions' (2020) 94(7) *Australian Law Journal* 6 <<https://papers.ssrn.com/abstract=3496386>> ('Algorithmic Decision-Making and Legality').

²³ Derya Ozkul and Refugee Studies Centre, 'Automating Immigration and Asylum'.

²⁴ Ben Wagner, 'Liable, but Not in Control? Ensuring Meaningful Human Agency in Automated Decision-Making Systems' (2019) 11(1) *Policy & Internet* 104, 117 ('Liable, but Not in Control?').

²⁵ 'The Urgent but Difficult Task of Regulating Artificial Intelligence', *Amnesty International* (16 January 2024) <<https://www.amnesty.org/en/latest/campaigns/2024/01/the-urgent-but-difficult-task-of-regulating-artificial-intelligence/>>.

²⁶ 'Privacy Act Review Report 2022' 188.

the data it has been fed in order to provide a decision that aligns with the pattern it has found.²⁷ When bias is present in a singular decision-making process or data set, and that is used to implement a further decision-making process, the bias is transferred and compounded.²⁸

This bias can infiltrate the ADM through the data it is fed as well as through the coding. If the legislation is translated to coding without a consideration for, or testing of, errors or bias, the results will disproportionately impact those most vulnerable in society. While the Law Council of Australia calls for “technology neutrality”,²⁹ evidence suggests that neutrality perpetuates pre-existing system discrimination and bias. If the AI is not given the ability to respond to systemic injustice, it will likely perpetuate it. Laws and government expenditure increasingly process through regulatory measures to ensure compliance with human rights obligations and anti-discrimination laws, but AI isn’t under the same scrutiny, currently. Those who are to be most impacted by ADM are rarely consulted in its development.³⁰ Instead, the impacts on these individuals and groups comes to light following gross impact, as was the case with robodebt.³¹

²⁷ Anna Huggins, ‘Addressing Disconnection: Automated Decision-Making, Administrative Law and Regulatory Reform’ (2021) 44(3) *University of New South Wales Law Journal* 8404

<<https://www.unswlawjournal.unsw.edu.au/article/addressing-disconnection-automated-decision-making-administrative-law-and-regulatory-reform/>> (‘Addressing Disconnection’).

²⁸ Ozkul and Centre (n 13) 65.

²⁹ ‘Positioning Australia as a Leader in Digital Economy Regulation - Automated Decision Making and AI Regulation - Law Council of Australia’ <<https://lawcouncil.au/resources/submissions/positioning-australia-as-a-leader-in-digital-economy-regulation---automated-decision-making-and-ai-regulation->>>.

³⁰ Lyndal Naomi Sleep, ‘From Making Automated Decision Making Visible to Mapping the Unknowable Human: Counter-Mapping Automated Decision Making in Social Services in Australia’ (2022) 28(7) *Qualitative Inquiry* 848 (‘From Making Automated Decision Making Visible to Mapping the Unknowable Human’).

³¹ ‘Royal Commission Into the Robodebt Scheme - Final Report - Volume 2 [2023] AUROYALC 3 (7 July 2023)’

<https://www.austlii.edu.au/cgi-bin/viewdoc/au/other/cth/AURoyalC/2023/3.html?context=1;query=2020%20AIAdminLawF%2024%20or%20AIAdminLawF%202020%2024;mask_path=>>.

Recommendations:

1. Introduction of AI into courts and tribunals to be co-designed with court users from marginalised backgrounds and the services who work with them.
2. Introduction of AI to be monitored and evaluated with consultation from court users and the legal assistance sector.
3. AI to be introduced as an option, not an alternative to in-person services.
4. Efficiency to be measured with consideration of the impacts on access to justice and impacts on the broader service system.
5. If AI is to be used to inform decision making, transparency measures to be in place and rights of review protected.

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