MONASH University | CASTAN CENTRE FOR HUMAN RIGHTS LAW

The Use of Artificial Intelligence in Victoria's Courts and Tribunals

Submission to the Victorian Law Reform Commission

Prepared by

Professor Melissa Castan
Director, Castan Centre for Human Rights Law

Associate Professor Genevieve Grant
Director, Australian Centre for Justice Innovation

Mr Scott Walker
Research Fellow, Castan Centre for Human Rights Law

December 2024

Table of Contents

Part 1: Background

1.1 About the Castan Centre for Human Rights Law

The Castan Centre for Human Rights Law (**Castan Centre**), based in the Faculty of Law at Monash University in Melbourne, Victoria is a research, education and policy centre which aims to create a more just world where human rights are respected, protected and fulfilled, allowing all people to flourish in freedom and dignity. The Castan Centre has a long history of defending and promoting the realisation of human rights in Australia and has a strong commitment to research and advocacy of vulnerable peoples. This builds on work on anti-vilification and hate-speech to date. The Castan Centre was founded in 2000 and named in honour of lawyer and human rights advocate Ron Castan AM QC.[1]

1.2 About the Australian Centre for Justice Innovation

The Australian Centre for Justice Innovation (**ACJI**), also based in the Faculty of Law at Monash University in Melbourne Victoria, is a research centre which aims to support effective policy and practice innovation in justice systems through rigorous socio-legal and empirical research. ACJI was established in 2011 and its research provides an evidence base for effective improvements to law and justice systems and increased accessibility for system users and stakeholders. ACJI's researchers have particular expertise in the use of administrative data to shed light on the performance of justice systems, together with research on system user perspectives and experiences.

1.3 About this submission

This submission focuses on the human rights implications of the use of AI in Victoria's courts and tribunals and its impact on access to justice and the need for adequate and robust data infrastructure to evaluate the impacts of AI in Victoria's courts and tribunals. It focuses particularly upon individuals and groups who access the court system as parties to litigation or who have recourse to the courts. Consistent with the human rights approach discussed in Section 2.1 below, this submission emphasises the need for strong legal mechanisms that prioritise the rights of the court users and preferences these over other considerations. While the use of AI (as defined in the Victorian Law Reform Commission's (**VLRC**) consultation paper) might improve efficiency in the court's processes, the use of such technology must be appropriately implemented and regulated to ensure that efficiencies do not come at the expense of the rights of court users, particularly those who are members of vulnerable groups, to justice.

[1] We are grateful for the input of Assoc Professor Joanne Evans, Associate Professor, Department of Human Centred Computing, Faculty of Information Technology, Monash University.

1.4 Submission structure

This submission addresses the following terms of reference:

Terms of reference	*Part/Section*
Chapter 3: Benefits and risks of AI 3. What are the most significant benefits and risks for the use of AI? 4. Are there additional risks and benefits that have not been raised in this issues paper?	Part 2 Part 3
Chapter 4: AI in courts and tribunals 6. How can courts and tribunals manage risks?	Part 2 Part 3
Chapter 7: AI in courts and tribunals: Current laws and regulations 19(c). What, if any changes to legislation, rules or processes are necessary to enable courts and tribunals to implement human rights principles	Part 2

Part 2: The Need for a Human Rights-Based Individual-Centred Approach

Australia is a party to a series of human rights treaties in international law and therefore has an obligation to respect, protect, and fulfil those rights.[2] Victoria also has duties to respect, protect, and fulfil these rights and has an obligation to ensure that human rights are respected and complied with in decision-making and in the implementation of policy decisions. This is mainly done through the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Victorian Charter**), which places obligations on public authorities. Victorian Charter in particular imposes obligations on the Victorian Government and other public authorities, including courts acting in an administrative capacity.[3] Importantly this means that in exercising its administrative functions—such as determining policies for the appropriate use of AI—courts and tribunals and other public authorities must (a) act compatibly with human rights engaged by the taking of such decisions; and (b) fail to give proper consideration to a relevant human rights.

As the UN High Commissioner for Human Rights has underscored, any regulation of new and emerging technologies, including artificial intelligence, 'must be founded in respect for human rights' if they are to

[2] Walter Kalin and Jorg Kunzli, *The Law of International Human Rights Protection* (Oxford University Press, 2nd ed, 2019) 181; UN Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 18th sess, UN Doc CCPR/C/21/Rev.1/Add.13 (adopted 29 March 2004) paras 15-20.
[3] *Charter of Human Rights and Responsibilities 2006* (Vic) s 38.

be effective and put people at the centre.[4] Ensuring transparency in the use of AI requires governments and private sector actors 'to take steps to permit systems to be scrutinized and challenged from conception to implementation'.[5] This includes assessing the human rights impacts of such technologies, ensuring audits of technologies implemented, ensuring adequate and fully informed notice and consent procedures, and providing that adverse impacts of AI systems can be adequately remedied.[6] These safeguards for the use of AI cannot be merely tick-box exercises, but must be real and meaningful oversight mechanisms.

2.1 A human rights-based approach

There is no universal definition of a human rights-based approach, however such an approach places the human experience at the core of analysis. Human rights approaches have a number of common elements, namely: the participation of rights-holders in decision-making processes; clear links to human rights; accountability for duty-bearers with respect to human rights; respect for principles of equality and non-discrimination of rights holders; the empowerment of rights-holders to understand and enjoy their human rights, and participate in decision-making and the formation of laws, policies, and practices that impact upon them; and transparency for all stakeholders involved.[7] What is clear from different conceptions of the human rights-based approach is that it is 'based on respect for the fundamental dignity and humanity of all people and is framed in terms of justice and rights'.[8]

A central component of a human rights-based approach is that it reframes persons impacted by decisions as rights-holders. This moves beyond seeing people as consumers, as court users, or as participants in the court process, and instead transforms them into autonomous rights-bearers, empowered to see their rights realised. So understood, a human rights-based approach seeks to 'promote, protect and fulfil human rights' in practice and enable the integration of human rights norms, standards and principles into the development of law, policy, and practice.[9]

In the designing and regulation of the use of AI in Victoria's courts and tribunals, a human rights-based approach requires co-design with affected individuals and communities. Those who use the courts, including those who are overrepresented in the court systems, such as First Nations peoples, and those with additional accessibility needs to access court systems, such as persons with disabilities, must particularly be in mind when making decisions about the use of AI in courts and tribunals. In so doing, emphasis should be placed on the *individual* as a rights-bearer not as court users as a static or homogenous group.

---

[4] UN High Commissioner for Human Rights, Speech, High Level Side Event of the 53rd sess of the Human Rights Council, 12 July 2023 <https://www.ohchr.org/en/statements/2023/07/artificial-intelligence-must-be-grounded-human-rights-says-high-commissioner>.
[5] David Kaye, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, UN Doc A/73/348 (29 August 2018) para 53.
[6] Ibid paras 53-60.
[7] See, eg, 'Human Rights Based Approach', *Swedish International Development Cooperation Agency* (Web Page) <https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach>.
[8] Kevin Bell and Jean Allain, 'Homelessness and Human Rights in Australia' in Paula Gerber and Melissa Castan (eds), *Critical Perspectives on Human Rights Law in Australia* (Thomson Reuters, 2022) vol 2, 241, 266.
[9] SIDA (n 7).

2.2 Access to justice and equality before the law

Article 14 of the *International Covenant on Civil and Political Rights* (**ICCPR**) recognises the right to equality before the law and the fundamental principle of the openness of court proceedings and the right to a fair trial.[10] This includes the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, the importance of which is increased where criminal charges are heard or the possible outcome is of such severity that it ought to be regarded as penal.[11]

Similarly, the Victorian Charter recognises the right to a fair hearing, that is, 'the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing'.[12] This right also intersects with the right to equality where individuals involved in courts have a protected attribute, such as disability which engages that right.[13] Where a party is self-represented, especially where that party is not a lawyer, the judge is 'obliged by s 24(1) to give them certain advice and assistance to ensure that they effectively participate[] in the hearing'.[14] The risks of automation bias are one potential concern in the implementation of AI for court users with protected attributes in respect of whom particular obligations around equality and non-discrimination arise.[15]

Self-represented litigants may face particular challenges accessing the court system, with difficulty understanding technical procedural and legal requirements.[16] While there is unfortunately limited data on the number of self-represented litigants in most jurisdictions, there is a perception that the number of self-represented litigants is increasing across Australia.[17] Research also suggests that where self-represented litigants are involved in litigation, there is a resultant increase in costs and expenses and difficulties for court staff and judicial officers in responding to their needs.[18]

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.[19] But there are recognised problems with legal AI models generating inaccurate information or hallucinating content,[20] which may create further burdens in workload for courts. Where such inaccurate content is

[10] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 14(1) ('ICCPR').
[11] United Nations Human Rights Committee, *General Comment No. 34: Article 19 Freedom of Expression*, UN Doc CCPR/C/FC/34 (12 September 2011) para 15.
[12] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 24(1).
[13] See, e.g, *Matsiukatidou v Yarra Ranges Council* (2017) 51 VR 624.
[14] Ibid 684, [186] (Bell J).
[15] David Lyell, 'Automation Can Leave Us Complacent, and that Can Have Dangerous Consequences', *The Conversation* (online, 29 July 2016) <https://theconversation.com/automation-can-leave-us-complacent-and-that-can-have-dangerous-consequences-62429>.
[16] Liz Richardson, Genevieve Grant and Janina Boughey, *The Impacts of Self-Represented Litigants on Civil and Administrative Justice: Environmental Scan of Research, Policy and Practice* (Australian Institute of Judicial Administration, Report, 2018), II
[17] Ibid.
[18] Ibid p III.
[19] See, e.g., Supreme Court of New South Wales, *Generative AI Practice Note and Judicial Guidelines* (Practice Note, 21 November 2024).
[20] See, Varum Magesh et al, 'Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools' (2024, Pre-print Paper) <https://hai.stanford.edu/news/ai-trial-legal-models-hallucinate-1-out-6-or-more-benchmarking-queries>.

relied upon before the court, there is no doubt a negative impact on the right to a fair hearing and a further barrier to accessing justice.

2.3 The right to privacy and recordkeeping rights

The right to privacy is also strongly protected in human rights law.[21] The Victorian Charter provides that a person has the right 'not to have that person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with'.[22] While there are significant carve-outs for courts and tribunals from the Information Privacy Principles and the data security standards in the *Privacy and Data Protection Act 2014* (Vic), such that those Principles and standards do not apply to them in either judicial or quasi-judicial functions,[23] the obligations of the Charter to both adequately consider and give effect to the right of privacy continues to apply to courts and tribunals in their administrative functions. This creates a difficult tension between the carveout under the *Privacy Act* and the obligations of courts and tribunals under the Victorian Charter.

AI and machine learning systems pose particular privacy concerns, with research showing that AI is even able to learn particular patterns, such as predicting individual responses.[24] Without adequate privacy protections built into the use of systems, the use of AI might further increase the asymmetry between organisations and individuals in relation to the protection of privacy.[25] The use of sensitive client data in AI machine learning systems and courts' possible use of individual identifiers (e.g., names, case file numbers, dates of birth, addresses, etc.) in AI systems is a further privacy concern. Even seemingly innocuous administrative aspects of courts and tribunals' functions, such as case management and scheduling, represent possible privacy risks where informed consent for the use of such data is not obtained. 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.

2.4 Oversight and safeguards

Ensuring AI systems are human rights-compliant requires transparency scrutiny of systems, ensuring audits of technologies implemented and that any adverse impacts of AI technologies can be adequately remedied.[26] The need for transparency in the use of AI in lawyers' work was particularly highlighted by the recent *Statement on Artificial Intelligence and in Australian Legal Practice* jointly released by the

[21] ICCPR (n 10) art 17.
[22] *Charter of Human Rights and Responsibilities 2006* (Vic) s 13(a).
[23] *Privacy and Data Protection Act 2014* (Vic) s 10.
[24] Jordan Awan, 'Here's How Machine Learning Can Violate Your Privacy', *The Conversation* (online, 23 May 2024) <https://theconversation.com/heres-how-machine-learning-can-violate-your-privacy-226299>.
[25] See, Office of the Victorian Information Commissioner, 'Artificial Intelligence and Privacy - Issues and Challenges' (Web Page) <https://ovic.vic.gov.au/privacy/resources-for-organisations/artificial-intelligence-and-privacy-issues-and-challenges/>.
[26] Kaye (n 4) paras 53-60.

legal services boards of New South Wales, Western Australia and Victoria.[27] We observe that proforma disclosure obligations (such as those under the *Civil Procedure Act 2010* (Vic)) may be performed in a perfunctory and uncritical manner, which render nugatory the obligation to make disclosure. While obligations to disclose the use of generative AI in legal documentation may be a well-meaning proxy for discerning the source and authority of material, inevitably participants in legal processes will revert to proforma assertions about AI without any assessment of the veracity of material generated.

Recent use of automated decision-making provides a salutary warning of the misuse of such technologies and the significant impacts it can have.[28] The Robodebt scandal represents one such lesson, through its use of complex automated decision-making with respect to alleged overpayments of government welfare payments.[29] There were significant failings in the implementation and administration of that system, but key 'was insufficient governance associated with the Scheme'.[30] The Royal Commission into the Robodebt Scheme found that '[p]roper governance, controls and risk measures would have increased the level of scrutiny and oversight of the data-matching component of the Scheme … [and] difficulties with inter-agency collaboration … may have been somewhat improved had there been an effective governance framework'.[31]

[27] The Law Society of New South Wales et al, 'Statement on the Use of Artificial Intelligence in Legal Practice' (undated, c. December 2024) <https://www.lawsociety.com.au/sites/default/files/2024-12/LS4590_PSP_Statement_AI_LawSocietyVersion.pdf>.
[28] See, e.g., *Prygodicz v Cth (No 2)* [2021] FCA 634 ('Robodebt Class Action') in which, in approving the settlement, Murphy J referred to it as 'a shameful chapter' in public policy administration: [5].
[29] Commonwealth, *Royal Commission into the Robodebt Scheme* (Final Report, July 2023) Section 4.
[30] Ibid 460.
[31] Ibid.

Part 3: Data Infrastructure for Evaluating AI's Impacts

This part of our submission responds to a specific subset of issues raised by the Consultation Paper in addressing the following questions:

> *4. Are there additional risks and benefits that have not been raised in this issues paper? What are they and why are they important?*
> *26. Are there other guidelines or practice notes relevant to court users and AI use that should be considered by the Commission?*
> *36. Are there appropriate governance structures in courts and tribunals to support safe use of AI?*
> *37. What governance tools could be used to support the effective use of AI in courts and tribunals*

In particular, we address the kinds of data and analysis that are required to investigate the impacts of generative AI in Victoria's courts and tribunals. This part of our submission draws on input ACJI has provided to previous inquiries, including the *Review of Litigious Costs in Victoria* and the Victorian Parliamentary inquiry into the COVID-19 pandemic response. We also draw on the considerable work undertaken by the Victoria Law Foundation in its multiple reports on the use of administrative data in Victoria's civil justice system.

3.1 Assessing the impacts of AI requires data and evaluation

In short, there is a considerable risk that the current lack of robust and accessible administrative data about the operation of Victoria's civil courts and tribunals will render it impossible to effectively evaluate the impacts of AI on some of the key processes and outcomes of interest to the Inquiry.

For the purposes of the discussion that follows, we focus on the risks identified in the Consultation Paper that are relevant to court and tribunal management of civil disputes, particularly involving self-represented litigants and generative AI. We note, however, that the observations we make are relevant across a range of technologies and court contexts.

The Consultation Paper principally frames the potential benefits of AI as being promoting efficiency, access to justice and 'improved quality of processes and outcomes' (p 18). It further identifies the potential risks of AI as including 'access to justice challenges', amongst others (p 20). The Consultation Paper notes (at p 37) that 'AI tools that use natural language processing and speech recognition could assist self-represented litigants… But issues around inaccuracy remain significant… AI drafting tools could result in a significant rise in vexatious litigation and the generation of too much material without a strong basis in law', which the paper suggests could result in '[i]ncreased workloads for courts and tribunals'. A number of the paper's more granular descriptions of the potential risks of AI relate to the potential workload implications for courts if poor quality and error-laden court documents are produced by litigants using generative AI.

It is necessary to unpack these workload-related concerns in order to identify relevant data and outcomes in proceedings that could be investigated to enable us to see how the use of various kinds of

AI has an impact. What are the impacts, for example, on case numbers, durations and processing times? To what extent is active case management required from courts and tribunals (reflected, for example, in the number and duration of case management conferences, directions hearings and administrative mentions)? These insights should be discernible from the administrative data generated in the case management systems and processes of courts and tribunals. Administrative data are data collected and produced routinely by public services - such as courts and tribunals - to support their operations.[32] Going further, are there variations across or within courts or tribunals (in different divisions or specialist lists, for example), in the number or proportion of cases involving self-represented litigants using generative AI, and whether trends in these areas emerge over time? Analyses using this data would enable us to understand relationships between the use of AI, the profile of litigants and litigation and the related resourcing requirements of courts and tribunals managing these proceedings over time, together with aspects of access to justice. Without that basic data, we will remain unable to draw reliable conclusions about the impact of AI on court and tribunal workloads.

3.2 The civil litigation data deficit

There is a critical shortage of data available for research and evaluation about litigation in Victoria's justice system. This data deficit has long been recognised by a range of stakeholders including the VLRC which has previously noted that there is limited quantitative and qualitative research into the operation of the Victorian justice system.[33] In 2021, the Victoria Law Foundation (**VLF**) published its landmark report on the use and utility of administrative data in Victorian courts and tribunals.[34] The report found that civil justice data recorded by our courts and tribunals is variable, with a focus on data that covers such matters as basic litigant profile, matter type, stage, outcome and manner of disposal.[35] There is less 'user-focused' data collected - such as information about party demographics and legal representation.[36] The VLF suggested that as a result, there are 'substantial gaps' in what the data can tell us about the parties to civil matters in Victorian courts and tribunals and their matters and experiences. The report identified that to improve our understanding of court and tribunal operations and user experience we need 'capacity to differentiate experiences and outcomes; identify and plug gaps; appropriately respond to diverse user needs; identify potential downstream impacts of upstream change; and determine what works'.[37]

The Law Council of Australia and Commonwealth Attorney-General's Department have emphasised that the absence of comprehensive, consistent and comparable data collection practices are a barrier to evidence-based justice policy and practice.[38] Persistent data limitations include inconsistent

[32] Matthew A Jay, 'A public health approach to family justice: the possibilities of legal epidemiology and administrative data' (2024) 46(3) *Journal of Social Welfare and Family Law* 289-305, 294.
[33] Victorian Law Reform Commission, *Civil Justice Review* (Report No 14, May 2008) 99.
[34] HM McDonald, CL Kennedy, T Hagland and L Haultain, *Smarter data: The use and utility of administrative data in Victorian courts and tribunals* (Victoria Law Foundation, 2021).
[35] Ibid 5.
[36] Ibid.
[37] Ibid 7.
[38] Productivity Commission (Cth), *Access to Justice Arrangements* (Inquiry Report No 72, 5 September 2014) vol 2, 880–1.

definitions and measures, reporting being confined to aggregated data and poorly captured outcomes.[39] The Productivity Commission concludes that available data about the justice system is 'seriously deficient for policymaking and evaluation purposes'.[40]

Notably, the VLRC's Consultation Paper raises 'data quality' as a concern in relation to AI but only as it relates to the nature of the data used to train AI systems, rather than as it pertains to the information available to estimate or evaluate the impact of AI on the very benefits and risks the consultation paper is concerned about. The Consultation Paper notes the acceleration of the use of technology and virtual hearings in the courts as a consequence of the COVID-19 pandemic – but not the paucity of evaluation of the impact of these changes on the kinds of aspects of court and tribunal performance that the inquiry is interested in. The absence of rigorous evaluation of the profound and lightning-fast changes to hearings in courts and tribunals brought about by the pandemic provides a useful warning of what can happen when our data infrastructure and analytical capability does not keep pace with wide-scale change in justice systems. We remain unable to say, for example, what the impact of online hearings has been in terms of case processing times, efficiency and access to justice at a level beyond the self-reported experiences of a small number of litigants and practitioners. Administrative data could provide a range of different and informative system-level evidence.[41] There is considerable foundational work to be done on building justice system data research infrastructure and capability in order for this potential to be realised.

These problems are not confined to Victoria nor Australia. Importantly, however, there are examples that show how Victoria could be better equipped for making more optimal use of justice data resources for research and evaluation. In 2019 the Legal Education Foundation (UK) reported the findings of its investigation into developing the data and evaluation infrastructure necessary to ensure the UK Government's online courts program could achieve access to justice for court users.[42] That report's recommendations included collecting data on the characteristics of court and tribunal users, cases brought, the cost and effort associated with bringing and defending claims; indicators of procedural fairness (subjective and objective); and case outcomes (including disposition and enforcement).[43] Additionally, the report recommended that mechanisms be developed to facilitate data sharing with researchers for evaluation and research, consistent with the increasing recognition of the value of administrative data. In the United Kingdom, *Data First* is a new and groundbreaking research program that is making administrative data about civil, criminal and family courts available for use by accredited researchers on approved projects.[44] Examples of this kind demonstrate the international trend toward making more extensive use of administrative data to inform justice system evaluation and interventions.

[39] Ibid 882.
[40] Ibid 879.
[41] Matthew A Jay, 'A public health approach to family justice: the possibilities of legal epidemiology and administrative data' (2024) 46(3) *Journal of Social Welfare and Family Law* 289-305, 294.
[42] Natalie Byrom, *Digital Justice: HMCTS Data Strategy and Delivering Access to Justice* (Legal Education Foundation, 2019).
[43] Ibid 7-8.
[44] Ministry of Justice (UK), *Ministry of Justice: Data First* (Web Page, 10 December 2024) <https://www.gov.uk/guidance/ministry-of-justice-data-first>.

In Australia, the data available to inform justice system innovation is vastly inadequate relative to other sectors. Australia is known to be a leader in healthcare information systems. Initiatives such as the Population Health Research Network coordinate data delivery systems and provide researchers with a diverse range of health-related datasets.[45] Service planning and delivery is informed by extensive surveys from multiple bodies with periodic reviews by the Australian Institute of Health and Welfare in coordination with the Australian Bureau of Statistics.[46] During the COVID-19 pandemic, the Victorian Injury Surveillance Unit at Monash University published monthly bulletins monitoring injury rates, extracting data from the Victorian Emergency Minimum Dataset.[47] This research enabled us to understand how the prevalence and profile of injury in the Victorian community changed over the course of the pandemic and facilitated comparisons with pre-pandemic injury-related presentations to hospital emergency departments.

In contrast, the justice system lacks similarly informative and periodic datasets. While Court Services Victoria and individual courts and tribunals publish annual reports, and some data on court performance is available through the Productivity Commission's annual Report on Government Services series, the nature, extent and infrequency of these resources restrict their usefulness for understanding the profile of court users, cases and processes. The limitations of the data create significant barriers for understanding the impacts of increased use of generative AI in courts and tribunals beyond the non-systematic practice-based insights of those at the coalface (for example, court and tribunal registry staff, judges and tribunal members).

Despite the indelible impacts the justice system has on its participants and its significance for the community and society, its data collection practices, and infrastructure have not kept pace with those in other equally significant sectors. The development of effective policy and practice is reliant on an evidence base that is informed by data and evaluation. Improving systems relies on empirical and legal analysis that tests, reviews and informs improvements to systems to ensure that the justice system remains fair and accessible.[48] Without policy-relevant, periodic data collection, weaknesses in current systems cannot be identified,[49] and the civil justice system is vulnerable to claims about floodgates and workloads imposed by self-represented litigants that cannot be interrogated or validated. High-quality, robust and safely regulated data for research is critical for us to understand how AI impacts on courts and tribunals and the people that use them, now and into the longer term.

[45] Population Health Research Data Network, *About Us* (Web Page, 10 December 2024) <https://www.phrn.org.au/about-us/>.
[46] Victorian Government, *Access to Justice Review (Vol 1)* (Report, 2016) 62-3.
[47] Victorian Injury Surveillance Unit, Monash University, *Injuries During the COVID-19 Pandemic: Monthly Bulletins* (available at https://www.monash.edu/muarc/research/research-areas/home-and-community/visu/injuries-during-the-covid-19-pandemic).
[48] Above n 40, 2.
[49] Above n 37.

3.3 Building research capacity and infrastructure and including evaluation in the principles and governance arrangements

Court Services Victoria should take urgent steps to invest in the production of granular administrative datasets about case management and handling to be used in the necessary analyses, together with developing the data governance framework to ensure this work can be done safely and in compliance with human rights standards (see Section 2.3 above).[50]

We note that the Consultation Paper proposes a list of principles to guide the use of AI in Victorian courts and tribunals (at p 75) and asks a related question about the sufficiency of the principles to guide the use of AI in Victorian courts and tribunals (Question 11). A number of those principles touch on aspects of empirical analysis that are relevant to our call for better evaluation, namely accountability, transparency and open justice, access to justice, efficiency and monitoring. We argue, however, that an explicit commitment to process and impact evaluation is a critical addition to the list of principles to ensure that our understanding of AI's impacts is truly evidence based and not limited to the perceptions or practice-based insights from those working in or bringing civil litigation. Relatedly, the governance arrangements and tools – referred to in Questions 36 and 36 – should also include the data governance and infrastructure necessary to monitor and evaluate the impacts of the use of AI in court and tribunal settings.

Best practice for evaluation of the use of AI within courts and tribunals would include developing a standing consultation forum including non-professional users of courts (such as self-represented litigants, parties to litigation, and the like). As this VLRC consultation no doubt shows, there will be a number of submissions from the profession and academia and research centres such as ourselves, but 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.[51]

[50] See, for example, Natalie Byrom, Mariane Piccinin-Barbieri and Peter Wells, *Towards effective governance of justice data* (OECD Working Papers on Public Governance No 74, 2024); Emily Taylor Poppe, 'Courts as data guardians for the public good' (2023) 73 *University of Toronto Law Journal* 34-58.
[51] See Byrom et al above n 49, 13-16.

Part 4: Conclusion

The use of AI in Victoria's courts and tribunals engages human rights to justice in a number of ways. In seeking to address these possible impacts, it is necessary that the design and implementation of such systems prioritises a human rights-based approach to ensure that AI enhances and does not undermine access to justice. To ensure the proper use of such technologies within courts and tribunals, there must be clear oversight and governance mechanisms which emphasise accountability, transparency and fairness after comprehensive consultation and codesign with all stakeholders in the justice system, particularly those most likely to be affected by the use of AI such as overrepresented communities within the justice system, and especially individuals and communities who are unlikely to participate in this inquiry. This co-design is required by a human rights-based approach and will help to ensure human rights-compliant use of such technologies. A human rights-based and person-centred approach will ensure that benefits of AI can be harnessed, while ensuring adequate safeguards are in place to ensure access to justice.