1. Introduction

Good afternoon, everyone, thank you for having me today, and for coming to hear about one of the new legal issues of our day.

I also acknowledge the Burramattagal People of the Darug Nation, the traditional owners of the land on which this building stands, and pay my respects to their elders, past and present.

I want to thank the Whitlam Institute for the generous invitation to speak today.

It's especially pleasing as a WSU graduate, and the first to hold the Office of the President of the Law Society of NSW.

In today's address, I'm going to explore a topic that is one of my presidential priorities for solicitors in NSW this year: AI.

At its best, it can make legal work much easier, and free solicitors to focus on solving the harder legal and human aspects of their matters.

At its worst, think, perhaps: Robodebt—or even, for those who remember, Skynet in *Terminator*.

Today, I'll look at the implications of artificial intelligence for our justice system.

We'll touch on what it is likely to mean for practising solicitors, the courts, and regulation.

And how this is affecting our right to access justice.

2. Computing as a Precedent for AI

But before we start, I'd like to step back. To Sydney, in December, 1986.

It was a very different place in some senses.

The year *Crocodile Dundee* brought a ridiculous version of Australia to the world.

Of deep, deep importance: *The Oprah Winfrey Show,* and *Neighbours,* appeared on TV.

Amongst this, there was the LEXPO symposium.

New legal practice and technology were on show—looking to the then, bright, coming decade of the 1990s.

Imagine computer monitors the size and weight of medium-sized cars.

The coming of single compact disks containing the entire Commonwealth and NSW law reports, for use on individual computers.

Speakers noted that by 1990, solicitors would be redundant if they could not use computers.

Based on some things I have seen, 38 years later...not so sure. Although paper files can't be hacked, so there's that.

Trevor Haines, then Secretary of the Attorney General's Department, delivered the keynote address at the event.

He outlined how, *advances in technology, were affecting community expectations, of the legal profession*. Sound familiar?

Other speakers said that new technology would affect lawyers in the way they practised, and every area of practice.

It would bring things like freedom of access to information anywhere in the state; litigation support—at the time simply indexing documents and transcripts; alongside issues arising from the use of computers in evidence, and the inadvertent waiver of privilege.

Issues with privacy, and police records with inadmissible evidence escaping and it coming to be thought of as fact, were also raised.

As an aside, a prize was given: a Remington computer with 640 KB of memory, a 20 MB hard disk, and word processing capabilities—valued at *$14,500*. According to the Reserve Bank of Australia, that is about $45,000 dollars today.

I have lifted this from the December 1986 issue of the *Law Society Journal,* and *The Vault* section of LSJ from December last year.

I assume you can see why I am starting here.

Society has faced massive upheaval from computing in the very recent past.

It raised a variety of similar legal concerns, and practice concerns.

It raised issues around evidence.

How the courts would function.

And what clients would except of our conduct.

We survived as a profession—even prospered.

And for the purposes of today: some of the predictions were spot on, and many, were not.

What we face today with Artificial Intelligence is not entirely new, then.

But, are there differences with today's technological change?

The adage has become: AI won't replace lawyers anytime soon—but another lawyer using AI might.

This refers to Generative AI; trained using high volumes of data to generate new text, images, and audio in response to human inputs.

Large language models (LLMs) are a sub-type of Generative AI.

And most people have absolutely no technical idea of how it works—a point I will return to.

It is widely agreed that Generative AI does not currently have the capacity to altogether replace lawyers.[i]

It is also unlikely that GenAI could presently manage the roles of legal support staff, like paralegals—despite some wild claims.

One from Goldman Sachs last year suggested AI could automate 44 per cent of legal work in the USA.[ii]

Instead of a mass layoff of lawyers, we're seeing the profession grow there, as it continues to in NSW.[iii]

Nonetheless, Generative AI programs have been presented as tools with enormous implications for improving the efficiency of legal practice in several respects.

3. AI and Opportunity in the Legal Profession

The blue-sky version of this story is unfolding something like this: I have heard a few younger lawyers say that document discovery stole some of the best years of their lives.

If AI could have helped them get home at 7pm, instead of, say, two days after they started a discovery task—they would have taken it 100 per cent of the time.

At the even more extreme end of this, we have seen outlandish predictions like—and I quote:

"What if you could have a memory that was as good as computer memory?"

From Tom Gruber, AI guru and Siri co-creator, in 2018.[iv]

What if Tom?

A more prosaic concern with technology came up just a few weeks ago in response to the NSW budget announcement.

I publicly called for appropriate investments in our court facilities, including technology enabling more reliable use of Audio-Visual Links and online courts; to move from Local Courts using a paper diary in each Registry, to one that is at least online…

So, West-Coast-United-States-of-American-tech-guru predictions versus Dickensian local legal reality, are quite different.

But we are seeing the positive possibilities of AI in the legal world unfolding.

Last year ChatGPT passed a U.S. Bar Exam—although subsequent investigation by MIT recently has shown that it did pretty poorly compared to lawyers who pass the first time, especially with essay writing.[v]

Also, towards the end of last year, a specialist legal AI scored 74% on the English Solicitors Qualifying Exam.[vi]

We knew this was coming.

Back in 2018 the large legal publisher and legal support-service provider, LexisNexis, had already outlined four primary areas within the legal field that would play to AI's strengths:

1. **Due diligence**
2. **Prediction technology**
3. **Legal analytics**
4. **and Practice Management**[vii]

They noted that some of the changes AI would drive, included:

- **Changing cost structures**
- **More cases and more commercial deals**
- **Newer ways to practise law**

Many of the positive sides of these predictions are coming through.

Whether it's practice management like billing, social media management, legal research or e-discovery, there are now tools to handle repetitive work.

By making use of machine learning, legal analytics solutions can plough through vast legal databases to provide transparency to lawyers and clients.

With the right AI tool, a sole practitioner is as likely to find the relevant information as a team of associates at a large law firm in the city.

For some years now the *High Court Analyser*, for example, has given lawyers the power to dissect millions of High Court judgments to uncover valuable insights, fast.[viii]

Everything from intake, research, discovery, brief writing and managing client relations is becoming digitised, and AI is increasingly playing a part in this.

It is providing lawyers with more time to grow their business—and to do the harder, non-digital parts of practising law, like decision making, critical thinking and legal analysis, and interacting with clients.

Those predictions from 2018 have landed.

In April, *The Australian Financial Review* wrote about global firm Ashurst's months-long trial with generative artificial intelligence and everyday legal tasks.

On average, its lawyers used AI to produce client briefings 2.4 hours faster.[ix]

The trial involved 411 staff, across 23 Ashurst offices, in 15 countries.

It indicated time savings of 80 per cent for reviewing articles of association; 60 per cent for company research reports; and 45 per cent for creating client briefings.[x]

In June, *The Tech Times* reported similar things from UK law firm, Silver Circle.

Its trial found legal briefs using generative AI could be produced roughly two and a half hours quicker—half the time it would have taken them to write them independently.[xi]

They also saved 80 per cent of the time required to produce UK corporate filings, which required reviewing and extracting information from articles of association.

Their lawyers saved a further 59 per cent of the time required to draft reports about industries and sectors using company filings.[xii]

And, finally, in May, *The Australian* reported that a new report from PwC showed lawyers can earn up to 49 per cent more if they are harnessing emerging technology.[xiii]

While the data is based on the US market, and possibly inflated, it is not outlandish to suggest that Australian jobs will generally follow the same trend.[xiv]

With AI and automation becoming more readily available, AI is disrupting the legal sector, and the opportunity for law is huge.

Lawyers can focus more on their clients and legal decisions.

Less time can be wasted on tracking, research, and repetitive tasks that can be vastly sped up.

By allowing different ways of structuring costs, it may allow for better fee transparency for clients, and more fixed rates for certain areas of legal work.

These clients include not just those in the private sector, but the Australian taxpayer through government clients.

The need for a lawyer to oversee this work will not disappear.

Conversely, it could allow for more capacity to serve clients.

And it could have a positive knock-on effect for many clients, alongside their financial ability to access justice.

On a macro-economic front, in an era of persistent inflation, the productivity gains from the use of AI in the legal sector, including courts and tribunals, should spur all governments to encourage and facilitate investment in this area.

The downside?

5. Risks of AI in Law

The work of law, is, ultimately, too human for AI to take over.

AI is very good at processing data, but it's weaker in areas requiring emotional intelligence and human judgment.

The Chief Justice of NSW, the Honourable Justice Bell, has recently written that, and I quote:

> "One of my real concerns with the advent of GenAI is the extent to which it will "deskill" lawyers (including judges) and undermine or

erode the development and maintenance of their analytical abilities and capacity for the critical testing of legal and factual propositions."

His Honour went on to say:

> "The combination of cost, efficiency and laziness may generate disproportionate or even overwhelming reliance on GenAI in the judicial and wider legal system in a way that not only exposes it to abuse but more fundamentally has the capacity to alter the high regard in which judges, and their judgments, are currently generally held by the broader community, to the extent that their decisions may be viewed as little more than another output or result of Generative AI."[xv]

The Chief Justice has gone on to note the phenomenon of "truth decay," which has grown from things like the well documented fact that AI is prone to generating incorrect or false information—colloquially referred to as "hallucinations.".

The justification for these outputs can never be truth.

One can't check ChatGPT's sources, for example, because the source is the statistical fact, that most of the time, a set of words tend to follow each other.[xvi]

So what?—you may say; no lawyer would solely rely on AI when representing a client.

Well, in several international cases, ChatGPT *has* been relied upon by lawyers in the preparation of litigation—*and,* they didn't check ChatGPT's work.

As a co-regulator of solicitors in NSW, this is not the kind of precedent we wish to follow.

Last year we saw the small-scale infamous case of Mata v Avianca Inc, where lawyers in New York used ChatGPT, and it went very wrong.[xvii]

Submissions were filed which included non-existent judicial opinions with fake quotes and citations, created by ChatGPT.

The Judge characterised ChatGPT's legal analysis as "gibberish."[1] [xviii]

Ultimately, the Judge found that the two lawyers who were primarily involved breached the Federal Rules of Civil Procedure.

Amongst other things, they were ordered to pay a $5,000 USD penalty (around $7,500 AUD).[xix]

The Canadian case of Zheng v Chen, from Canada earlier this year, unfortunately followed a similar set of AI related issues—with lawyers inserting two fictitious cases into a notice of motion which were invented by ChatGPT.[xx]

---

[1] It turned out the chatbot had complied with the lawyers' requests to provide case law to support a legal point, by making up the cases. The lawyer asked if they were "real" or "fake" to which it replied that it had supplied him with "real" authorities.

Thankfully we have yet to see such cases in NSW, although it is of course possible.

But while these cases are a serious breach of their respective ethical and professional requirements, both also demonstrate something positive: the rules of procedure with which lawyers must comply are an important safeguard.

Equivalent safeguards exist here.

Many pleadings in the Supreme and District Courts of New South Wales, for example, must be verified by an affidavit.[2]

Similarly, in the Federal Court of Australia, pleadings must be accompanied by a certificate signed by the lawyer that any factual and legal material available to the lawyer provides a proper basis for each allegation, denial, and non-admission in the pleadings.[xxi]

Guidelines have also been issued to solicitors by the Law Society of NSW, which outline how AI may be used in a manner consistent with a lawyer's ethical and professional obligations.

The Professional Support Unit of the Law Society of NSW released these in the *Law Society Journal* in November 2023 as a "guide to responsible use of artificial intelligence."[xxii]

---

[2] Apart from defamation, malicious prosecution, false imprisonment, trespass to the person, death, and personal injury proceedings. Uniform Civil Procedure Rules 2005 (NSW), rr 14.22-14.24.

The Law Society has also set up its own AI Taskforce, made up of lawyers, academics, and technology experts to guide the approach of solicitors using AI in NSW.

Last year, the NSW Bar Association also released a Guideline, which aims to provide guidance for barristers in relation to the consideration of use of AI language models, including ChatGPT, in their practice.[xxiii]

This presents similar guidance for barristers.

There are extensive legal, professional obligations in existence that cover lawyers' use of AI in NSW.

Legal practitioners should neither avoid generative AI completely nor embrace it, without first understanding its limitations and giving critical thought to maintaining their professional obligations while using it.

Further, the New Zealand and UK judiciaries, and The Australasian Institute of Judicial Administration, have produced guidelines on AI use in courts, and the steps that judicial officers may take to ensure that AI is not misused in the judicial system.[xxiv]

As my speech writer, a New Zealander admitted to practise there, has helpfully, and so happily noted, New Zealand led the way.

The two states closest to us have also produced AI guides: The Supreme Court of Victoria has also released guidelines for the responsible use of AI by litigants.[xxv]

And the Queensland Courts have released guidelines for the responsible use of generative AI by non-lawyer litigants.[xxvi]

It seems fair to say the majority of the legal profession and judiciary are alive to the reality and dangers of use of AI in the justice system.

Checks and balances within the courts, and professional regulation, are likely to keep the worst effects of misusing AI in law to a minimum.

6. The Case for Regulation

Are we in need of more regulation, and more law then?

Well, there are around 42,000 solicitors in NSW, close to 2,500 barristers, and hundreds of judges.

So, while they help bolster the administration of rule of law, and stand against AI eroding the justice system, few of the 8.1 million people in the state are covered by these regulations and professional obligations.

Consider the wider perspective.

The Human Technology Institute at the University of Technology Sydney launched a report last year in May, called *The State of AI Governance in Australia*.[xxvii]

Around its launch, The Institute's Lauren Solomon said—and I quote:

> "AI systems can cause real harm to people, both to individuals and society more broadly. Threats to safety, discrimination, loss of personal information, and manipulation need to be addressed by organisations using AI systems to ensure our lives are improved by this innovation." [xxviii]

AI is developing rapidly, as are attempts by regulators in jurisdictions around the world to grapple and address its risks.

However, as Ms Solomon went on to point out:

> "While reform is undoubtedly needed, AI systems are not operating in a 'regulatory Wild West'. AI systems are subject to privacy, consumer protection, anti-discrimination, negligence, cyber security, and work, health and safety obligations, as well as industry-specific laws." [xxix]

And, across several areas of both federal and state-based governments, we see Australia's first steps towards defining its own approach to regulating AI.

In March, I had the privilege to appear before the Upper House Committee examining artificial intelligence In New South Wales.

I urged the NSW government to build upon and adapt existing approaches to AI that are emerging both in Australian and in international jurisdictions.

Policymakers in NSW can now consider overseas efforts like the European Union's proposed Artificial Intelligence Act and the more 'light touch' approach to AI regulation adopted in the United Kingdom.

These contrasting approaches provide NSW with a useful point of comparison as the inquiry, and later, the Government, decides on the best approach for homegrown AI regulation.

As I noted then, we also need to seek consistency with other areas of domestic law, such as administrative, privacy, cyber-security, consumer rights, and human rights law.

Some have pointed out that we must especially guard against fraud—such as what has been seen in February this year in Hong Kong.

A finance worker at a multinational firm was tricked into paying out around $38 million AUD to fraudsters using deepfake technology.

The fraudsters posed as the company's chief financial officer in a video conference call, alongside what the worker thought were several other members of staff, but all of whom were in fact deepfake video-call recreations.[xxx]

Thankfully legislation already exists to combat fraud and covers this in theory.

But we must make sure that we adopt a consistent approach to dealing with the use of AI and fraud in our constellation of Australian legislation.

7. Is this Skynet? AI, Automated Decision Making, and Government

So far, I think the picture has been reasonably optimistic.

I want to move then, to what I think is the biggest issue facing us with AI in NSW right now.

The Law Society has shown its support for the state government's NSW AI Strategy, Assurance Framework and Mandatory Ethical Principles for AI use.

This is very important, as it addresses implementing AI in government in an ethical way.

I think this is our biggest cause for legal concern in relation to AI in NSW and Australia.

While everything I have mentioned so far of course requires serious consideration, no clearer example is before our MPs of the need for ethical use of AI, than the recommendations of the Royal Commission into the Robodebt Scheme.

Sadly, the failure of the Robodebt scheme presents a counter to this picture of successful AI regulation.

Robodebt destabilised administrative processes, procedures, and principles.

It did so by reducing administrative discretion, removing human intervention, curtailing transparency, and information provision, assuming guilty until proven innocent, and reversing the onus of proof.[xxxi]

It also reversed a basic legal principle that in order to claim a debt, a debt must be proven to be owed.[xxxii]

Indeed, Robodebt algorithmically encoded a fundamental lack of procedural fairness throughout its various procedures.

These observations highlight that algorithms do not simply reproduce less or non-automated administration in an equivalent fashion; they can fundamentally recast administrative principles.[xxxiii]

The Robodebt automated decision-making process was founded on an abrogation of the government's statutory requirement under the Social Security Act 1991 (specifically sections 1222A(a) and 1223).[xxxiv]

It held income averaging in assessing welfare recipients' annual income for the purposes of raising debts, was not allowed by government.

This was actively ignored in the creation of the automated process.

It was, in short, a shameful failure.[xxxv]

Its disastrous effects have been so serious that a $1.8 billion dollar settlement was reached between the commonwealth Government and the class action plaintiffs in 2021.[xxxvi]

And formal recommendations were made last year by the Royal Commissioner into the scheme which may lead to civil and criminal prosecutions. We wait on that count.[xxxvii]

I will say at this juncture, that I appreciate AI and automated decision-making are overlapping, but not entirely synonymous concepts or things.

For the purposes of today's address, I won't go further than that but simply state that I think it is necessary to include both in the context of this discussion.

Numerous legal commentators and legal academics have highlighted problems with using AI and automated decision-making in government and issues with privacy law, freedom of information, and judicial review.

People such as Law Professor Anna Huggins, writing in the UNSW Law Journal in 2021, have thoroughly explored the concerning legal dimensions that AI poses.[xxxviii]

Others such as Jennifer Cobbe and Edward Santow, to name a few, have noted legal issues with challenging AI use in government.

The Australian Law Reform Commission, and the Australian Human Rights Commission have called for legislative reform to judicial review and administrative law to better deal with AI and ADM.

And locally, as I mentioned earlier, we have seen the NSW Government examining artificial intelligence In New South Wales.

The report of the Royal Commission into Robodebt made 57 recommendations.

Recommendation 17.1 suggests reform of legislation and implementation of regulation where automated decision-making is implemented. It noted:

- there should be a clear path for those affected by decisions to seek review
- departmental websites should contain information advising that automated decision-making is used and explaining in plain language how the process works
- business rules and algorithms should be made available, to enable independent expert scrutiny.[xxxix]

Recommendation 17.2 calls for the establishment of a body to monitor and audit automated decision-making.

Particularly their technical aspects and their impact in respect of fairness, avoiding of bias, and client usability.[xl]

Given the publicity around this issue, it is reasonable to think that policy, oversight, and legal safeguards in government are changing to meet the legal demands around AI.

Indeed, we are seeing many levels of government scrutiny including here in NSW.

One might ask, then, how likely are we to see serious issues with automated decision-making or more advanced AI in government again?

Perhaps alarmingly, automated decision-making to perform government functions, and AI more broadly, is prevalent, and becoming more prevalent, across all portfolios in the NSW government.[xli]

In March the NSW Ombudsman publicly uncovered the presence of over 275 automated decision-making tools, raising questions about how the tools are administered and their usage is disclosed.[xlii]

Two-hundred-and-seventy-five is a conservative estimate.

The data the survey used was voluntary, and only a quarter of NSW's 439 public sector entities, including councils, departments, and agencies, participated.[xliii]

Moreover, a public review of procurement records, government websites, and other public information—which supplemented the survey—found an additional 702 potential automated decision-making tools.[xliv]

Perhaps more alarmingly, the report, which the Ombudsman commissioned, estimated an "increase of 50 percent in the next three years," of departments and agencies' use of automated decision-making tools.[xlv]

In his statement accompanying the release of the report, the NSW Ombudsman, Paul Miller, was clear.

He said that the lack of mandatory reporting of automated decision-making tools or a public register had stifled, "informed debate about what assurance and regulatory frameworks may be appropriate for automated decision-making use now and into the future."[xlvi]

The lack of mandatory reporting also made it impossible to know whether the systems were "legally validated, or tested, and whether and how it is subject to ongoing monitoring for issues such as accuracy and bias," Miller said.[xlvii]

Mr Miller went on to say, of particular concern was the fact that there was little evidence of external audit or external legal review or advice— with less than half of a smaller sample that was checked by the Ombudsman, having any legal input or oversight.

These tools were not just for mindless data processing either.

They included things such as a providing information about children in child-protection, classifying the likelihood of domestic violence recidivism, classifying inmates, and detecting people on watchlists entering hospitals.[xlviii]

The Ombudsman's report said that, even with a human in the loop, automated decision-making programs that, for example, recommend which communities to allocate less or more resources towards, still impact people's rights.

The Ombudsman's scrutiny comes against the backdrop of not just Robodebt at a federal level, but of two of the state government's own controversial automated decision-making case studies.

Revenue NSW used an automated decision-making tool between 2016 and 2019 that issued illegal, and often inaccurate, garnishee orders to recover debts.[xlix]

In addition, last year NSW Police discontinued its suspect prediction automated decision-making tool that over-represented Aboriginal peoples.[l]

It is, to be frank, breathtaking that after Robodebt, a myopic regard for legal advice around AI use in government could be taking place on a large scale within our own state government.

Whilst this may seem like strong language, chipping away at the rule of law within our institutions is deeply concerning.

Not only do I think this is therefore deserving of a serious response, I think it needs much more than strong language to bring this to light, and change course.

8. Access to Justice: Service or a Right?

This throws into sharp relief the ultimate question that I will deal with today: is access to justice a service or a right?

I'm sure you know that this is a bit of false question: it is legally a right.

But in the context of what I have covered, AI can, and already potentially has, changed that formulation in several instances—particularly in relation to state use of AI and automated decision-making tools.

The Honourable Steven Rares, recently retired as a judge of the Federal Court of Australia, noted in 2015 that—and I quote:

> "A system of justice is an institution for the redress of grievances. It can only command the respect of a society's members if they trust that it is an impartial, equal, transparent, and principled system that gives effect to the rule of law."[li]

The right of access to justice is enshrined, from the *Magna Carta*, to Ch III of the Constitution, that vests the judicial power of the Commonwealth in the Courts.

One sees it too in Article 10 of the *1948 Universal Declaration of Human Rights* of the United Nations."[lii]

The right to access the courts, and the right to procedural fairness when affected by the exercise of public power, are also common law rights in Australia.[liii]

What amounts to procedural fairness at law is not necessarily an easy question to answer.

But it generally requires that people directly affected by proposed administrative acts, decisions, or proceedings, be given adequate notice of what is proposed. This is so that they may be in a position:

(a) to make representations on their own behalf; or

(b) to appear at a hearing or inquiry (if one is to be held); and

(c) effectively to prepare their own case and to answer the case (if any) they have to meet.[liv]

In the context of AI and automated decision making, imposing the burden of proof on a person when they do not have access to enough information to understand how a decision affecting their interests is reached, is procedurally unfair.[lv]

Victorian Legal Aid have pointed out that understanding how a debt is calculated—whether by AI, AI-informed-decision-making processes, or a human being without technological assistance—is essential for a decision-making process to be fair, and for it to be seen as fair.

Transparency is integral to procedural fairness.

It is a critical protective function for citizens potentially affected by AI-informed decision-making.[lvi]

If a person cannot be informed of how a decision was reached because the technology involved is essentially a black box—often even to those who understand the coding and mathematics behind it—we have problems.

We may be entering territory where legal challenges are both needed, but increasingly hard to make out.[lvii]

The Law Society of NSW has taken the public position with the NSW Government that we see merit in government acting as a role model and leading by example in the adoption of ethical AI and responsible technology practices. [lviii]

In our view, the public sector should be held to a higher standard of responsible use of AI.[lix]

Government should be a model user of AI.

It needs to assist the creation of appropriate behavior and standards, which can then be applied more broadly to the private sector's use of AI.[lx]

Citizens should know when and how automated decision-making is being used in any way which significantly affects their human rights.

AI can produce outputs that are insufficiently robust or unsafe for the reliance that humans place upon them.

Both regulated personal information, and other non-identifying information, may be used in ways that are unreliable, unsafe, and cause real damage to people.

Legitimate expectations to be informed of how and why one is being singled out for differentiated treatment—and if a decision is reasonable—need to be fairly met by governments.

Given the potentially broad reach of AI, this underscores the importance of coordination between all jurisdictions on the regulation of AI.

While the appropriateness and transparency of AI uses are broad questions, considered, appropriate regulatory safeguards to manage these risks are needed.[lxi]

Whatever approach is adopted by our Parliaments, it must ensure that the public service and Government of the day are subject to reasonable uses of AI and automated decision-making.

And that the law is enforceable against them where, unfortunately, necessary.

The nearly 450,000 people detrimentally affected by Robodebt illustrates the need for this all too well.

To do otherwise is to risk eroding the very rule of law upon which our society functions.

Again, thank you for the opportunity to speak at the Whitlam Institute.

ENDNOTES

i "Truth Decay and its implications for the judiciary: an Australian perspective," Speech presented to the 4th Judicial Roundtable Durham University, 23-26 April 2024, The Hon. A S Bell Chief Justice of New South Wales, page 31, para 84: Truth_Decay_29042024.pdf (nsw.gov.au)

ii Goldman Sachs Research Newsletter, page 14.

iii Lawyers : Occupational Outlook Handbook: : U.S. Bureau of Labor Statistics (bls.gov)

iv Tom Gruber introduces Humanistic AI at TED 2017

v GPT-4 didn't ace the bar exam after all, MIT research suggests — it didn't even break the 70th percentile | Live Science

vi Lawrence the 'AI paralegal' passes SQE with flying colours - Legal Futures

vii Lawyer vs Artificial Intelligence: A legal revolution | LexisNexis® Australia

viii ibid.

ix Ashurst AI trial shows huge time savings on everyday legal tasks (afr.com)

x ibid.

xi UK Law Firm Trial Claims AI Helps Lawyers Write Case Briefs Faster | Tech Times

xii ibid.

xiii https://www.pwc.com/gx/en/issues/artificial-intelligence/job-barometer/report.pdf?utm_source=TheAustralian&utm_medium=Email&utm_campaign=Editorial&utm_content=TA_LEGAL_CUR_01&net_sub_id=485345218&type=free_text_block&position=2

xiv Ipso Facto: Jobs for Tim Longwill, Celia Armstrong, Craig Fordham, Aleks Ceklic, AI in court, and Bruce Lehrmann's latest legal battle | The Australian

xv "Truth Decay and its implications for the judiciary: an Australian perspective," by The Hon. A S Bell Chief Justice of New South Wales, page 33, para 89: Truth_Decay_29042024.pdf (nsw.gov.au)

xvi B Haggart, "Unlike with academics and reporters, you can't check when ChatGPT's telling the truth," The Conversation (online, 31 January 2023) https://theconversation.com/unlike-with-academics-andreporters-you-cant-check-when-chatgpts-telling-the-truth-198463

xvii Lawyer Uses ChatGPT In Federal Court And It Goes Horribly Wrong (forbes.com)

xviii "Truth Decay and its implications for the judiciary: an Australian perspective," by The Hon. A S Bell Chief Justice of New South Wales, page 37, para 98: Truth_Decay_29042024.pdf (nsw.gov.au)

xix This US lawyer used ChatGPT to research a legal brief with embarrassing results. We could all learn from his error - ABC News

xx Zheng v Chen [2024] B.C.J. No. 305; "Truth Decay and its implications for the judiciary: an Australian perspective," by The Hon. A S Bell Chief Justice of New South Wales, page 40-41, paras 105-106. Truth_Decay_29042024.pdf (nsw.gov.au)

xxi Federal Court Rules 2011 (Cth), r 16.01.

xxii Professional Support Unit, "A solicitor's guide to responsible use of artificial intelligence" Law Society Journal (online, 14 November 2023) https://lsj.com.au/articles/a-solicitors-guide-to-responsible-useof-artificial-intelligence/

xxiii NSW Bar Association GPT AI Language Models Guidelines.pdf

xxiv

- https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/allbenches/20231207-GenAI-Guidelines-Lawyers.pdf At the same time, Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff (7 December 2023) (NZ Judicial Guidelines on AI) were released.
- AI Judicial Guidance (judiciary.uk)
- AI-DECISION-MAKING-AND-THE-COURTS_Report_V5-2022-06-20-1lzkls.pdf (aija.org.au)

xxv Guidelines for litigants: responsible use of artificial intelligence in litigation | The Supreme Court of Victoria

xxvi The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers (courts.qld.gov.au)

xxvii Report launch: The State of AI Governance in Australia | University of Technology Sydney (uts.edu.au)

xxviii ibid.

xxix ibid.

xxx Finance worker pays out $25 million after video call with deepfake 'chief financial officer' | CNN

xxxi "The computer says 'DEBT': Towards a critical sociology of algorithms and algorithmic governance," by Paul Henman, University of Queensland, in *Data for Policy 2017: Government by Algorithm?,* London, United Kingdom, 6-7 September, 2017: https://doi.org/10.5281/zenodo.884116

xxxii ibid, taken from Senate 2017 and Ombudsman 2017.

xxxiii Data_for_Policy_2017_paper_43.pdf

xxxiv "Addressing Disconnection: Automated Decision-Making, administrative Law and Regulatory Reform," by Anna Huggins, in UNSW Law Journal (vol 44(3), 2021), pages 1057; Issue-443_final_Huggins_v2.pdf (unsw.edu.au)

xxxv Royal Commission into the Robodebt Scheme - Full Report

xxxvi Robodebt: court approves $1.8bn settlement for victims of government's 'shameful' failure | Centrelink debt recovery | The Guardian

xxxvii Royal Commission into the Robodebt Scheme - Full Report, see appendix 5, pages xxxiii - xli; also, 'Crude and cruel' scheme: robodebt royal commission report recommends civil and criminal prosecutions | Royal commission into robodebt | The Guardian

xxxviii "Addressing Disconnection: Automated Decision-Making, administrative Law and Regulatory Reform," by Anna Huggins, pages 1048-1052; Issue-443_final_Huggins_v2.pdf (unsw.edu.au)

xxxix Report | Royal Commission into the Robodebt Scheme

xl ibid.

xli 0040 NSW Ombudsman.pdf, pages 4-5.

xlii A map of automated decision-making in the NSW Public Sector

xliii More than 275 AI and automated decision tools in NSW public sector - Software - iTnews

xliv ibid.

xlv ibid.

xlvi ibid.

xlvii https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0004/145093/Introduction-and-Brief-Observations.pdf

xlviii Compendium of ADM systems (nsw.gov.au)

xlix https://www.itnews.com.au/news/revenue-nsw-unlawfully-collected-debts-using-automated-system-573340

l https://www.theguardian.com/australia-news/2023/oct/31/chris-minns-rules-out-compensation-for-young-people-affected-by-discriminatory-police-scheme

li "Is access to justice a right or a service?" by Justice Steven Rares, (FCA) [2015] FedJSchol 11, para 3. Rares, Justice Steven --- "Is access to justice a right or a service?" (FCA) [2015] FedJSchol 11 (austlii.edu.au)

lii UN General Assembly, Universal Declaration of Human Rights (10 December 1948, RES 217 A (III)), Article 10: A/RES/217(III): Universal Declaration of Human Rights

liii Speech to the Anglo Australasian Lawyers Society, "The Common Law and the Protection of Human Rights," by Chief Justice RS French (4 September 2009, Sydney), para 7, pages 3 -4: Microsoft Word - Anglo Australasian Break Meet 0409.doc (hcourt.gov.au)

liv AIAL FORUM No. 56, "PROCEDURAL FAIRNESS – ITS SCOPE AND PRACTICAL APPLICATION," by Dr Kristina Stern, page 3: 2.pdf (austlii.edu.au)

lv Submission to the Australian Human Rights Commission's Human Rights and Technology Discussion Paper (2019), by Victorian Legal Aid [10 March 2020], page 3: 40_-_victoria_legal_aid_1.pdf (humanrights.gov.au)

lvi ibid.

lvii December 2022, ABC News. Available online: https://www.abc.net.au/news/2022-12-12/robodebt-algorithms-black-box-explainer/101215902

lviii Letter to NSW Parliament Inquiry into artificial intelligence in New South Wales - 20 October 2023.pdf (lawsociety.com.au)

lix ibid, pages 3-4.

lx ibid.

lxi 21 See ISO/IEC CD TS 12791 Information technology — Artificial intelligence — Treatment of unwanted bias in classification and regression machine learning tasks https://www.iso.org/standard/84110.html?browse=tc