INQUIRY INTO ARTIFICIAL INTELLIGENCE (AI) IN NEW SOUTH WALES

Organisation: Maurice Blackburn Lawyers

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Hon. Jeremy Buckingham MLC
Chair
Portfolio Committee No.1 – Premier and Finance
Parliament House
6 Macquarie Street
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By email: portfoliocommittee1@parliament.nsw.gov.au

Dear Chair,

We welcome the opportunity to provide input to the Committee's inquiry into artificial intelligence (AI) in New South Wales.

Maurice Blackburn Lawyers is Australia's biggest plaintiff law firm. We operate across 34 permanent offices and 30 visiting offices covering all mainland States and Territories to extend access to justice so the law serves everyone. The firm specialises in personal injuries, abuse law, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions.

In this brief submission, we draw the Committee's attention to the positive role AI can play in making the legal system more efficient and affordable for the people of New South Wales.

We note the Terms of Reference ask the Committee to inquire into:

> *(b) the social, economic and technical opportunities, risks and challenges presented by AI to the New South Wales community, government, economy and environment*; and

> *(e) the current future extent, nature and impact of AI on social inclusion, equity, accessibility, cohesion and the disadvantaged.*

We further note that Term of Reference (i) requires the Committee to consider whether the current laws which govern various matters potentially impacted by AI in New South Wales are fit for purpose.

Maurice Blackburn believes the use of AI by lawyers and courts and tribunals has the potential to dramatically lower the cost of legal advice and the administration of justice in NSW. This would make available legal solutions to the everyday problems of thousands of NSW residents shut out of today's inefficient and costly legal system. At the same time, with appropriate safeguards in place, we are confident the benefits of AI adoption can be achieved without compromising on quality or integrity in the process.

The opportunity of generative AI

With not many exceptions, the way law is practiced in 2023 would be familiar to a lawyer in 1923. Lots of labour is applied to manual procedures, then charged back to clients at high hourly rates. This has worked well for the legal profession, but not at all well for ordinary people.

The commonplace excuse has been that legal services, which are characterised by work tasks that are cognitive and non-routine, will be the laggards of digitalisation and automation. The rise of generative AI is challenging this expectation and expanding what machines can do. A recent study found generative AI could automate one-quarter of current work tasks, rising to nearly one-half of administrative and legal tasks, and over one third of tasks across a range of other professional services.[1]

AI and law firms

Generative AI promises to unlock big productivity gains and service improvements for firms willing to make the necessary investments. The NSW Judicial Commission has identified[2] several legal tasks with which AI can assist, from taking instructions, determining who should be witnesses and advising on the law, to preparing or assisting in the preparation of legal submissions.

Practically, AI-powered legal research tools can quickly and accurately find relevant case law and statutes, reducing the time and cost of legal research. AI chatbots can respond to legal enquiries "24/7" and draw on data from past cases to triage matters based on their chances of success. In combination, AI tools can let individuals access legal help sooner and for less, while helping law firms allocate their legal resources to maximise the client outcomes they achieve.

So what is stopping lawyers from making the most of these opportunities? Key culprits are poor incentives and legacy regulations. These discourage the entry of new providers and encourage the continuation of inefficient practices.

One such practice is charging for time. Most lawyers charge this way either because government regulations or court directives compel them to, or just because they always have. This discourages investments in time-saving processes and technologies since the financial benefits go to clients while the firm carries the costs. Value-based pricing could go a long way to improving incentives but is not currently an option outside of a narrow exception for class actions in Victoria.

There are precedents for NSW playing a leading role in moving the legal profession forward. These include the harmonisation of legal professional rules between NSW, Victoria and Western Australia, which could provide a continuing platform for pro-innovation changes.

AI and the judiciary

AI has the potential to transform the way courts and tribunals operate, and not just law firms. It promises to reduce the bias and improve the efficiency of the judicial process.

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[1] Goldman Sachs Economics Research 2023, *The Potentially Large Effects of Artificial Intelligence on Economic Growth*, March.

[2] Judicial Commission of New South Wales, *Handbook for Judicial Officers*, section on "Artificial intelligence and litigation — future possibilities".

The current process is slow, inward-looking and contributes significantly to legal costs. The first way AI might change this is helping disputants to reach a resolution without incurring the expense and distress of a court appearance. For example, disputants might input information into an AI system which would categorise their issues, provide information about their rights and entitlements, and suggest the options available to resolve the dispute.

A second area where AI could assist is with redress schemes. The determination of compensation payments typically involves many variables relating to the individual claimant, and the application of both calculation and judgement. An AI system could suggest a personalised compensation amount for each claimant based on their specific circumstances, scheme guidelines and legal precedents. This might represent a "fast track" option which claimants could accept or alternatively reject to pursue a different outcome.

For matters that do proceed to court, AI can reduce the bias and improve the productivity of human judges. Human judges can be affected by factors, including the time of the day, how many other decisions a person has made that day (decision fatigue) and the attractiveness of the individuals involved, that impair their decisions. The impact of other influences, such as personal values, unconscious assumptions and emotion, is exaggerated by the narrow demographics of human judges.

AI decision-making can avoid human biases by taking an algorithmic and data-driven approach. Estonia uses AI judges for small claims under €7,000 that do not involve the exercise of discretion. In matters where human involvement is required (or expected), AI can reduce the experience and knowledge required to make judgements, thereby opening up the bench to a wider range of people. For example, AI can identify patterns and trends in witness testimony, documents and expert reports, which can help less experienced judges to make informed decisions. The hope is this will lead to a judiciary that is more representative of the diverse population it serves, and so more likely to deliver outcomes in line with community expectations.

In conclusion, we invite the Committee to find that:

1. with appropriate safeguards in place, the use of AI by lawyers and the judiciary could dramatically extend access to justice in New South Wales; and

2. specific research is required into the legal and regulatory barriers which may discourage investment in technology and innovation within the legal sector.

We would be delighted to discuss these matters in more depth with the Committee if that would be beneficial to the inquiry.

Please do not hesitate to contact me via my Executive Assistant Bianca Parry on
                        or at   if we can further assist with the
Committee's important work.

Yours faithfully,

Jacob Varghese
CEO
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