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David G Millhouse

Faculty of Law, Bond University

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ARTIFICIAL INTELLIGENCE AND THE LAW

DAVID MILLHOUSE*

ABSTRACT

It is too early to definitively predict how generative artificial intelligence ('AI') will affect the law and the legal profession. How much of the hype will come to pass, or whether the effects of AI will be revolutionary or evolutionary, is yet unknown. Although the extent of those effects may not be fully evident today, early glimpses show the potential for structural disruption is real, pervasive and likely to be far-reaching.

This paper explores four research questions, explored strategically in a contested, internationally underdeveloped regulatory environment — with significant regulatory lag in Australia — amidst vast and rapid technological change.

It posits that AI is not 'intelligent' of itself but that enterprises that deploy AI tools can then act intelligently. This objective requires updated enterprise governance frameworks. It also posits that the potential convergence of AI and legal linguistics is a new scholarly field which could open the path to Artificial General Intelligence ('AGI'), a requirement for legal utility beyond prosaic applications.

This paper develops the research questions into original contributions in modern enterprise governance and the necessary conjoining of AI and legal linguistics. It identifies a process of 'enculturation' as AI technology and legal stakeholders learn about each other globally. 'Enculturation' facilitates the 'myriad moments' — encountered in creative and artistic spirits implicit in negotiations and dealing with the unexpected in court.

It establishes that future legal stakeholder utility derived from the enhancement and/or replacement of sentient human intelligence rests upon the confluence of logic, plain language and law, underpinned by a command of ethics, linguistics, legal linguistics and linguistics engineering.

The paper then provides 'Digital Readiness' guidance for legal stakeholders including directors, trustees, practitioners, arbitrators and judicial officers, and detailed proposals for the development of Australian law as means of reducing legal risks.

* Honorary Adjunct Senior Research Fellow, Faculty of Law, Bond University. This author's scholarly publications are available at www.drda-vidmillhouse.com.au, LexisNexisButterworths, and Routledge/Informa Group PLC. He is also the Founder and Chair of ActiumAI Pty Ltd www.actiumai.com. He would like to acknowledge the useful commentary provided in the peer review process and to faculty members who have assisted in the development of this paper.

I INTRODUCTION

Artificial Intelligence (‘AI’) and the law is an ever-evolving topic affecting all enterprises, businesses, professions, households and individuals. It is now of systemic academic importance. This paper seeks to reconcile the promise of AI technologies deployed in enterprises with their widespread, pervasive and growing legal risks. These risks impact all areas of law, and its development, application, practice and governance.

This paper is deliberately broad in scope. It aims to assist legal stakeholders — including directors, officers, trustees, counsel and judicial officers—to understand developments, around them, particularly by correcting the misconception that AI tools possess innate intelligence. It is intended to provide an enduring foundation for further legal scholarship.

There are four research questions addressed in this paper. These are:

1. Can enterprises that deploy AI tools then act intelligently through the design and implementation of their governance frameworks?
2. What does the deployment of allegedly artificial intelligence in the creation of an intelligent enterprise mean for private and public transactional law, governance frameworks for the future, and managing the resulting legal risks?
3. Does conjoining legal linguistics with Large Language Model (‘LLM’) AI tools assist in their utility for legal stakeholders and their communities?
4. Will the recent conjoining of legal linguistics and public and private LLM AI technology become a symbiotic relationship facilitating the development of Artificial General Intelligence (‘AGI’)?

The creation of the intelligent enterprise by the deployment of AI technology requires a systemic review of the legal tensions that arise in governance as AI becomes endemic in most enterprises. This is particularly important in an environment of substantive regulatory lag in which legal stakeholders must exercise their duties in meeting the challenges imposed by the confluence of legal complexity and AI engineering.¹

Linguistic datasets are vast, global and continuing to expand as Indigenous and other non-Western societies adopt AI. Their use in professional and judicial contexts requires AI tools capable of analysing and processing this volume of data efficiently. The limited case law to date illustrates this need.

This conjunction of two separate scholarly fields has received scant attention. This paper fills that gap. Hitherto, the sheer volume of corpus data without the processing infrastructure has limited the use of legal linguistics beyond manual interpretations of dictionary material. Lawyers, who rely heavily on contextual analysis across the rich fabric of existing jurisprudence, require more to fulfill their professional roles: legal linguistics capable of operating across multiple languages and cultures. Legal Linguistics Engineering is its physical manifestation.²

This paper necessarily addresses the issues facing fiduciaries in the exercise of their duties. It provides an analysis of the present frames of reference for private and public transactional law, and of governance strategies for the future.³

The paper posits that the conjunction of legal linguistics and AI can lead directly to AGI if AI is to demonstrate utility in the law beyond prosaic applications. This is achieved through a process of ‘enculturation’.⁴

It measures the promise of AI with legal outcomes on a thematic basis and identifies those legal themes which are going to underpin the future deployment of AI technologies as they continue to evolve.

It identifies the skills that enterprises and their legal advisers will need in the future. It also considers how lawyers should be trained to assist enterprises with governance, governments and regulators with the development of law and regulation, and judicial bodies with interpretation.

The pervasiveness of AI in society demands comprehensive analysis of what AI is (or is likely to be), what legal frameworks need to be updated and developed, how governance frameworks should evolve, how enterprises of the future should adapt to new disruptive technologies, and the legal risks in their deployment. The law relating to each industry sector is *ex ante*, complex, often long-standing, contextual, predates modern disruptive technology, and has its own cultural traditions. *Ex post* judicial reviews require existing law to be applied in new disruptive technology contexts.

¹ See below Part IV.

² See below Part V.

³ See below Parts VI and VII.

⁴ See below Part V(D).

Since 2022, the advent of Generative Pre-Trained Transformer ('GPT') technology generated considerable debate about whether this technology or its oft-discussed AGI development is intelligent in the cognitive sense or otherwise. AI is a far broader collection of disruptive technologies than GPT or generative AI; more accurately, it includes all the elements of professional workplace automation, collectively, Intelligent Enterprise Workflow Automation ('IEWA').⁵

Formerly, automation was industry led — FinTech, InsurTech, RegTech, RoboAdvice, SupTech — rather than technology led. The advent of GPT revolutionised the automation potential of these industry sectors. It is now in common usage globally with Natural Language Processing ('NLP') interfaces in multiple languages.

The starting point in this legal analysis is to identify what is meant by AI and AGI from an industry, rather than a technical perspective. Essentially, the dichotomy is 'process' — being the multiple technology platforms now available including LLMs, of which there are some 250,000 plus now in existence, and 'AI Agents'⁶ (including 'chatbots'), being the end-user interface.

For legal and professional use, these systems are regularly supplemented by technologies intended to improve legal accuracy and reduce 'hallucinations'. These include Retrieval Augmented Generation ('RAG'), context windows, NLP and AI linguistic-engineering techniques designed to improve recall and precision. Linguistic engineering encompasses communication and reasoning, the vectorisation of billions of parameters, and the embedding of relevant relationships through mathematical mapping used to train an LLM. AI agents provide the consumer-facing interface and are used in millions of applications, including smartphone apps.

There is considerable promise in the deployment of these and subsequent technologies. However, this early promise is jeopardised by unmet user expectations and abuse resulting in widespread litigation. Further promises of AGI, whilst intellectually stimulating, remain in the future and are presently premised on existing technologies with uncertain, perhaps diminishing returns.

Essentially, the present technology-led environment must evolve into a user-led heavily contextual environment. A quantitative algorithmic environment is given more value by a culturally based qualitative linguistics environment providing necessary human context, insight, nuance and testing for legal veracity. Only then can the technology promise become useful, reliable and integral infrastructure in a professional services environment.

For the avoidance of bias and 'groupthink' this research deliberately includes authoritative sources from outside mainstream AI research, including from South Africa, Japan, Switzerland, Germany, Poland, Canada and India. It only includes original sources even when identified using generative techniques.

II THE PROMISE

The application of AI in the law has a distinguished scholarly history in Australia:⁷

Writing in 1987, Michael Kirby anticipated both the growing role of information systems in professional practice and the continuing importance of human judgment:

The probability seems to me that information systems will move from an adjunct to professional practice to the actual control of some professional activity ... Many laws will doubtless be rewritten [to] reduce the judgmental or discretionary element and to increase the element of automaticity.⁸

I doubt that a program could ever [consider] the myriad unexpected events that occur in a courtroom ... Human judgment requires a human face.⁹

This sentiment is entirely consistent with the themes in this paper, being the developing legal risks arising at the confluence of AI, law and future enterprise governance. These risks will inevitably result in changes to business model design and governance.

Kirby was writing in 1987, long before the advent of generative AI but at the cusp of computing use in professional services automation. He concluded with the following question:

⁵ IEWA includes every element — technological, cultural, legal, managerial and governance — of automating human activity in an enterprise as the successor business model of that enterprise so that it acts intelligently.

⁶ See generally Louis-Francois Bouchard and Louie Peters, *Building LLMs for Production: Enhancing LLM Abilities and Reliability with Prompting, Fine-Tuning, and RAG* (Towards AI, rev ed, October 2024) 294.

⁷ Michael Kirby, 'Legal and Ethical Issues in Artificial Intelligence' (1987) 12(2) *International Computer Law Adviser* 4 ('Legal and Ethical Issues in AI').

⁸ Ibid 6.

⁹ Ibid 7.

Might we then accept the resulting ‘integrated artificial expert’ as equivalent to the human partner?¹⁰

His paper, converted to machine readable robotic form, provides an answer. Using workflow automation technology available only from a limited number of suppliers globally, a robot that creates its own robots then ‘vectorised’¹¹ the original text to search for its most relevant content, generated discourse based only on the document content thus avoiding ‘hallucinations’, sourced citations accurately, and identified where legally useful information was omitted from the original difficult-to-decipher text. This early document was automatically converted into an auditable workflow visible to the naked eye. It then created a poem as an output:

Machines learn...

They out-argue puzzles we once called ours ...

And who signs the paper when judgment is cast? We write the future, but will it answer back?¹²

The point is that technology can read and interpret old-text legal precedents dating to the early days of the Court of Chancery, in minutes, and create useful and original outputs using vectorisation powerful enough to capture semantic and syntactic relationships. This is proof of Kirby’s thesis.

Whether Alan Turing, when introducing the ‘Turing Test’ as a benchmark for machine intelligence in 1950, or Marvin Minsky, when building the first artificial neural network simulator—the Stochastic Neural Analog Reinforcement Computer—in 1951, envisaged such outcomes remains open to speculation. Turing acknowledged that:

the problem is mainly one of programming ... [and that] advances in engineering will have to be made too, but it seems likely that these will not be adequate for the requirements.¹³

Inadvertently perhaps, he may have been the first to accept the limitations of deterministic coding without alighting on the engineering solution, being statistically assured generative and predictive technology. Certainly, using this technology to achieve the outcomes of the Kirby paper could not have been achieved by coding without substantial monetary and human investment.

Subsequently, it has become commonplace, especially with younger lawyers and professionals, to criticise large workloads, long hours and low pay, so-called ‘indentured labour’. The ‘tyranny of the billable hour’ is a similarly colloquial expression expressing dissatisfaction amongst professional services providers and their clients. It stems from innate conflicts between revenue generation and value creation. These should be consistent objectives based on professional values, but are known to become a zero-sum game, driven partly by the microeconomics of providing the service.

Whilst there are business models which have attempted to resolve this conflict, it is modern AI-based technology which can generate windfall profits able to be shared between services providers, their employees and their clients. How these profits are shared is contended. More sophisticated users require AI discounts to capture part of the economic gain. As LLMs become more trained and develop expertise, the nature of professional business models should evolve beyond time-based billing to being able to provide statistical assurance-based contractual guarantees of output accuracy. This provides the basis for warranties in services businesses.

The promise is not only simple productivity enhancements. It includes the generation and sharing of knowledge-based wealth, including merger and acquisitions using technology platforms¹⁴ and the replacement of traditional bank reconciliations.¹⁵

Technology provides the means of industry disruption, including in law. The broader implications of this disruption are captured in the following question:

¹⁰ Ibid citing Brian Shackel, ‘Responsibility: Are We Asking Machines to Take Responsibility for Complex Decisions and Delicate Judgments? Is this Wise? Is this Inevitable?’ in *Proceedings of a Seminar on Social Implications of Artificial Intelligence and Expert Systems* (British Computer Society, 1985) 27, 28.

¹¹ A process called embedding. See Mohammad Taher Pilehar and Jose Camacho-Collados, *Embedding in Natural Language Processing: Theory and Advances in Vector Representation of Meaning* (Morgan and Claypool Publishers, 2020). See also Yonathan A Arbel and David A Hoffman, ‘Generative Interpretation’ (Public Law and Legal Theory Series Research Paper No 23.27, Penn Carey Law, University of Pennsylvania, 2023).

¹² Full text is available from the author.

¹³ A M Turing, ‘Computing Machinery and Intelligence’ (1950) *Mind* 49, 433, 450.

¹⁴ See generally Sam Tobin and Edward Tadros, ‘The AI Boom is Driving Ashurst’s Mega-Merger’, *Companies and Markets, Australian Financial Review*, (Sydney, 18 November 2025) 24, discussing Australian law firm Ashurst’s merger with US law firm Perkins Coie.

¹⁵ See generally Tess Bennett, ‘Xero’s Chief Ready to Drop the AI Price Hammer’, *Companies and Markets, Australian Financial Review* (Sydney, 25 June 2025) 15, discussing the acquisition of US company Melio by ASX-listed Xero.

How is automation changing the legal analysis, legal rulemaking, legal rule extraction, and application of legal rules, and how does this impact individuals, policymakers, civil servants, and society at large?¹⁶

III UNMET EXPECTATIONS AND MISUSE

A 'Myriad Unexpected Events'

The unfulfilled promises and misuse of AI technologies in professional practice illustrate Kirby's concern about 'myriad unexpected events'. Except in more prosaic applications, these shortcomings have generated widespread disappointment and significant legal risks.

Partly this is due to misguided beliefs in AI technology hype, assumptions of outcome veracities which are not yet technically achievable, and lack of discernment of what AI technologies are, how they are priced and how they should be deployed, with systemic disregard for training and governance. But as the cases illustrate, mis-, non- and malfeasance by individuals, corporate entities and government agencies have contributed greatly to legal risks, sometimes dangerously so, resulting in civil and criminal contraventions.

Problematic themes have arisen, inter alia, in administrative misfeasance,¹⁷ governance failures,¹⁸ intellectual property infringement (copyright, theft, unjust enrichment),¹⁹ and professional failures including in the legal profession.²⁰ Many cases are transactional and lend themselves to simple taxonomy.²¹ Others seek to apply multiple areas of law and equity.²² But transactional analysis of itself is not workflow automation.

¹⁶ Aurelia Tamo-Larrieux, Clement Guiton and Simon Mayer, *AI and Law: How Automation is Changing the Law* (CRC Press, 2025) 3.

¹⁷ See, eg, *Prygodicz v Commonwealth* [No 2] [2021] FCA 634 ('*Prygodicz*'). See also Kobi Leins, 'What is the Law when AI Makes the "Decisions?"', *Pursuit* (Web Article, 4 December 2019). <<http://pursuit.unimelb.edu.au/articles/what-is-the-law-when-ai-makes-the-decisions>>; Arindrajit Basit, 'Discrimination in the Age of Artificial Intelligence', *Oxford Human Rights Hub* (Web Article, 23 October, 2018) <<http://ohrh.law.ox.ac.uk/discrimination-in-the-age-of-artificial-intelligence/>>. See also Paul Karp, 'Junk AI Reports Harming NDIS Users, Say Groups', *AFR Weekend* (Sydney, 18–19 December 2025) 10; Karen Hao, 'AI is Sending People to Jail — And Getting it Wrong', *MIT Technology Review* (online, 21 January 2019); Sam Buckingham-Jones, "'A Crook': Butler Pans Reddit Court Case', *AFR Weekend* (Sydney, 13–14 December 2025) 3.

¹⁸ See, eg, Chris Herde, 'Suspected AI Use slammed in Brisbane Body Corporate Fight' *City Beat, Courier Mail* (Brisbane, 1 November 2025) quoting Ingrid Rosemann, Adjudicator, Office of the Commissioner for Body Corporate and Community Management; Paul Karp, '\$1.6m NDIS Claim Made Using Fake Academic Citations', *News, Australian Financial Review* (Sydney, 16 October 2025) 7 citing *CBLG and CEO, National Disability Insurance Agency* [2025] ARTA 1956; Paul Karp, 'AI Tainted Deloitte Report Worse than Thought', *Australian Financial Review* (Sydney, 7 November 2025) 3 citing Deloitte, *Targeted Compliance Framework Review* (Final Report, 26 September 2025); Mark di Stefano and Hannah Wootton, 'ASIC questions KPMG over using AI to cheat on tests', *Rear Window, Australian Financial Review* (Sydney, 9 December 2025) 32; James Eysers and David Marin-Guzman, 'CBA cuts dozens of call centre jobs citing AI', *Companies and Markets, Australian Financial Review* (Sydney, 29 July 2025) 17; Emma McGrath-Cohen, 'Early mistakes offer lessons', *Focus, Australian Financial Review* (Sydney, 10 December 2025) S2, discussing Commonwealth Bank redundancies; Emma Jacobs, 'Employees in the Dark on AI Use at Work' *Financial Times* (London, 27 November 2025) reprinted in *Australian Financial Review* (Sydney, November 2025); Patrick Hosking, 'Study Finds AI Hype Overblown for Investors', *Times* (London, 23 November 2025); Ewin Hannan, 'One in Two Abusing AI in the Workplace', *Australian* (Sydney, 18 November 2025) citing N Gillespie et al, *Trust, Attitudes and Use of Artificial Intelligence: A Global Study 2025* (Report, 2025) (n= 48,340); Olivia Solon and Mark Bergen, 'Grok Sexual Images Draw Rebuke, France Flags Content as Illegal', *Technology, Australian Financial Review* (Sydney, 3 January 2026); *Re Toyota Motor Corporation* 978 F Supp 2d 1053 (CD Cal, 2013); Lewis Maddison, 'Samsung Workers Made Major Error by Using ChatGPT', *TechRadar* (Blog Post, 5 April 2023) <<https://www.techradar.com/news/samsung-workers-leaked-company-secrets-by-using-chatgpt>>; Laura Mayers, Stephen Martin and Debbie Rybicki, 'Hepburn Mayor May Sue OpenAI for Defamation over False ChatGPT', *ABC News* (online, 6 April 2023); Simon Sharwood, 'Swiss Government Says Give M365, and All SaaS, A Miss as it Lacks End-To-End Encryption', *The Register* (online, 1 December 2025) <<https://www.theregister.com/security/2025/12/01/swiss-government-bans-saas-and-cloud-for-sensitive-info/1986554>>; Emma McGrath-Cohen, 'Early Mistakes Offer Lessons' *Focus, Australian Financial Review*, (Sydney, 10 December 2025) S2, discussing the NSW Reconstruction Agency; James Madden, 'Fake News to the Fore as Horror Murder Slur Exposes Google AI', *Australian*, (Sydney, 2 November 2025); Jake Goldenfein, 'No Accountability: Why We Should Be Concerned Australian Police are Using ClearviewAI Facial Recognition Software', *Conversation* (online, March 2020). Authors Note: the lawfulness of web scraping to build facial databases for police and commercial use required judicial intervention.

¹⁹ See, eg, 'Class Action Complaint', Submission in *PM v OpenAI LP* (ND Cal, 06.28/23) ('United States Class Action Complaint').

²⁰ See, eg, *Mertz & Mertz* [No 3] [2025] FedCFanC1A 222; Anna Huggins, 'Automated Processes and Administrative Law: The Case of Pintarich', *Australian Public Law* (online, 14 November 2018) <<https://auspublaw.org/2018/11/the-case-of-pintarich/>> citing *Pintarich v Deputy Commissioner of Taxation* (2018) 262 FCR 41 (the author notes that since 2010 in Australia, certain administrative decisions can now be made by computer); Lucy Dean, 'Financial Adviser Who Deep Faked Himself Says Clients "Love It"', *Australian Financial Review* (Sydney, 10 July 2023); John Hyde, 'LiP Presents False Citations to Court After Asking ChatGPT', *Law Society Gazette (England and Wales)* (online, 29 May 2023). See especially Order to Show Cause of Castel USDJ in *Mata v Avianca Inc* (SD NY, No 22-cv-1461 (PKC), 4 May 2023), *1 ('*Mata*'). See also Emma McGrath-Cohen, 'Lawyers to Face Legal Watchdogs over AI Mistakes', *News, Australian Financial Review* (Sydney, 10 December 2025) 10; *Tyndaris SAM v MMWVWM Ltd* [2020] EWHC 778 (Comm) (Author's Note: this case is settled).

²¹ See, eg, Toby Walsh, 'AI: Boom or Doom' (Speech, National Press Club of Australia, 25 February 2026) cited as 'Fair Myths in the Age of AI', *Australian Financial Review*, (Sydney, 25 February 2026). Walsh reports 'over 50 cases before the courts in the US about AI training on copyrighted data'.

²² See, eg, 'United States Class Action Complaint' (n 19). Two major multi-jurisdictional class actions with remedies, inter alia, for unjust enrichment and economic loss in equity. Author's Note: These cases have global import.

B The End of the Beginning

Widespread deployment of AI has led to the development of ‘orchestration’ platforms. These will become commonplace in deployment of AI Agents in workflow automation in most enterprises. Orchestration platforms allow the use of multiple LLMs and enterprise software integration in one workflow. This results in geometric increments of legal risks and increasingly greater strains on enterprise governance.

The legal interpretation of ‘decision’ is fundamental in determining the veracity of AI Agents (being contextual applications) embedded in these platforms, particularly where statistically assured inference and semantics are embedded within the Agent for its decision making.

The influence of *Pintarich v Deputy Commissioner of Taxation* (‘*Pintarich*’)²³ in administrative law has implications for what constitutes a ‘decision’, particularly whether it is applied to a human with computing assistance even when resulting in error inconsistent with the human intent, or alternatively, whether only human decisions hold legal validity.²⁴ This was not a unanimous judgment with powerful dissent recognising that workflow decision automation is now commonplace, requiring judicial recognition. This has contextual statutory support.²⁵

Future expectations in workflow automation include the ‘uberisation’²⁶ of professional services.²⁷ AI does not need to be perfect to disrupt existing business models provided it is believable or desirable. It needs only to replace existing processes by scraping in-use applications to provide more efficient and cost-effective automation. These do not necessarily achieve required legal veracity.

Unmet expectations extend to return on investment being achieved in the professional workplace. To sustainably achieve and share windfall gains is not merely a matter of deploying AI technologies. It requires enterprise and industry disruptions and the reconfiguration of client and customer relationships. This is the basis of promised enterprise productivity enhancements. As Waters explains, ‘[m]ore than was the case with your previous acquisitions of new technology, deploying AI is a broader leadership issue as it goes to organisational behaviours and values.’²⁸ Non-adherence to this maxim is a fundamental error. Discord between AI technologies, law and enterprise governance leads directly to unmet expectations.

C Implications for the Law

De-risking AI deployment in enterprises is a major multifaceted challenge for their governance. Cost, productivity and human resource pressures abound. Prosaic tasks can be onerous for highly educated and skilled humans in a well-resourced judicial setting and less well-resourced academic environment.

Digital Legal Assistants (‘DLAs’) can be trained as machine-learning expert systems that use NLP and humanoid interfaces. However, the law requires a DLA to ‘distinguish between fact and opinion ... truth and falsity’.²⁹

Whether public policy will allow the augmentation of human decision-making or restrain a DLA to ‘substitute its judgment for that of a human decision-maker raises fundamental questions of ethics and professional responsibility’.³⁰ Impediments include public trust, the creation of work that did not need to be created, hallucinations and fakes, and the creation of an additional level of costly skilled human supervision.

²³ *Pintarich v Deputy Commissioner of Taxation* (2018) 262 FCR 41 (‘*Pintarich*’).

²⁴ Michael Ghihot and Lyria Bennett Moses, *Artificial Intelligence, Robots and the Law* (LexisNexis, 2020) 138–9, 143 [5.15].

²⁵ *Ibid* 139 [5.6].

²⁶ The disruption of traditional service professions industries by IEWA technology housed on digital orchestration platforms.

²⁷ See, eg, ‘Mercor AI: What the Actual Hell is Going On?’ (30 October 2025) [r/Artificial Intelligence](https://www.forbes.com/sites/richard-nieva/2025/10/30/mercor-youngest-self-made-billionaires/) citing Richard Nieva, ‘The World’s Youngest Self-Made Billionaires are A Trio of 22-Year-Old AI Founders’, *Forbes* (online, 30 October 2025) <<https://www.forbes.com/sites/richard-nieva/2025/10/30/mercor-youngest-self-made-billionaires/>>.

²⁸ Peter Waters, Melissa Gregg and Deena Shiff, ‘Catch a Tiger by the Tail’, *Australian Institute of Company Directors Magazine* (online, July 2023).

²⁹ Ivan Fong, The Promise of Legal Digital Assistants’ cited in Cynthia H. Cwik, Christopher A. Suarez and Lucy L. Thomson (eds), *Artificial Intelligence: — Legal Issues, Policy, and Practical Strategies* (American Bar Association Science and Technology Law Section, 2024) 133, 141.

³⁰ Waters (n 28) 142.

AI systems can act as company and trustee directors in some jurisdictions although these are limited.³¹ Essentially, the concept of ‘artificial personhood’ will determine whether corporate laws will allow the appointment of robots to be legally responsible entities.³² United States judicial opinion suggests not.³³ Australian statutes require a director and ‘shadow director’ to be a human being.³⁴

At present, LLMs are not accepted as ‘robot judges’, and ‘many challenges ... remain unresolved’. Limited exceptions exist, principally in smaller jurisdictions and in China. Singapore’s online Small Claims Tribunal, for example, remains in the testing phase, while Estonia has piloted an automated system for resolving small disputes. Some commentators argue that a particular LLM ‘is clearly capable of adjudicating complex cases’, raising the further question whether AI can serve as a law clerk and whether it might ultimately presage the demise of the ‘expert witness’.³⁵ This is a quote and FN should be reinserted

Later research³⁶ replicated earlier experiments on judicial writing using the most modern LLMs, concluding:

The LLMs tended to follow the law and disregard non-legal factors, resembling students more than judges ...³⁷ no evidence that GPT hallucinates ... nor does it commit logical errors in its legal rationales ...³⁸ GPT was limited by its lack of human faculties ... [but] wrote reasonable opinions.³⁹ Does that mean that LLM’s are becoming better than human judges or worse?⁴⁰ Statistical assurance may result in contextual legal compliance, but it is not an act of will or intent and cannot therefore give rise to original determinations of causality or robot ‘personal’ responsibility.

Similarly, non-human animals have not achieved legal personality.⁴¹ Robots cannot conclude contracts on their own behalf, despite superficial statistical appearances. However, with the pervasive usage of AI, liability inevitably arises.⁴² AI as a human agent can operate within existing law, yet AI as a principal cannot.⁴³

Legal personality implies personhood. Does this imply that the AI system has rights? If a neural device is implanted into a human in an integrated neural network,⁴⁴ does the artificial component have the same rights as the human component?

These are legal challenges for the future, now being addressed in US jurisprudence⁴⁵ in the march to intelligent enterprises.

IV CREATING THE INTELLIGENT ENTERPRISE: THE CONFLUENCE OF LEGAL COMPLEXITY AND AI ENGINEERING

An intelligent enterprise integrates AI technology into contextual legal environments controlled by skilled human supervision charged with superior financial and operational performance within a governance framework updated to accommodate the opportunities and legal risks of deployment in existing and re-engineered automated workflows.

³¹ In Finland, AI can emulate a corporate directorship. Estonia may follow. Tieto Corporation (financial services, Europe) appointed AI as a member of its leadership team. Deep Knowledge Ventures (Hong Kong) appointed AI as a board observer. See generally John Buyers, *Artificial Intelligence: The Practical Legal Issues* (Law Book Publishing, 2018) 119, 120.

³² Ibid 31 citing *European Parliament Resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics* 2015/2103(INL).

³³ See, eg, Memorandum of Rakoff USDJ in *United States v Heppner* (SD NY, 25 Cr 503 (JSR), 17 February 2026) (‘Heppner’).

³⁴ See generally Chief Justice Andrew Bell, ‘Corporate Responsibility and Directors’ Duties in the Era of Artificial Intelligence’ (Harold Ford Memorial Lecture, University of Melbourne Law School, 21 May 2026) [40], [47]–[49], [57]–[59], [63]–[65], [69] (‘Corporate Responsibility and Directors’ Duties in the Era of AI’).

³⁵ Adam Unikowski, ‘In AI we trust, Part II Wherein AI adjudicates every [US] Supreme Court case’ (Blog Post), <<http://www.hello@lifearchitected.ai>> (June 16, 2024).

³⁶ Eric A Posner and Shivam Saran, ‘Silicon Formalism: Rules, Standards, and Judge AI’ (Research Paper No 26-02, Coase-Sandor Institute for Law and Economics, University of Chicago, January 2026).

³⁷ Ibid 1.

³⁸ Ibid 2.

³⁹ Ibid 18.

⁴⁰ Ibid 28.

⁴¹ *Nonhuman Rights Project Inc v Stanley*, 25257 SC Misc 3d 746 (NY, 2015). Author’s Note: This was an *amicus curiae* case determining the habeas corpus rights of chimpanzees to be released from cages. The animals could not bear legal responsibility for their actions and not capable of performing human obligations, despite their humanoid similarities.

⁴² William Vorhies, ‘Who Do We Blame When an AI Finally Kills Somebody?’ *Data Science Central* (online, 4 November 2020).

⁴³ David C Vladeck, ‘Machines Without Principals: Liability Rules and Artificial Intelligence’ (2014) 89 *Washington Law Review* 117, 150. Author’s Note: with some minor exceptions.

⁴⁴ Neural networks are machine learning models that mimic the functions of the human brain with interconnected nodes that process data and learn patterns without relying on pre-defined rules.

⁴⁵ See, eg, *Heppner* (n 33). Rakoff J denied personhood to the LLM used in the case materials.

The governance of an intelligent enterprise demands leadership and management competencies to strategically integrate technology enablement through upskilling of its human resources and capital markets disciplines in decision making.

A *Problems in Enterprise Governance*

Statutory and legal complexity are no strangers to enterprise governance. Whether the promise of AI can assist those with governance, advisory and regulatory responsibilities remains evolutionary.

The agglomeration of rules and regulations over time has produced a body of legal code that no single individual can fully comprehend ... Software engineers frequently face the challenge of understanding and managing large, structured collections of instructions, directives, and conditional statements.⁴⁶

As with Australian statutes, including the *Corporations Act*,⁴⁷ 'the interconnections of references can increase complexity and create the potential for unintended consequences'.⁴⁸ Clausal dependencies, conditional statements, exceptions, non-linearities and special cases create complex pathways that require mapping. This has led to the use of 'network mapping', which graphically identifies nodes and the relationships between them. Azar observes that '[t]hese chains can be used to identify complex sequences of legal implications that even the most knowledgeable and intelligent human cannot [comp]rehend without technological assistance'⁴⁹ and that 'excessive number[s] of conditional statements might suggest that the underlying rule is faulty, requiring many special cases and exceptions'.⁵⁰

Whilst there are conceptual similarities between software coding and legal drafting, they are far from being equivalents. Law is rarely organised into neat lines of software and there is no one source of law. There is the interplay between contextual rules, doctrinal and thematic law, equity and public policy.

This is rich territory for AI since LLMs can be trained and deployed within specific contexts and specific workflows. However:

US federal law requires a mandatory certification from each attorney 'attesting either that no portion of the filing was drafted by generative artificial intelligence ... or that any language drafted by generative artificial intelligence was [humanly] checked for accuracy'.⁵¹

Moreover, AI systems:

hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States ... or the truth. Unbound by any sense of duty, hono[u]r, or justice, such programs act according to computer code rather than conviction, based on programming rather than principle. These principles apply to grammatical usage — algorithmic coding, without huge expense, cannot address every grammatical nuance.⁵²

LLMs can substantially lessen the gaps between legal drafting and software coding and have now evolved to provide user flexibility and comprehension abilities beyond the largest and most detailed coded software programs. They are starting to meet lay person usage tests of comprehension and readability using NLP. This generates legal risks unappreciated by lay person usage in enterprises.

B *Disruptive Technology and Enterprise Governance*

To assess the legal risks, those charged with enterprise governance and its judicial interpretations need to understand the vast differences between AI and traditional IT implementation.

A fundamental distinction exists between traditional deterministic coding and AI. Traditional coding seeks to reproduce legal rules in code; like legal drafting, that process is time-consuming, slow and costly. AI, by

⁴⁶ Palo Azar et al, 'Law is Code: A Software Engineering Approach to Analyzing the United States Code' (2015) 10(2) *Journal of Business and Technology Law* 297.

⁴⁷ The *Corporations Act 2001* (Cth), Corporations Regulations and Legislative Instruments together amount to approximately 2.5 million words.

⁴⁸ Azar (n 46) 298; see also R Hiltunen, 'The Grammar and Structure of Legal Texts' in P M Tiersma and L M Solan (eds), *The Oxford Handbook of Language and Law* (Oxford University Press, 2012) 39–51.

⁴⁹ Azar (n 46) 315.

⁵⁰ Ibid 317.

⁵¹ Standing Order of Judge Brantly Starr, 'Mandatory Certification of Compliance with the Court's Policy on the Use of Generative Artificial Intelligence' (ND Tex, No 3:23-mc-000235 30 May 2023) ('AI Standing Order'). See especially *Mata* (n 20). This is not congressional law, but policy regulation exercised by the US Courts.

⁵² AI Standing Order (n 51); *Mata* (n 20). See generally Jared Gans, 'Texas Judge Bans Legal Filings That Rely on AI-Generated Content', *The Hill* (Blog Post, 2 June 2023) <thehill.com/policy/technology/4032793-texas-judge-bans-legal-filings-that-rely-on-ai-generated-content/>. See, eg, Grant Robertson 'The \$2-Million Comma' *Globe and Mail* (Toronto, 7 August 2006)

contrast, is probabilistic and relies on statistical assurance, whereas code operates through predetermined instructions.

To date, unmet expectations arising from this dichotomy have left ‘lawyers, law firms and other legal service providers more confused and unsure, while making it harder for legal technology companies to prove their value.’⁵³

The use of stochastic, statistically assured algorithms can indeed deliver required performance benchmarks trained on trillions of parameters. The more usage these algorithms get, the more precise their outcome. LLMs will not infer or predict with 100% accuracy. If, however, the LLM is trained and applies the same dataset consistently, the result can be statistically assured. It can learn — code cannot. LLMs perform well on the data diet they are trained on but less well on new data. Hence a workflow automation needs to include multiple robots or LLMs with specialist contextual training and include a human default supervisor.

However, their utility requires more than an installation. It requires insightful ‘generative interpretation’⁵⁴ and can produce unintended consequences, including bias, discrimination, threats to safety and erosion of trust.⁵⁵ Modern orchestration platforms can accommodate both technologies seamlessly.

Statistical assurance is based on metrics (accuracy, precision, recall on unseen data) and can guarantee a level of performance, providing a confidence level applicable to specified warranties. Statistically assured AI has a governance and risk management objective as well as a user-reliability objective with directors able to approve deployment.

Each workflow is contextual, and, as in coding, the commercial objectives establish the required confidence level, the capital investment required, and a decision whether the diminishing returns from further investment are acceptable. These factors then provide the contractual basis for the context.

Historically, there have been many attempts to convert legal documents into code. Code is hardwired and cannot cater for anything other than the specific context for which it is written. Consequently, it can generate errors in workflow automation, legal outcomes *inter alia* being multiple breaches of contract, compensation and representative action judicial determination.⁵⁶

LLMs great benefits are flexibility, learning ability and inference to achieve the ‘most likely’ outcome. This is poor but oft-used terminology and is not the same as statistical assurance. It is also not acceptable to the law or to lawyers.

C Legal Automation and LLM selection

Negligence and contractual risks abound for directors and trustees in discharge of their fiduciary duties in selection of LLMs and orchestration platforms. The approval of the selection is a strategic board decision, fundamental to the health of the enterprise and to the creation of intelligent enterprises deploying these AI tools. The appropriate selection of LLMs for legal contexts can be prone to error arising from user ‘brand bias’, especially when decisions are driven by effusive technologists rather than LLM legal veracity.

Legal automation has a considerable history.⁵⁷ Risk analysis using early empirical tools is not sufficient. Early tools include Jaccard Similarity⁵⁸ used to measure overlap and similarity in legal documents, Structured Query Language (‘SQL’) for organised data management, performance metrics of information retrieval (F1 scores), accuracy and precision metrics which measure the quality and completeness of information retrieval, precision of search requests,⁵⁹ and Latency Tests to measure quality, completeness and speed. These are of limited use outside of specific contexts but can improve access to contextual source data, provide due diligence checks, and can measure differences of typologies of document retrieval.

These tools were followed by automated applications based on ‘if-then’ propositional statements able to be modelled in an orchestration platform accommodating defeasible reasoning and contestability.

Since 2022, machine learning (LLMs) and NLP have been broadly if experimentally deployed in the law, trained using supervised, unsupervised and reinforcement learning. Structured data and standardised vocabularies and ontologies add to the fabric of machine learning. These LLMs rely on the statistical analysis of

⁵³ Vals.ai, *Vals Legal AI Report*, (Report, 27 February 2025) 4 <<https://www.vals.ai/industry-reports/vlair-2-27-25>>. There are examples of technology vendors providing AI platform training in core AI skills sets, for example, the Harvey Law Schools Program. The microeconomics of software vending encourages the creation of oligopolies managed by trained students. This is a common commercial strategy.

⁵⁴ See generally Arbel and Hoffman (n 11).

⁵⁵ Ghilot and Moses (n 24) 52 [2.16].

⁵⁶ Prygodicz (n 17).

⁵⁷ See, eg, Tamo-Larrieux, Guiton and Mayer (n 16) ch 1.

⁵⁸ See Sheetal A Takale and Sushma S Nandgaonkar, ‘Measuring Semantic Similarity Between Words Using Web Documents’ (2010) 1(4) *International Journal of Advanced Computer Science and Applications* 78, 82; R Real, ‘Tables of Significant Values of Jaccard’s Index of Similarity’ (1999) 22 *Miscellaneous Zoologica* 29, 30, cited in Azar (n 51) 328.

⁵⁹ See Tamo-Larrieux, Guiton and Mayer (n 16) 5–6.

billions of artificial neural network parameters to determine probabilistic outcomes. A limitation on the future development of LLMs is access to datasets and a global trend to copyright enforcement. LLMs have relied on scale. Scaling opportunities will become more limited and more costly. Exponential costs growth may result only in linear improvements.

LLMs have traditionally been trained at no cost on public and private datasets, some of which were allegedly accessed unlawfully. This practice has prompted claims alleging, among other things, unjust enrichment, with separate proceedings brought on behalf of the people and the children of the United States. Unlike deterministic coding, LLMs can readily be retrained to reflect changes in the law. However, their legal veracity depends heavily on the data on which they are trained, the interpretation of those data, and their integration with linguistic engineering. LLMs remain prone to hallucinations,⁶⁰ being fabrications, or ‘factual infidelity’,⁶¹ verbosity, repetitiveness, data leakage,⁶² novel scenarios, superficial similarities, nonsensical input,⁶³ and facile unintelligent language. They can create additional work requiring skilled human intervention and supervision. Technical evolution continues, including iterative inter-AI Agent reasoning and argument, but the underlying technology remains ‘unintelligent’, despite ongoing capital investment.

‘Hallucination’ is a commonly used colloquialism. It does not mean a random lie. In statistical assurance terms, it can mean a probability error. It does mean a lesser certainty of precision. Whilst there are technologies claiming to ‘reduce’ hallucinations, the interpretation of these will depend on typology⁶⁴ and insight into empirical claims by vendors. It has also been interpreted as having a ‘propensity to “lie” with a high degree of articulate self-assurance’.⁶⁵

LLM selection for legal and professional applications is a board-level strategic decision requiring sound technical advice. There are benchmarking tools which can assist.⁶⁶ Key indicators of sub-standard LLMs include reliance on keywords rather than semantics, generic language, and excessively long processing times, which should be in minutes.

‘For buyers, this market is confusing and opaque’,⁶⁷ despite a growing farrago of international AI accreditation agencies.⁶⁸ The American Bar Association now distinguishes between public generic LLMs and enterprise-grade models that are private and law specific and enable independent verification and standards compliance.⁶⁹ At board level, it should not be a case of purchasing retail level software with a favoured brand.

International benchmarking can assist. One empirical study compared DeepSeek, Google and OpenAI models across Canadian judicial reasoning and financial-analysis tasks. For judicial emulation, domain experts assessed the outputs against benchmarks and found broadly consistent accuracy across the three models, although costs in US dollars varied, probably because of differences in case complexity. By contrast, testing on long-context credit contracts found relatively little variation in cost per task but substantial variation in accuracy. For legal reasoning tasks, the results are consistent for each of DeepSeek, Google and OpenAI. Notably, in all three benchmarks, for both legal AI and generalist AI LLMs, accuracy rates are marginally better than human lawyers.⁷⁰ For quantitative datasets (eg US SEC EDGAR), humans are more accurate than LLMs. Subsequent empirical analysis supports these conclusions.⁷¹ Whilst LLMs can outperform skilled human lawyers,

⁶⁰ Bouchard and Peters (n 6) 72.

⁶¹ Matthew Dahl et al, ‘Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models’ (2024) 16(1) *Journal of Legal Analysis* 64, 68.

⁶² Department for Science, Innovation and Technology (UK), *International AI Safety Annual Report 2025/001* (Report, January 2025) 145 (‘*DSIT Report*’). General-purpose AI sometimes leaks sensitive information (to unauthorised third parties) acquired during training or while interacting with users.

⁶³ *Ibid* 45.

⁶⁴ Eg, fake case citations, jurisdictional error, omissions of fact and law.

⁶⁵ Chief Justice Andrew Bell, Foreword to ‘Artificial Intelligence and the Law’ 48(4) *UNSW Law Journal* (2025) (‘AI and the Law’) citing Bret Walker, ‘Lawyers and Money: 20 Years On’ (Lecture, Banco Court, Sydney, 14 October 2025).

⁶⁶ See, eg, Vals.ai, *Vals Legal AI Report* (n 53).

⁶⁷ *Ibid*.

⁶⁸ See, eg, International Organisation of Securities Commissions (‘IOSCO’), *Governance of Organisations: Guidance* (Report ISO 37000:2021, 2021); OECD, *AI Principles*; International Organisation for Standardisation, *Plain Language: Part 2: Legal Communication* (Report ISO 24495-2:2025, 2025) (‘*ISO Plain Language: Part 2*’). See also the Artificial Intelligence Underwriting Company’s AIUC-1 (2025), the first certifiable security and reliability standard designed for AI Agents allowing insurance for confidence levels used in performance warranties, hallucinations, and data leakage. See generally below n 99.

⁶⁹ See, eg, American Bar Association, *Model Rules* (at 2026) 1.1 and 5.3.

⁷⁰ *Ibid* reporting accuracy rates of human (71%) and Legal AI trained LLMs (80%) and ‘authoritativeness’ of human lawyers (68%) and Legal AI trained LLMs (76%).

⁷¹ ‘Real Time Index Updates’, *Vals.ai* (Web page, at 16 April 2026). Legal Bench AI trained LLMs accuracy rates are reported as 89.9% (n = 116 LLMs tested), and Case Law (n = 47 LLMs tested) as 74.4%. Vals.ai Legal AI Research data is now reported in real-time with its Legal AI Research Report (2026) predicted for publication in Q4 2026.

they are deficient in more complex multijurisdictional cases.⁷² LLM testing included accuracy, authoritative-ness and appropriateness.⁷³

Similarly, present LLMs can be deficient with quantitative datasets, and where context and semantic interpretations are required to analyse the law. Empirical accuracy and USD dispersion data are illustrative.

Some empirical data illustrate systemic problems in ‘state of the art’ LLMs selected for legal applications. Hallucination rates are reported to be between 69–88 percent generated by a selection of LLMs from approximately 200,000 ‘prompts’.⁷⁴ Despite its scientific method, other recent empirical analysis has both methodological and LLM selection concerns arising from reported research costs limitations associated with legal scholarly backgrounds of the research and ‘baseline tendency’ LLM preferences.⁷⁵

Hallucination rates vary with jurisdiction, case complexity and case year.⁷⁶ This empirical analysis ‘invites scepticism about LLMs true knowledge of the law’.⁷⁷ Chief Justice Andrew Bell agrees and opines, in the context of using LLMs for legal analysis, ‘[o]n any view, this should ring alarm bells’.⁷⁸

Extreme care is required in the interpretation of these studies. LLMs are trained on ex ante knowledge with ‘cut-off’ dates. They require training in real-time to maintain currency. LLM capabilities may not replicate on new datasets. Induced bias arises from datasets prompting which is also used for their training.⁷⁹ Bias can also arise in benchmark selection. US centric datasets may not be applicable in other jurisdictions. General purpose LLMs may provide different outcomes than legally trained LLMs.⁸⁰ LLMs are not able ‘to predict their own hallucinations ... [and can] uncritically accept user’s incorrect legal assumptions’.⁸¹

There are no legal industry standard benchmarking methodologies, with some legal AI tools not meeting law firm expectations, particularly in more challenging tasks.⁸²

Context is key⁸³ and economically useful high-quality legal work remains in the human realm, supported by prosaic LLM applications.⁸⁴ LLM benchmark performance does not necessarily translate to performance in real-world applications.⁸⁵ There are no standardised benchmarks for productivity uplifts.

Ultimately, the law operates in a fiduciary environment where trust and ethical conduct is paramount. Quantitative statistical assurance LLMs alone do not readily lend themselves to qualitative legal analysis. They need support.⁸⁶

D Artificial Intelligence and Directors’ Duties

Directors are responsible for the deployment of AI in the creation and supervision of intelligent enterprises. They and their counsel are also users of AI tools in the performance of their governance and professional duties. Expedient performance of these duties necessarily requires multifaceted strategic comprehension of additional disciplines in addition to adherence to corporate law.⁸⁷

Whilst tactical legal contexts will always remain, with their associated bodies of law and regulation, tactical considerations at director level are subservient to the strategic needs of the enterprise.

⁷² ‘Generative AI Tools and Resources for Law Students’, *UC Davis School of Law Mabie Law Library* (Web Page, 18 April 2026) (‘UC Davis AI Research Guide’).

⁷³ *Ibid.* n = 210 questions across 9 research types.

⁷⁴ Bell, ‘AI and the Law’ (n 65) Foreword, citing Martin Ebers, ‘Law GPT: LLMs under Legal Services Regulation’ in Mimi Zou et al (eds), *Cambridge Handbook of Generative AI and the Law: Transatlantic Perspectives* (Cambridge University Press, 2025) 431. See also Dahl et al (n 68).

⁷⁵ Alejandro Salinas et al, ‘Law Professors Prefer AI over Peer Answers’ (2026) 61 *Social Science Research Network* 5 <<https://ssrn.com/abstract=6849678>>.

⁷⁶ Dahl et al (n 61) 22 (n = 5,000 for US Supreme Court, US District Court and Court of Appeal cases; n = 100 for high complex US Supreme Court cases).

⁷⁷ *Ibid.* 28.

⁷⁸ Bell, ‘AI and the Law’ (n 65) 2.

⁷⁹ See, eg, Damien Charlotin, ‘Hallucination Cases in Generative AI in Court: Cases and Consequences’ in ‘UC Davis AI Research Guide’ (n 80).

⁸⁰ See also Q Huang et al, ‘MLAgent Bench: Evaluating Language Agents on Machine Learning Experimentation’ (Conference Paper, 41st International Conference on Machine Learning, 2024) cited in *DSIT Report* (n 69) 125.

⁸¹ Dahl et al (n 61) 64.

⁸² Vals.ai, *Vals Legal AI Report* (n 53) 2.

⁸³ See, eg, *DSIT Report* (n 62) 44. In 2024, general-purpose AI outperformed human subjects in multi-task language comprehension, general problem solving, competition-level mathematics and PhD-level science questions.

⁸⁴ See, eg, Vidgen et al, ‘APEX AI Productivity Index’ [2025] *ArXiv arXiv:2509.25721* cited in ‘UC Davis AI Research Guide’ (n 80).

⁸⁵ See also TR McIntosh et al, ‘Inadequacies of Large Language Model Benchmarks in the Era of Generative Artificial Intelligence’ [2024] *ArXiv arXiv:2402.09880*, cited in *DSIT Report* (n 69) 41 [179]. See, eg, *DSIT Report* (n 69) 44 citing J Au Yeung et al, ‘AI Chatbots Not Yet Ready for Clinical Use’ [2023] 5 *Frontiers in Digital Health*, 1161098:1–15 <<https://doi.org/10.3389/fgdh.2023.1161098>>.

⁸⁶ See below Part V.

⁸⁷ See, eg, Bell, ‘Corporate Responsibility and Directors’ Duties in the Era of AI’ (n 34) [31]–[33].

Modern examples include concepts of social licence embedded in environmental, social and environmental governance ('ESG'), bribery, employment redundancy and slavery. These can be jurisdiction specific, but many stem from international treaties. Whilst a derived demand from the use of AI, the ESG impacts of data centres associated with water, farmland and forest destruction, scenic disruption and energy usage are substantial and subject to litigation (including class action) risks. Other modern examples include systemic copyright theft, harms arising from direct and indirect deployment of chatbots and other AI tools⁸⁸, and accountability and proofs of reasoning. Each of these categories have multiple private and class action litigation risks.

Political pressures arising from 'community expectations' of director behaviour influence statutory construction. Directors' company law duties then vary from the capacious to the specific.

In the United Kingdom, 'despite the aim of "the code" being to increase accessibility, transparency and comprehensibility ... [w]hat has been done does not satisfy those criteria, and leaves directors in a somewhat confused position'.⁸⁹ Directors owe duties to their company, including the overarching duty to 'promote the success of the company for the benefit of the members as a whole' and 'have regard' to a wide range of factors in the exercise of duties, and strive for long-term economic value increments.⁹⁰ Notably, duties are a codification of directors' fiduciary duty, but remedies are not, relying on traditionalist judicial interpretation of general law.

Regulators and most industry bodies have regulations, policies and procedures in their governance accreditations.⁹¹ In Australia, 'contemporary developments in directors' duties jurisprudence are increasingly integrating evolving social attitudes into corporate decision making'⁹² ... [D]irectors will need to grapple with the responsible use of AI, AI's impact on stakeholders and the implications of AI for their businesses'.⁹³ ASIC proposes 'enforcement actions ... on cyber and operational resilience, technology-enabled scams and misconduct, and poor use of AI'⁹⁴ without explaining what this language means.⁹⁵

Extensions of the duties of directors as fiduciaries to undefined and evolving community standards which may extend the proscriptive duties formulation to positive duties are a logical corollary of principles based common law. AI creates vulnerabilities as the cases demonstrate. Remedies are often in equity and in some jurisdictions, fiduciaries have prescriptive fiduciary duties. AI also operates in contextual transactional legal environments, but detailed rules⁹⁶ have not and may not be developed sufficiently to meet the obligations of fiduciaries expected by community opinion or regulators. There is 'regulatory lag'.

Although redundancy is governed by contract and statute, the concept of social licence may introduce common law and statutory duties of good faith and care, particularly where the relationship is characterised by vulnerability. In Australia, directors' duties do not yet extend to a fiduciary duty within employment relationships.⁹⁷ While '[t]he fiduciary relationship cannot be superimposed upon the contract in such a way as to alter the operation which the contract was intended to have according to its true construction', community expectations may create uncertainty because commonly used words and phrases can produce different legal outcomes in different contexts. In the United Kingdom, implied contractual duties of fidelity have been applied to employees.⁹⁸ AI-generated redundancy should therefore be treated as an opportunity for intelligent organisational redesign, including upskilling and redeployment, rather than merely as a regulatory-management issue. Directors, trustees and their counsel should accordingly exercise care when selecting and using current AI technologies, including LLMs. However, it has been argued that directors and counsel may be negligent if they fail to use AI technology where doing so is necessary to rely on the business judgment rule defence under s 180(2), avoid professional negligence claims,⁹⁹ or comply with counsel's obligations under the Uniform Rules.

⁸⁸ See, eg, Eysers and Marin-Guzman (n 18).

⁸⁹ P Hood, 'Directors Duties under the Companies Act 2006: Clarity or Confusion (2013) 13(1) *Journal of Corporate Legal Studies* 1, 48 cited in David Millhouse, *Corporate Governance in Non-Bank Financial Entities* (LexisNexis Butterworths, 2019) 279 [6.108].

⁹⁰ *Companies Act 2006* (UK) s 172(1).

⁹¹ See, eg, Australian Council of Superannuation Investors, *ACSI Governance Guidelines* (12th ed, January 2026) 33. ACSI requires member boards to 'have appropriate governance structures that reflect the scale of the risks and opportunities associated with digitalisation'.

⁹² Vivienne Brand, 'Directors Duties and AI Regulation' (2024) 33(4) *Griffith Law Review* 324, 1 cited in Bell, 'Corporate Responsibility and Directors' Duties in the Era of AI' (n 36), 3.

⁹³ *Ibid* 12.

⁹⁴ Australian Securities and Investments Commission, *Corporate Plan 2025–26* (Corporate Plan, 27 August 2025) 19.

⁹⁵ See also Australian Securities and Investments Commission, *Beware the Governance Arrangements in the Face of AI Innovation* (Report No 798, 29 October 2024).

⁹⁶ Julia Black, 'Forms and Paradoxes of Principles-Based Regulation' (2008) 3(4) *Capital Markets Law Journal* 425, 1 cited in Bell, 'Corporate Responsibility and Directors' Duties in the Era of AI' (n 34) 20.

⁹⁷ See, eg, *Francis v South Sydney District Rugby League Football Club* [2002] FCA 1306.

⁹⁸ *Hospital Products Ltd v United States Surgical Corporation* ([1984]) 156 CLR 41, 97 (Mason J).

⁹⁹ See generally Bell, 'Corporate Responsibility and Directors' Duties in the Era of AI' (n 34) [72]–[76].

These are also reasons for the next generation of AI tools to include legal linguistics engineering. Only then can the rich fabrics of the law and its evolving contexts be interpreted and practiced judiciously.

V LEGAL LINGUISTICS AND ARTIFICIAL GENERAL INTELLIGENCE: THE FUTURE

AI needs considerable technological development before it is professionally useful beyond prosaic workplace automation and legal research. Present AI technology is replete with legal risks. Balancing professional productivity with legal risks in its deployment is a key consideration in enterprise governance and professional advice.

A *The conjoining of Legal Linguistics and Artificial Intelligence*

Legal linguistics is the confluence of language, logic and law. Few have yet posited a symbiotic relationship between legal linguistics and AI. Both disciplines need each other. Missing has been the AI infrastructure to accommodate analysis of vast numbers of documents and words. This infrastructure became publicly available in 2022. The US cases cited below acknowledge the use of corpora. This is a recent expansion of the interpretation of the statutory language beyond dictionaries.

The law requires precision in meaning with differing versions of text having the same meaning as the original, across languages and cultures. Key functions include translation, judicial and regulatory analysis, forensics and legal drafting.¹⁰⁰

Minor errors can have catastrophic legal consequences arising from ambiguity, cultural context, pressure in litigation and negotiations, differing legal systems, and the intrusion of ‘social licence’ and ‘community expectations’ into the duties of fiduciaries.

All litigation requires access to and interpretation of corpora of words, containing up to 1 billion words¹⁰¹ which may not be consistent with other corpora within accepted grammatical formulations. As of 2019, courts were ‘beginning to utilise corpus linguistics as a means to aid the interpretation of statutory language in context with the use of empirical data.’¹⁰² One of the chief benefits of a corpus-linguistics-style analysis is that it offers a ‘systematic, non-random look at the way words are used across a large body of sources’.¹⁰³

Modern examples include —

1 *The role of punctuation.*

Punctuation can have very real financial consequences. In *Rogers Communications Inc v Châteauguay (City)*,¹⁰⁴ English punctuation resulted in ambiguous clausal interpretation arising from the placing of a comma. Its French equivalent was clear and unambiguous. It prevailed since, in Canada, English and French have equivalent legal status (the ‘Equal Authenticity Rule’).

2 *Compromising photography and email*

In *State of Idaho v Lantis* (‘*Idaho*’), the Court held that statutes (Disturbing the Peace) ‘cannot be overextended to address the personal sensibilities of one offended by offensive emails in our modern age of Facebook Posts and Twitter feeds.’¹⁰⁵ Interpreting the relatively simple statutory language, challenged by the application of corpus linguistics drawing upon a corpora of 400 million words,¹⁰⁶ the Court concluded that the ‘disturbing the peace statute does not extend to “internal peace of the victim”’.¹⁰⁷

citing P O’Malley, ‘Generative AI Systems and Corporate Governance, Compliance and Liability: Rethinking Director and Officer Roles in the Light of a New World of Technological Challenges’ ch 21 in M Zou et al (n 74) (eds), *The Cambridge Handbook of Generative AI and the Law* (Cambridge, 2025) 367.

¹⁰⁰ See, eg, M Galdia, *Legal Linguistics* (Peter Lang, 2009) <<https://www.peterlang.com/document/1107289>>. See generally Adam Mickiewicz University, ‘Comparative Legilinguistics’ (2026) 65 (March) *International Journal for Legal Communication* i.

¹⁰¹ Mark Davies, *Corpus of Contemporary American English* (‘COCA’).

¹⁰² *State of Idaho v Lantis*, 447 P rd 875, 880–1 (Bevan J) (Idaho, 2019) 8 (‘*Idaho*’).

¹⁰³ Ibid.

¹⁰⁴ *Rogers Communications Inc v Châteauguay (City)* (2016) SCC 23.

¹⁰⁵ *Idaho* (n 102) 4 (Bevan J).

¹⁰⁶ Mark Davies, *Corpus of Historical American English* (‘COHA’).

¹⁰⁷ *Idaho* (n 102) 9.

3 *The meaning of work*

A pension fund case¹⁰⁸ deploying a corpus¹⁰⁹ arrived at a reversal of an arbitral decision which ‘frustrates rather than effectuates legislative intent’. The Court held that “‘work ... of the type for which contributions were previously required” ... does not include work of the type for which contributions are still required’.¹¹⁰

4 *The meaning of employee pension benefit plans*

The use of a corpus containing 1 billion words¹¹¹ confirmed judicial interpretation of statutory language, noting that ‘corpus linguistics is a powerful tool for discerning how the public would have understood a statute’s text at the time it was enacted ... [W]here ordinary meaning is debatable, corpus linguistics can be determinative’.¹¹²

5 *The meaning of information*

‘Information’ is not always defined in statute.¹¹³ Ordinary meaning can be found in dictionaries or corpora which contextualise and qualify definitions, in this case truthful and false information, noting that ‘information’ unmodified by ‘truthful’ must include both truthful and false information’.¹¹⁴

6 *The meaning of knowledge*

In Australia and other common law jurisdictions, ‘[t]he concepts of knowledge and assistance or knowing assistance are heavily nuanced and can be fertile ground for a claim against a director, trustee, or other fiduciary.’¹¹⁵ The intrusion of ESG and Social Licence using ‘plain language’ inevitably widens statutory liability into common law interpretations.

Some cases also acknowledge the need for judicial training in interpretation. Although these cases marginally pre-date the widespread use of LLMs, judicial training will inevitably need to encompass their use. . The cases cited in this paper are concerned with the deployment of AI, not with the judicial use of AI in judgments, addressed elsewhere in this paper, and judicially influenced extra-curially by Chief Justice Andrew Bell.

B *Limitations of present AI Engineering*

Resolving the problems associated with applying AI and software engineering in context-specific legal environments requires more than increasingly powerful algorithms applied to prose. It requires the integration of law, language, logic and AI engineering to emulate human semantic intuition in a way that can withstand challenges to the claimed legal accuracy of outputs. AI has not yet achieved the AGI objective of sentient human intelligence and, despite interfaces that appear and sound realistic, lacks emotional intelligence.

Data of itself is not knowledge. LLM data sets can provide useful information using generative AI, but its professional usage requires far more intelligent analysis to become contestable knowledge. There is nothing inevitable about the advent of AGI.¹¹⁶ It remains a utilitarian possibility still without the human qualities to process data into knowledge. Nonetheless, ‘[t]he countdown to AGI continues, and it’s accelerating faster than ever’.¹¹⁷

AGI in its early mainstream manifestations dates to GPT-4,¹¹⁸ with claimed ‘mental capabilities (such as reasoning, creativity, and deduction ... but a lot remains to be done to create a system that could qualify as a complete AGI’.¹¹⁹ Similarly, despite the reported promise of AGI, present day AI ‘fails at creativity’.¹²⁰

¹⁰⁸ *Caesars Entertainment Corp v Int’l Union of Operating Engineers*, 932 F 3d 91, 95 (Hardiman J) (3rd Cir, 2019) (‘*Caesars*’).

¹⁰⁹ *COHA* (n 106).

¹¹⁰ *Caesars* (n 108) 13.

¹¹¹ *COCA* (n 101).

¹¹² *Wilson v Safelite Group Inc*, 930 F 3d 429 (Rogers, Stranch and Thapar JJ) (6th Cir, 2019) (‘*Wilson*’). A partial concurring judgment on the use of corpus linguistics as a judicial tool qualified on methodological grounds 16.

¹¹³ *People v Harris* 885 NW 2d 832 (Zahra and Lee JJ) (Mich, 2016).

¹¹⁴ *Ibid* 16.

¹¹⁵ Millhouse, Corporate Governance in Non-Bank Financial Entities (n 89)145 [3.54].

¹¹⁶ See, eg, Abhivardhan, *Artificial Intelligence Ethics and International Law: Practical approaches to AI Governance* (BPP Online, 2nd ed, 2024) 140.

¹¹⁷ Alan D Thompson, ‘The AGI Threshold: Why 2025 is the Year’ (2025) 1(1) *ActiumAI Quarterly Review* 11. Author’s Note: Thompson is a Foundation Member of the ActiumAI Advisory Board.

¹¹⁸ Sebastien Bubeck et al, ‘Sparks of Artificial General Intelligence: Early Experiments with GPT-4’ (2023) *ArXiv arXiv:2303.12712*, 1.

¹¹⁹ *Ibid* 9.

¹²⁰ Danielle Long, ‘AI Fails to Live Up to Human Creativity’, *The Australian* (Sydney, 24 November 2025).

Caution needs to be exercised. The goal remains limited by mathematical reasoning and the infinite contextual nuances for applications in law and the administration of justice. Performance is known to decline as the ‘number of clauses in a question increases’.¹²¹ These models remain based in pattern recognition, certainly with vastly improved statistical assurance (and the end-user tools that creates), but they do not have ‘robust and generalisable problem-solving skills’.¹²²

Financing constraints may restrict present AI LLMs being engineered for AGI. Evolution to AGI may demand the largest investment in corporate history. Investment returns to date may not provide the basis for such investment confidence other than those with supplier relationships.¹²³ LLMs with present technology will not suffice on their own since LLMs model probability, not novelty. Given AGI’s potential power and its borderless nature, geopolitical weaponisation appears inevitable.¹²⁴

Statistical assurance provided by LLMs cannot determine causality. The law requires proof of causation in many contexts. AI systems deploying multiple AI Agents in a single workflow can be adapted for that purpose to provide the necessary proofs for human determination. The relevant measure is whether AI is more ‘accurate’ than a human decision, or more efficient. Context determines the required outcomes.¹²⁵

Many legal contexts are characterised by rapid change influenced by social and political considerations, but LLM statistical assurance requires a stable learning environment.¹²⁶

Technological improvements must include, inter alia, exposure of hidden bias, ambiguity, convoluted grammar, misspelling, vagueness, unstructured text, quantitative data and other vulnerabilities in the LLM ‘data diet’.¹²⁷ Unlike common law judgments, limited access to private records limits the diet. Since at least 2017,¹²⁸ limitations which may impact portfolio creation and financial stability have included ‘black box’ impediments to challenge legal reasoning, audit trail creation and control of algorithms through control of diet resulting in ‘unintended consequences’.¹²⁹

C Legal Linguistics: The Missing Link

Legal risks arising from fiduciary and principle-based legal frameworks can be reduced at the confluence of law, logic, language and culture. ‘In the case of technologies like Artificial Intelligence, law by virtue of analysis is benefited by having a good command of ethics and linguistics.’¹³⁰

Linguistics, legal linguistics and linguistics engineering are separate thematic genres. The confluence of law, language, logic and engineering in an AI democratising world is fraught with legal and judicial problems. Essentially, the application of NLP and machine learning to legal data require the mapping of complex legal logic into quantitative models with high degrees of legal accuracy.¹³¹

Linguistics engineering is closing the gap between unsupportable predictions and fact, but skilled human supervision in the application of the relevant corpus remains. That is a cost not always presented in technology acquisition investment analysis.

¹²¹ Iman Mirzadeh et al, ‘GSM-Symbolic: Understanding the Limitations of Mathematical Reasoning in Large Language Models’ [2024] *ArXiv* arXiv:2410.05229 1.

¹²² Ibid 12.

¹²³ See, eg, Christopher Joye, ‘AI Race May be Riding an Inflationary Shock’, *AFR Weekend* (Sydney, 29–30 November 2025) 26.

¹²⁴ See, eg, Nikolaos Akkizidis, ‘AGI in Finance: The Greatest Opportunities and the Deepest Fears’, *FXStreet* (Web Article, 10 March 2025) <<https://www.fxstreet.com/education/agi-in-finance-the-greatest-opportunities-and-the-deepest-fears-202510030923>>.

¹²⁵ See, eg, Ghihot and Moses (n 26) 144 [5.19] citing Daniel Martin Katz, Michael J Bommarito and Josh Blackman, ‘A General Approach for Predicting the Behaviour of the Supreme Court of the United States’ (2017) 21(4) *PLoS ONE* 12: e0174698 <<http://doi.org/10.1371/journal.pone.0174698>>. US Supreme Court prediction outcomes have achieved a 70.2% success rate.

¹²⁶ Frank Fagan, ‘Natural Language Processing for Lawyers and Judges’ (2021) 119(6) *Michigan Law Review* 1401.

¹²⁷ Sean Shih and Eric Chin-Ru Chang, ‘The Application of AI in Arbitration: How Far Away are We from AI Arbitrators’ (2024) 17(1) *Contemporary Asia Arbitration Journal* 69, 77 citing Maxi Scherer, ‘Artificial Intelligence and Legal Decision Making: The Wide Open?’ (2019) 36(5) *Journal Of International Arbitration* 539, 559.

¹²⁸ See, eg, Financial Stability Board, *Artificial Intelligence and Machine Learning in Financial Services, Market Developments and Financial Stability Implications* (Report, 1 November 2017) 2.

¹²⁹ Ibid 34.

¹³⁰ Abhivardhan (n 116) 7.

¹³¹ See generally A Bernstein, ‘Legal Corpus Linguistics and the Half-Empirical Attitude’ (2021) 106(6) *Cornell Law Review* 1397. See also B Chau and M A Livermore, ‘Computational Legal Studies Comes of Age’ (2024) 1(1) *European Journal of Empirical Legal Studies* 1, 89–104.

The output is increasingly required to be expressed in plain language, primarily English.¹³² Plain language in its ordinary meaning is '[w]hat ... words would mean in the mouth of a normal speaker of English ... or how words sound in the mind of a skilled, objectively reasonable user of words'.¹³³

The ISO standard extends to legal contexts requiring authors to 'reach multiple audiences with different needs, adhere to legally required structural and design requirements, explain complex and nuanced legal concepts, and explain processes that readers must navigate to exercise legal rights and obligations'.¹³⁴ A standard implies certification procedures, not yet extant, but in preparation.

Plain language usage assists legal process automation. Kirby, an early Australian proponent¹³⁵ as an advocate of the people and the law as facilitator of economic development,¹³⁶ is famous for his 'Blessed Trinity' of 'brevity, simplicity, and clarity', and plain language as fundamental to natural justice. That 'ordinary people' may be able to benefit from the law, rather than relying on 'The Priestly Caste', warned that AI would democratise legal knowledge and challenge the legal profession's resistance to technology.

Kirby was prescient enough to warn of the need for human supervision and insisted that AI should remain a servant, warning of automation bias where lawyers rely on the then developing anthropomorphic nature of AI and open themselves to professional negligence claims. That remains the case today — machine learned data is still not intelligent knowledge and cannot deliver justice. His influence remains today.¹³⁷

Legal linguistics as a sub-genre is heavily contextual and is jurisdiction specific, to wit, dictionary preferences, grammatical formulations and AI interfaces. Legal analysis requires reasoning capabilities. Training of the selected LLM requires far more than predictive prompting — it must conjoin internally contested iterative logic¹³⁸ with data and neural networks. This is the agentic reasoning environment underpinning IEWA (Intelligent Enterprise Workplace Automation) in the professional workplace. There is limited benchmarking. For document redlining (amendment), properly applied legal linguistics by human lawyers outperform LLMs.¹³⁹

Legal linguistics engineering applies scientific method to random datasets. The engineering culture is systematic with its own logic, nomenclature and certifications, not always wedded to plain language. Enterprise-level AI implementation demands a fusion of engineering and legal cultures. Legal linguistics engineering is an uncommon skills set with few examples globally, despite its growing importance.¹⁴⁰

LLMs, being data reliant, essentially rely on the value of the causal data. Statistical analysis remains data. 'It remains a logistic and ontological dilemma as to what is being computed and how their outputs are instrumentalised.'¹⁴¹ Legal linguistics can be deployed to provide the missing link between data and contestable knowledge and between AI and natural persons. It can provide legal veracity required to properly interpret statistical data and apply the law as knowledge. But knowledge requires more than statistical assurance — it requires the integration of cultures, an understanding of society, social graces, passions and artistic creativity. This is especially so in common law jurisdictions.

There is a considerable scholarly history in the 'use of corpora of words to predict the meaning of phrases in contextual texts — *corpus linguistics*'¹⁴² — the means from which an adjudicator discerns the true intention of the contracting parties, being a confluence of text and context transformed into useful interpretations, provided there is a separation of facts and inferred facts (or hallucinations and prompt induced biases). Generative AI lends itself to corpus linguistics, whereas deterministic coding does not.

¹³² See, eg, United States Government Publishing Office, *GPO Style Manual* (Manual, 31st ed, January 2017); UK Government, *Government Digital Service Style Guide* (Guide); Australian Government, *Style Manual* (Manual); European Union, *Institutional Style Guide* (Guide) (24 Official Languages). See also International Organisation for Standardization, 'Plain Language: Part 1: Governing Principles and Guidelines' (Report ISO 24495-1:2023, 2023).

¹³³ Stephen C Mouritsen, 'The Dictionary Is Not a Fortress: Definitional Fallacies and a Corpus-Based Approach to Plain Meaning' (2010) (5) *BYU Law Review* 1915, 1953 ('The Dictionary is Not a Fortress').

¹³⁴ *ISO Plain Language: Part 2* (n 75). See also Risto Hiltunen, 'The Grammar and Structure of Legal Texts' in *The (Oxford Handbook of Language and Law* (Oxford University Press, 2012).

¹³⁵ Kirby, 'Legal and Ethical Issues in AI' (n 7).

¹³⁶ M Kirby, 'The Company Director: Past, Present, and Future' (Speech, Australian Institute of Company Directors, Tasmanian Division, 1998) cited in Millhouse, *Corporate Governance in Non-Bank Financial Entities* (n 97)53 [2.33].

¹³⁷ Zou et al (n 74) Foreword 3.

¹³⁸ This is a process of iteration of all available data against objective criteria using robots to compete against each other to produce statistically assured outputs within the risk criteria required by the intelligent enterprise governance framework. It eliminates the unacceptable legal risk reliance on 'most likely' LLM opinion within a statistically assured confidence range tested against a large number of iterations.

¹³⁹ Vals.ai, *Vals Legal AI Report* (n 53).

¹⁴⁰ See generally Friedemann Vogel, Hanjo Hamann and Isabelle Gauer, 'Computer Assisted Legal Linguistics: Corpus Analysis as a New Tool for Legal Studies' (2018) 43(4) *Law and Social Inquiry* 1340, 1340–1363.

¹⁴¹ *Ibid* 8.

¹⁴² Arbel and Hoffman (n 11) citing Stephen C Mouritsen, 'Contract Interpretation with Corpus Linguistics' (2019) 94 *Washington Law Review* 1337, 1378.

Generative techniques require training in text and context to be truly *ex ante* accurately predictive. A hallucination can occur when the next words are guessed on probability rather than reasoning. Reasoning stems from ‘reinforcement learning’ supervised by a skilled human who can further train the model.

Corpus linguistics is empirical, analyses patterns of text in NLP, uses large collections of text as the basis for analysis, and applies computer science techniques for quantitative and qualitative analysis.¹⁴³ The reason that no corpus will ever be big enough to embrace all the knowledge that a native speaker can access through introspection is that ‘the actual set of English sentences is an infinitely extendable one’.¹⁴⁴ Corpus linguistics usage ‘renders the discussion of ordinary meaning one of tangible and quantifiable reality’.¹⁴⁵

Corpus linguistics provides the textual basis for the application of linguistic engineering.¹⁴⁶ This is quantitatively expressed as tokens.¹⁴⁷ It also provides the basis for billing.

The conjunction of legal linguistics and AI is attracting scholarly attention.¹⁴⁸ In language translation applications:

while AI enhances productivity ... it often falls short in ensuring contextual accuracy ... [T]he importance of legal expertise in the human-led post-editing phase is strongly affirmed ... navigating at the intersection of human and machine intelligence, requiring transparenc[y] in the use of AI tools to preserve the cultural heritage rooted in EU multilingual law.

D *Legal Linguistics leads to Artificial General Intelligence*

AGI’s anthropomorphic objective will require the thorough integration of legal linguistics and AI engineering. This can provide a sound basis for AI use in the law and better adapt to the ‘myriad unexpected events’ and their resulting legal risks in enterprise governance.

This integrated technology does not presently publicly exist but can provide its holistic basis. It will require the conjoining of LLMs with linguistics engineering and with the creative human spirit to achieve the promise originally posited by Turing and Minsky.

‘This means that we should avoid conflating AI’s entitative nature with its utilitarian functions.’¹⁴⁹ More likely:

a process of ‘enculturation’ will take place where LLMs learn legal linguistics and humans gradually adapt their own behaviours and perceptions based on the recommendations and influences of AI technologies ... This dynamic interaction between AI and human societies highlights the evolving relationship between technology and enculturation.¹⁵⁰

E *Legal Linguistics is Contextual*

Context is paramount in legal argument. Cases are heavily contextual, determined not only in doctrinal law.

The meaning of corpus linguistics evolves with time, demographics, culture and ethnicity. The meaning of words and phrases change. This is especially important for analysis of precedents within differing legal traditions.¹⁵¹ Roman-Dutch law differs from Roman-English Common Law which is ‘significant[ly]’ influential in the most important AI originating jurisdictions.¹⁵² LLMs can now respond differently to various intra-English dialects¹⁵³ and in other languages.¹⁵⁴

F *Legal Linguistics and Indigenous Populations*

AI is a global industry and inevitably, there will be global demand for non-Roman translations and usages including from ‘indigenous’ populations governed by customary law, and faith-based societies governed by

¹⁴³ Mouritsen, ‘The Dictionary Is Not a Fortress’ (n 133) 1954.

¹⁴⁴ Ibid 1966.

¹⁴⁵ Ibid 1970.

¹⁴⁶ See, eg, EDGAR, the Electronic Data Gathering, Analysis and Retrieval System of the U.S Securities and Exchange Commission. EDGAR has approximately 20 million document filings deploying 200–300 billion tokens. Similar corpuses exist in all major jurisdictions.

¹⁴⁷ Generally, but not always, 4 characters (in English usage).

¹⁴⁸ See, eg, ‘New Special Issue “Artificial Intelligence and the Language of Law”’ *International Journal of Language and Law* (Blog Post, 9 July 2025).

¹⁴⁹ Ibid.

¹⁵⁰ Ibid. The process by which the values and norms of society are acquired by its members.

¹⁵¹ See, eg, Tshildidzi Marwala and Letlholwa George Mpedi, *Artificial Intelligence and the Law* (Palgrave Macmillan, 2024).

¹⁵² Ibid 8 [1.4.2], 9. See, eg, CAL², *Corpus of German Law (Juristisches Referenzkorpus)*; CAL², *Corpus of British Case Law*. Miriam Vogel, ‘AI and the Law’ in Cwik, Suarez and Thomson (n 29) 23.

¹⁵³ See, eg, V Hofman et al, ‘Dialect Prejudice Predicts AI Decisions About People’s Character, Employability, and Criminality’ [2024] *ArXiv arXiv:2403.00742* cited in *DSIT Report* (n 69) 268 [560].

¹⁵⁴ R Hada et al, ‘Bias: An Exploratory Study of Gender Bias in Hindi Language Technology’ (Conference Paper, ACM Conference on Fairness, Accountability and Transparency, 2024) cited in *DSIT Report* (n 69) 268 [566].

ecclesiastical law and personal religious belief. ‘Legal translation quality assurance is accordingly understood as an activity carried out by experts capable of measuring the adequacy of translation decisions in relation to a given translation brief and communicative situation and evaluation criteria.’¹⁵⁵ Automation of these tasks requires quality benchmarks, however, these are still ‘far from sight’.¹⁵⁶

Access to justice, fairness and equity will demand AI Agents which are specific to indigenous societies. The creation of specific indigenous data sets and their integration or co-existence with established law is technically possible with modern legal linguistics engineering.¹⁵⁷

Legal linguistics has been used as manual expert evidence in judicial proceedings in Australia since 1959¹⁵⁸ in resolution of cases involving Aboriginal citizens. Given the large number of Aboriginal language groups and reliance on verbal histories, the addition of AI tools to ‘collaborative, cooperative engagement between forensic linguistic professionals, the judiciary and legal professionals ... should enable faster, more detailed analysis’.¹⁵⁹

These will be in addition to access-to-justice driven representative actions. It may manifest in an ‘impending paradigm shift ... emerging in online dispute resolution (‘ODR’).’¹⁶⁰ This will be particularly so in non-western societies, but nonetheless important in western societies where ‘ODR represents a reimagined avenue to justice that prioritises affordability, accessibility and convenience’.¹⁶¹ Some opine that in western societies, access to justice is in crisis.¹⁶²

It will be Agentic AI (ie AI Agents), contextualised for discrete groups and needs, that will ‘unlock economic barriers, reduce economic barriers, reduce legal complexity, [and] improve language and literacy’.¹⁶³

By capitalising on the paradigm shifting capabilities of speech recognition, text-to-speech, and translation, it is possible to establish a legal environment in which fairness is not predicated on one’s handwriting or linguistic proficiency ... a system of justice in which every voice is acknowledged, appreciated, and comprehended, irrespective of language barriers ... feasible on through the adoption and integration of these AI tools.

It would be accurate to conclude that, for investors and AI industry participants, this will be where the growth will come from, not in a heavily capital intensive, globally contested and ultimately oligopolistic LLM market. It is also where the demand for AI trained lawyers will be generated within each genre of legal stakeholder.

VI LEGAL STAKEHOLDERS

The deployment of AI tools by stakeholders is commonplace, but myriad legal risks remain. Enterprise governance does not generally implement ‘Digital Readiness’ regimes. Many rely on internal IT departments or consultants. Both can be wedded to traditional deterministic technology.

Stakeholders include law firms, compliance firms, clients, benches, bars, employees, suppliers, communities, regulators, the political classes and various typologies of practitioners.

A Digital Readiness

Technology supply-side improvements can be matched by consumer-side changes by ensuring that all legal documents are ‘digitally ready’.¹⁶⁴ This may improve the quality of drafting and comprehension with its emphasis on plain language usage. Digital Readiness can also significantly improve the consumer use experience and reduce frustrations since many in western and non-western jurisdictions are not competent, nor wish to be competent, in the formats or logic so often designed by trained engineers not behavioural economists. Coded interfaces require human consumer behavioural skills.

¹⁵⁵ See, eg, Fernando Prieto Ramos, ‘Quality Assurance in Legal Translation’ (2015) 28 *International Journal for the Semiotics of Law* 11, 27.

¹⁵⁶ Ibid. Author’s Note: in 2015.

¹⁵⁷ Presently up to 50 languages, a process called ‘Omniculture’™.

¹⁵⁸ Cat Woods, ‘From Cold Cases to Criminal Trials: The Power of Forensic Linguistics’ (2009) *Law Society of NSW Journal* (Web Article, 9 December 2024) <<https://lsj.com.au/articles/from-cold-cases-to-criminal-trials-the-power-of-forensic-linguistics/>>. Author’s Note: this has been so in some United States cases since the advent of ChatGPT in 2022.

¹⁵⁹ Ibid citing D Eades, H Fraser and G Heydon, *Forensic Linguistics in Australia: Origins, Progress and Prospects* (Cambridge University Press, 2023).

¹⁶⁰ Marwala and Mpedi (n 151) 31 [2.2.3].

¹⁶¹ Ibid.

¹⁶² Ray Brescia and James Sandman, ‘Artificial Intelligence and Access to Justice: A Potential Game Changer in Closing the Justice Gap’ in Cwik, Suarez and Thompson, (n 29)187.

¹⁶³ Ibid 34–41.

¹⁶⁴ Tamo-Larrieux, Guiton and Mayer (n 16) 27.

Digital Readiness to convert law into automatically processable form opens a Pandora's Box of vagueness, ambiguity, interpretation and evolutionary legal drafting. It cannot be done using deterministic coding without fear of 'freezing the law'.¹⁶⁵ That would mean hardcoding legal documents, including statutes and regulations, without revision. Case law would be frozen in time.

'Myriad events' make it impossible to forecast every possible combination of interpretation in advance using deterministic coding or on paper. It also means human override becomes essential, which to some extent defeats the purpose of automation. As Turing posited, 'advances in engineering will have to be made'.¹⁶⁶ Digital Readiness must also provide for transparency, auditability and contestability. Each of these is possible using generative technologies which also allow for human agency.

Some jurisdictions have prepared for Digital Readiness in their legislative processes.¹⁶⁷ Each use differing typologies and differing implementation agencies. There is no consistent international standard for legal design or indeed, whether design should be legal consumer-centric or technology-centric. The promise of democratisation of AI to far larger user types will remain a promise without including psychologist and behavioural economists in AI Agent design teams.

It will change the nature of law faculty AI accreditation.¹⁶⁸ Some university law faculties, in efforts to afford students organisational AI literacy, are adopting specific IT legal AI systems suppliers specifically to 'use in their teaching ... to avoid a future where lawyers [and clients] are slaves to a technology they don't understand'.¹⁶⁹

B Judicial and Arbitral Use of AI

Chief Justice Andrew Bell, in a speech on the topic of corporate responsibility and directors' duties in the era of AI, notes:

given the number of questions that I have posed, more than the balance of this lecture would be required to even begin to answer them! Further, identifying and indeed asking key questions is a necessary first step in locating appropriate responses.¹⁷⁰

This implies a comprehension by judicial officers and counsel of the issues raised in this paper and in the 'growing volume of literature on the topic of AI in corporate governance'.¹⁷¹

This 'growing volume' generates demand for DLAs in the context of counsel and judicial chambers, their acceptance yet to be established.¹⁷² Fundamental questions of law and AI are yet to receive unanimous judicial approval.¹⁷³

There are many instances where judicial¹⁷⁴ and arbitral¹⁷⁵ use of AI is becoming commonplace. Arbitral misuse has included fabrication¹⁷⁶ and forgery.¹⁷⁷ Early cases required defendant 'advisement' or warning, not consent.¹⁷⁸ Later cases have required consent, with penalties including the setting aside of arbitration awards.¹⁷⁹

Cases are not limited to the use of generative AI to create case materials. Technology exists to create adversarial contests to provide a judgment or an arbitration award. Other technological impediments include lack of audit trails (referred to as 'black box') required to review the decision pathways and reasoning.¹⁸⁰ Black box

¹⁶⁵ Ibid 85.

¹⁶⁶ Turing (n 13).

¹⁶⁷ See, eg, Tamo-Larrieux, Guiton and Mayer (n 16) ch 5 108 [5.2].

¹⁶⁸ See, eg, Case Western Reserve University School of Law's certification in legal artificial intelligence in partnership with Wickard.ai (2025).

¹⁶⁹ Janek Drevikovsky, 'Two Sydney Law Schools Sign Up to HarveyAI Tool', *Australian Financial Review* (Sydney, 21 January 2026) 9.

¹⁷⁰ Bell, 'Corporate Responsibility and Directors' Duties in the Era of AI' (n 34) [34].

¹⁷¹ Ibid 9.

¹⁷² See, eg, Fong (n 29).

¹⁷³ See, eg, *Pintarich* (n 23).

¹⁷⁴ See, eg, Scott U Schlegel, Maura R Grossman and Herbert B Dixon, 'Artificial Intelligence and the Courts' in Cwik, Suarez and Thomson (n 29) 171, 181.

¹⁷⁵ Chief Justice Andrew Bell, 'Fabrication and Delegation: AI in International Arbitration' (Conference Paper, International Arbitration Conference, 2025) ('Fabrication and Delegation'). Author's Note: This speech is an important contribution.

¹⁷⁶ Ibid [12] citing *Contax Partners Inc BVI v Kuwait Finance House* [2024] EWHC 436 (Comm).

¹⁷⁷ Bell, 'Fabrication and Delegation' (n 175) [17] citing M Burgstaller and S MacPherson, 'Deepfakes in International Arbitration: How Should Tribunals Treat Video Evidence and Allegations of Technological Tampering?' (2021) 22 *Journal of World Investment and Trade* 860, 880; Bell 'Fabrication and Delegation' (n 187) [31] citing *Kohls v Ellison* (D Minn, No 24-CV-3754, 10 January 2025) §609.771.

¹⁷⁸ See, eg, *State v Loomis* 881 NW 2d 749 (Wis, 2016) cited in 'Wisconsin Supreme Court Requires Warning Before Use of Algorithmic Risk Assessments in Sentencing' (2017) 130(5) *Harvard Law Review* 1530 ('*Loomis*').

¹⁷⁹ Bell, 'Fabrication and Delegation' (n 175) [38]–[44].

¹⁸⁰ *Loomis* (n 178).

usage by government agencies, including police and the justice system, results in court abdication of its responsibilities to an opaque process and delegation of litigation risk to the defendant through non-informed consent.

Despite its ‘somewhat dubious reputation in the legal world’,¹⁸¹ it is being used to reduce ‘overburdened’ US State Courts.¹⁸² In some circumstances, AI is being trialled to replace human adjudication,¹⁸³ but only with legally skilled human supervision.

Many other jurisdictions are addressing the issues of fabrication (through human input), hallucinations (through LLMs), and pursuing the positive uses of AI. Examples include judgment drafting (in Germany¹⁸⁴ and Singapore)¹⁸⁵, AI assisted arbitration for small claims by self-represented litigants,¹⁸⁶ Project Sea-Lion (Singapore),¹⁸⁷ Guangzhou Arbitration Commission, (China) and British Columbia Civil Resolution Tribunal (Canada). Hong Kong statutorily limits arbitral decisions publication¹⁸⁸ which limits the ability to train LLMs.

Whilst the principled use of AI in alternative dispute resolution (‘ADR’) in furtherance of access to justice public policy is to be commended, ‘the use of GenAI by non-legally qualified parties comes with additional risks’.¹⁸⁹ Usage in part will be a test of the skills of the participants, their induction training and effective guardrails.

Law policy options will need to address issues associated with AI Agents as company and trustee directors, investment managers of regulated superannuation funds and managed investment schemes, judges¹⁹⁰ and arbitrators. Ultimately, the test will be one of public confidence and public trust in the judicial system. ‘Whether AI can serve as an arbitrator will eventually depend on the public’s trust in AI to make potentially life-changing decisions.’¹⁹¹

In common law countries, judicial review results in publication. This is not the case in arbitration or where there are private administrative sanctions. This distinction is attracting regulatory and contractual attention, including through statutory requirements that an arbitrator be a natural person, thereby implying ‘humanness’. Failure to adopt regulatory constraints can result in invalidity and unenforceability of an arbitration award or private agreement.

Whilst ex post statutory and regulatory interpretations are adapting to this new environment, equity may be enlivened in common law countries. Equitable remedies can be an existential threat to the use/misuse of generative AI LLMs.¹⁹² Remedies can include the retraining of LLMs to ‘unlearn’ alleged copyright infringement, but also its complete destruction.¹⁹³

C Practitioners Use of AI

Legal risks abound for practitioners. Inter alia, research advises ‘experienced lawyers [to] remain wary of legal hallucinations’.¹⁹⁴ Some vendors may claim to have resolved the hallucination problem, but these claims need to be treated with caution. There is no technology presently available which should be deployed without legally skilled human supervision. Risks of deployment ‘are *highest* for those who would benefit from LLMs the

¹⁸¹ See, eg, Erin Mulvaney, ‘How Tech Could Help Decide Your Next Legal Dispute’, *Australian* (Sydney, 8 January 2026) 19.

¹⁸² Ibid.

¹⁸³ See generally Liz Benjamin, ‘Judge Bridget Mary McCormack on the Impact of AI in the Legal Community’, *New York State Bar Association* (Blog Post, 10 January 2024) <<https://nysba.org/judge-bridget-mary-mccormack-on-the-impact-of-ai-in-the-legal-community/>>. Judge McCormack is the President and CEO of the American Arbitration Association-International Centre for Dispute Resolution.

¹⁸⁴ Bell, ‘Fabrication and Delegation’ (n 175) [56] citing I S Szalai, ‘Stranger Disputes: When Artificial Intelligence Turns Arbitration Upside Down’ (2025) 25(2) *Pepperdine Dispute Resolution Law* 133, 140.

¹⁸⁵ Ibid [46] citing A Xu ‘The Use (and Abuse) of AI in Court’ (Speech, IT Law Series 2025: Legal and Regulatory Issues with Artificial Intelligence, 6 August 2025) [21]–[23].

¹⁸⁶ Ibid [45]–[52].

¹⁸⁷ See also J G Allen and J Loo, ‘Singapore’s Evolving AI Governance Framework’ in Zou et al (n 74) 165 quoted in Bell, ‘Fabrication and Delegation’ (n 175) [52].

¹⁸⁸ Shih and Chin-Ru Chang (n 127) 78, citing *Hong Kong Arbitration Ordinance* (Hong Kong) cap 609, s 18(1).

¹⁸⁹ See generally V Tan, J M Paterson and J Webb, ‘Generative Artificial Intelligence in Small Value Consumer Disputes: Hallucination Risk, System Design, and Governance in Online Dispute Resolution’ (2025) 48(4) *UNSW Law Journal* 1257.

¹⁹⁰ L Greco, ‘Judicial Power Without Judicial Responsibility: The Case Against Robot Judges’ in D Moura Vicente, R Soares Pereira and A Alves Leal (eds), *Legal Aspects of Autonomous Systems: A Comparative Approach* (Springer, 2024) quoted in Bell, ‘Fabrication and Delegation’ (n 187) [72].

¹⁹¹ Shih and Chin-Ru Chang (n 127) 69.

¹⁹² Elizabeth E Joh, ‘Equitable Legal Remedies and the Existential Threat to Generative AI’ (Research Paper, UC Davis School of Law, 27 August 2023) citing *Mahan v Roc Nation LLC*, 720 F Appx 44 (2nd Cir, 2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4553431>.

¹⁹³ Ibid.

¹⁹⁴ See especially Dahl et al (n 61).

most.¹⁹⁵ Practitioners require training (beyond retail level skills sets) and risk frameworks in law firms and chambers prior to AI system purchase and deployment.

'The American Bar Association has flagged the imperative for lawyers not only to stay informed of technological advances but also to confront the ethical and legal quandaries they pose.'¹⁹⁶ 'Little imagination is required to conclude that an attorney's use of AI tools could lead to liability for breach of [attorney's] fiduciary duty [to a client].'¹⁹⁷ Important issues for lawyers using generative AI tools, DLAs or AI Agents include the unintended dissemination of client information. This issue alone should govern which LLMs are deployed. Publicly available AI tools should not normally be used for client-confidential information, and then only with great caution and client disclosure and consent.

'Black box' tools by design are not transparent nor readily auditable. The use of 'chatbots' in marketing or client on-boarding must 'avoid the creation of an attorney-client relationship without the lawyer's knowledge ... a lawyer should be wary of utilising an overly welcoming generative AI chatbot that may provide legal advice, fail to immediately identify itself as a chatbot, or fail to include disclaimers limiting the lawyer's obligations.'¹⁹⁸ Training of chatbots needs to accompany legal assistant training.

The sharing of 'windfall' profits will become contested between stakeholders. Over time, market norms will apply to resolve conflicts between revenue and value creation. Generally, third-party fees charged to clients for AI tools usage 'must be reasonable and non-duplicative'.¹⁹⁹

Robo-advice is likely to become more common, partly because of the regulatory and costs pressures on human financial advisers and the irresistible temptation of 'dark pools' of capital.²⁰⁰ Robo-advisers may be fiduciaries for their clients.²⁰¹ Compliance with statute does not abrogate fiduciary responsibilities, including in the provision of 'financial advice about advice'.²⁰² Neither can stringent fiduciary standards be contracted away. Equity is enlivened when statutes '[do] not systemically ensure discharge of equitable fiduciary duties'.²⁰³ This principle has been relied upon in major US class action unjust enrichment cases.²⁰⁴

Whilst the Australian Securities and Investments Commission ('ASIC') has previously asserted a technology-neutral regulatory environment,²⁰⁵ some legal scholars have opined that 'financial consumers are more willing to trust the digital platform than a face-to face adviser'.²⁰⁶ There have been proposed regulatory attempts, to date unsuccessfully, to 'strengthen' distinctions between 'retail', 'sophisticated' and 'wholesale' investors. The published empirical data²⁰⁷ deny the need for this reform, but industry pressures remain, some from potentially conflicted sources. Increasing automation may be cited in support of these pressures but is not supported by the facts.

These examples serve to illustrate the legal perils that can arise for directors, trustees and professionals in AI driven IEWA. There should always be a review of where fiduciary relationships can arise. This is especially important in jurisdictions where the application of fiduciary law is stronger than in Australia. Fortunately, the technology now exists to identify these prospective relationships as a specialised robot within AI automated workflows.

Mapping of relationships (whether conditional clauses or entities in contracts) and in statutory and fiduciary contexts of network nodes and outliers are particularly well-suited to interpretation using LLMs and other IEWA technologies. These include 'semantic networks', a concept dating back to the third century AD²⁰⁸ and

¹⁹⁵ Ibid 87.

¹⁹⁶ Miriam Vogel, 'AI and the aw' in Cwik, Suarez and Thomson (n 29) 24.

¹⁹⁷ Lucian T Pera, John F Weaver and Andrew P Sutton, 'AI and Ethics: A Lawyer's Professional Obligations' in Cwik, Suarez and Thomson (n 29) 113, 115.

¹⁹⁸ Ibid 125 citing Florida Bar, *Ethics Opinion 24-1* (Opinion, 19 January 2024).

¹⁹⁹ Ibid 132.

²⁰⁰ Millhouse, *Corporate Governance in Non-Bank Financial Entities* (n 97) 338 [7.34].

²⁰¹ Simone Degeling and Jessica Hudson, 'Financial Robots as Instruments of Fiduciary Loyalty' (Presentation, UNSW Law School, 2017).

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ 'United States Class Action Complaint' (n 19).

²⁰⁵ Australian Securities and Investments Commission, *Providing Digital Advice to Retail Clients* (Regulatory Guide 255, August 2016) [6]; Australian Securities and Investments Commission, *Beware the Gap: Governance Arrangements in Face of AI Innovation* (Report 798, October 2024).

²⁰⁶ S Degeling and J Hudson, 'Financial Robots as Instruments of Fiduciary Loyalty' (2024) 40 *Sydney Law Review* 63, 78.

²⁰⁷ David G Millhouse, 'Empirical Analysis Supports the Hayne Long Run Reform Thesis' (2019) 13(2)–(3) *Law and Financial Markets Review* 162.

²⁰⁸ Tamo-Larrieux, Guiton and Mayer (n 16). See especially the Tree of Porphyry (Perugia, 1475): at 36. See also 35. See also the Resource Description Framework, used by the World Wide Web Consortium to represent knowledge graphs. There are additional Frameworks used to map, manage and share structured data.

can be deployed to assist legal analysis in more recent related party transactions litigation, a major legal risk in enterprise governance.

VII LEGAL RISKS IN AI GOVERNANCE²⁰⁹

Every enterprise will be influenced by regulatory regimes beyond their national control. These regimes are inconsistent, lacking international standards, in a state of flux and generate evolutionary legal risks. Enterprise governance risks need to be considered and managed on a supra-national basis.

A *Competitive Tensions Widen Legal Risks*

Competitive tensions across jurisdictions make it unlikely that there will be a harmonised global AI legal framework. There are common regulatory themes, but they are being applied strategically, and not only for the traditional roles of the law. This necessarily colours the datasets required to select and train LLMs and the interpretation of their algorithmic outcomes.

Control of AI technologies, and silicon chip manufacturing, are being used as strategic tools in creating jurisdictional competitive advantage. Open-source access, valuable in innovation, can be used as a strategic tool destroying the sunk costs of private, competitive technology investment.

Law is, fundamentally, about predictability and the allocation of responsibility,²¹⁰ consistent with its Kirby-esque formulations facilitating economic freedoms and control.²¹¹ These are not mutually exclusive. They underpin international argument on the primacy of innovation versus regulation debate, often self-interested.

Technological innovation is constant. It can lead to rapid diffusion of economic benefits. It may also lead to the creation of new global oligopolies in the LLM sector.²¹² These oligopolies are likely to be centred in only two countries — the United States and the People's Republic of China (the EU is an outlier) with differing views on regulation and how it is enforced. These two countries may establish a dialogue to govern AI regulation.²¹³ There is a large body of literature now documenting strategic competition, statutory interventions and regulation.

These interventions are following the dichotomy between economic freedom and protective coercion, sometimes with strict liability.²¹⁴

B *Sectoral Themes: Legal Risks*

Regulation of AI of itself will be less important than the regulation of context.²¹⁵ Context includes sharing of economic benefits, control and ownership of IP, disclosure and consent, and LLM training rights. Every enterprise can deploy these tools (predictive and generative) in prosaic contexts, with their abundant legal risks.²¹⁶

Themes in present litigation are well known and include, inter alia, — liability, insurance, responsibility for harm, selection of legal standards, bias, discrimination, data protection and privacy, data ownership, informed

²⁰⁹ See generally Luis E Machado, *AI and the Law: Navigating Legal Challenges in the Age of Artificial Intelligence* (1st ed, 2025).

²¹⁰ Paul Rosenzweig, 'Black Box Reasoning and the Rule of Law' in Cwik, Suarez and Thomson (n 29) 59, 61.

²¹¹ Kirby, 'Legal and Ethical Issues in AI' (n 7).

²¹² See, eg, *DSIT Report* (n 62). The cost of training compute for the most expensive single purpose AI model is projected to exceed USD 1 billion by 2027: B Cottier et al 'How Much Does it Cost to Train Frontier AI Models?' (2024) <http://arXiv:2405.21015>.

²¹³ See generally Lingling Wei, 'US and Beijing Seek Guardrails to Stop AI Arms Race', *Wall Street Journal, Australian* (Sydney, May 8 2026) 17.

²¹⁴ In the European Union: *Artificial Intelligence Act 2026*; Markets in Financial Instruments Directives ('MiFID 11'); Undertakings for Collective Investments in Transferable Securities ('UCITS'); General Data Protection Regulation ('GDPR'); *Data Protection Act 2018*; *Digital Services Act 2022*; Model AI Governance Framework.

In the People's Republic of China: New Generation Artificial Intelligence Developmental Plan 2017; Measures for the Administration of Algorithmic Services 2022; Data Security Law and Personal Information Protection Law; Cybersecurity Law.

In the United Kingdom: Office for AI, Information Commissioner's Office AI Sandbox, Alan Turing Institute.

In the United States: Federal law includes *National AI Initiatives Act of 2020*, 15 USC ch 119 §§ 9401 et seq; *Uniform Trade Secrets Act* § 1(4) ('UTSA'); *IoT Cybersecurity Improvement Act of 2020*, 15 USCA § 278g-3a; HIPAA Privacy Rule; Executive Orders 14179 'Removing Barriers to American Leadership in Artificial Intelligence' (23 January 2025), 14178 'Strengthening American Leadership in Digital Financial Technology' (23 January 2025), 14158 'Establishment of the Department of Government Efficiency' (20 January 2025), M-25-21 'Accelerating Federal Use of AI through Innovation' (3 April 2025), 'Executive Order on Advancing AI Education' (23 April 2025); The Stargate Project (21 January 2025); US Department of Commerce, Export Administration Regulations and Commerce Control List; *Decoupling America's Artificial Intelligence Capabilities from China Act of 2025* ('The Hawley Act'); *International Traffic in Arms Regulations* 22 CFR § 120.41; United States Munitions List. Important agencies include the National Institute for Standards and Technology, which issued the Artificial Intelligence Risk Management Framework (2023).

In Singapore: Monetary Authority of Singapore, *Guidelines for Risk Management* (Guidelines, 13 November 2025).

²¹⁵ Stephanie Wilson and Natalie Pierce, 'AI in the Workplace' in Cwik, Suarez and Thomson (n 29) 211

²¹⁶ ActiumAI Pty Ltd, eg In Body Corporate Strata Management, a tenant application for a pet in a residential apartment has been automated generating an approximately 30 times productivity uplift, enabling an employee to undertake other tasks, as of November 2025.

consent law, intellectual property, defamation, recruitment and workplace productivity and consumer law. Recent United States jurisprudence addressed the interfaces between AI, privacy claims and legal privilege. Communications recorded or documented using LLMs may not be confidential or protected by legal professional privilege. They may also be used to train the models. Much of this is uncharted territory at the intersections of AI, copyright and privacy law where ‘research reveals that consumers do not read or understand privacy policies.

Australian jurisprudence follows, with the Federal Circuit and Family Court noting ‘[t]hese issues warrant extreme caution’²¹⁷ warning specifically of AI misuse and hallucinations.²¹⁸ Future litigation (private and representative actions) is likely to include monetisation and self-interest cases, performance criteria (including conflicts between deterministic coding traditions and modern generative statistical stochastic assurance techniques), cross-border legal traditions and standards, data use contracts, corporate and trustee governance, ethics, risk management and frameworks, standards selection and compliance, LLM selection, use of autonomous AI Agents in process and user interfaces, tortious liability in training and governance, accreditations and security in a contested geopolitical environment, unjust enrichment, data deidentification and reidentification, and ‘hype’ in representations and competition law.²¹⁹

Intellectual property cases are more likely to be focussed on know-how and trade secrets, rather than risk exposure through patents and other protection mechanisms. The diffusion of global talent and the explosion in AI Agent and DLA use cases will make IP protection problematic, as will competition law reducing restraint of trade protections. Legal protections of themselves may not be sufficient to deter IP infringements and enterprises will increasingly need to adopt other strategies. The increasing deployment of the ‘Internet of Things’ with its data collection objectives and their immediate, global diffusion will add to other forms of risk framework and IP control.

These are likely to be more complex cases with specialist data sets. Representative action cases, particularly those with litigation financing, are often multi-jurisdictional, and even in Australia, enliven a rich tapestry of multi-layered, inconsistent and at times, contested law.²²⁰

Unjust enrichment cases can involve multiple jurisdictions in the same country with multiple representative actions, and multiple sources of law. In one significant action,²²¹ two plaintiff classes—described as the People of the United States and the Children of the United States (—) pursued jury trials in the Northern District of California, with subclasses in Illinois and New York. The proceedings have potential global implications and trace the development of AI in the United States. The issues include whether OpenAI is genuinely ‘open’; the scraping of private data from the web; the deliberate creation of business models based on ‘economic dependency’; alleged violations of privacy and property interests; unjust enrichment; liability where machine learning contravenes the law; and the covert tracking of children without consent, thereby depriving them of the economic value of their personal data.

On the issue of remedies, the Court held:

to avoid the unjust enrichment of Defendants, this Court sitting in equity has the power to order a ‘data dividend’ to consumers for as long as the Products generate revenue fuel[l]ed on the misappropriated data.²²²

C *Practical Governance Measures for Directors and Trustees*

Australian policy and law do not always follow international standards. This is a trap for Australian directors and for foreigners serving on Australian company and trustee boards. Australian directors, trustees, and IT industry personnel will require not only comprehension of the rich fabric of Australian statute, common law and equity, but also those of major civil law jurisdictions and where there are in-licensing contracts, governance responsibilities and cross-border investment. Contextual regulation may intervene on social policy grounds where productivity improvements need to comply with employer duty of care and where there are challenges in the capture of windfall productivity profits in workplace regulation.²²³

²¹⁷ *Helmold and Mariya* [No 2] [2025] FedCFamC1A 163, 9.

²¹⁸ *Ibid* 7.

²¹⁹ *Ibid*. See also Abhivardhan (n 116).

²²⁰ David Millhouse, ‘Litigation Financing: Untangling the Gordian Knot’ (2022) 34(2) *Bond Law Review* 15.

²²¹ See, eg, ‘United States Class Action Complaint’ (n 19).

²²² *Ibid* 76.

²²³ Workplace Health and Safety Amendment (Digital Work Systems) Act 2026 (NSW). See, also, Edward Santow, Co-Director Human Technology Institute, University of Technology, Sydney, Australia.

Contextual regulation extends to company governance, now requiring ‘a level of AI literacy that enables them to take steps or challenge AI outputs’.²²⁴ Specifically, ‘[d]irectors must not rely on AI-generated summaries or analysis as a substitute for their own review and interrogation of board papers’.²²⁵ A prime responsibility for company and trustee directors is to convert strategic intent into tactical management actions. This paper highlights specific issues requiring board attention.²²⁶ Many require skilled training of directors and officers to reduce legal risks. AI governance is not optional and not delegable.

Boards should appoint a Digital Readiness Officer to implement IEWA reporting through an AI compliance committee equivalent to the audit committee and separate from operational IT management. All entities should conduct board-level workshops to establish internal policies and procedures, supported by board-level compliance reporting. Regular management training and reporting should follow, with clear responsibility for developing human-supervision capabilities and evaluating AI behaviour. These requirements should be mandatory for ASX-listed companies and trusts.

The Digital Readiness Officer should enforce:

- Cyber discipline and procedures. Examples are automated note-taking robots which may cause inadvertent loss of legal privilege;
- Usage discipline, by establishing authorisations for AI usage in work and home office environments where access to public LLMs is commonplace;
- Data discipline regulating storage, access and bans on its use for LLM training;
- Cultural discipline to enforce fiduciary loyalty to the interests of the enterprise, acknowledging that compliance with regulations alone is not sufficient. If regulations are silent, that is not a permission to engage in undisciplined or egregious behaviours;
- Technology discipline requiring usage of authorised AI tools only;
- Competency discipline: require all directors and officers to undertake approved AI training;
- Financial discipline: require competent and business cases for all AI investments benchmarked against enterprise board level objectives;
- Workflow discipline by documenting and automating all workflows and outputs against financial benchmarks;
- Legal discipline: a regular review of each workflow context, regulations, contracts and procedures and their attendant legal risks including class action litigation risk documented in a compliance manual;
- Relationship discipline via mapping and identification of potential fiduciary obligations;
- Guardrail discipline ensuring supervisory and management competencies and enforcement;
- Strategic discipline: regular reviews of global trends, threats and opportunities;
- Geopolitical risk discipline: regular reviews of legal and regulatory changes in other jurisdictions, particularly where an Australian domiciled enterprise has international operations, foreign investment or sources foreign technology subject to extra-territorial law;
- Vulnerability and resilience discipline: identify points of systemic failure and business model user dependencies;
- Intellectual property discipline: periodic board reviews of enterprise intellectual property portfolios, especially where these are statutorily reported accounting assets, with a special focus on copyright and business process patents, the value of which can be impacted by AI deployment.

D Recommendations for Legal Reform

The Australian regulatory response needs to provide flexibility for innovators, especially in the Agentic AI sector. This is also where consumers are more prone to risks. Risks can change rapidly.²²⁷ How AI products are released, and to whom, are key determinants of risk.

²²⁴ Australian Institute of Company Directors, *AI Use by Directors and Boards: Early Insights* (Report, December 2025) 17.

²²⁵ Ibid 6. See especially *Australian Securities and Investments Commission v Bekier (Liability Judgment)* [2026] FCA 196 (Lee J) (‘*Star Casino corporate governance case*’).

²²⁶ See also below Part VII(D).

²²⁷ See, eg, *DSIT Report* (n 62) [2.4] (‘Impact of open-weight general purpose AI models on AI risks’) 156, 165.

The Australian AI Safety Institute ('AAISI')²²⁸ is designed to 'build capability, provide expert advice ... and facilitate information sharing on emerging technologies'.²²⁹ It has adopted a voluntary AI Safety Standard including ten 'guardrails'.²³⁰

It will need the support of considered and substantial evolutionary law reform to provide the necessary regulatory framework. Presently, ex ante postures across many legal disciplines within differing legal traditions are attempting to regulate the use of technologies in an ex post environment.²³¹ Present Australian government policy (under review) is to not legislate a specific AI statute. This is an error requiring legislative rectification in the pre-AGI era. Reform needs to be capacious.

Specific Australian legislative reform needs to include, inter alia:

1 *Doctrinal reform* —

- Legislate an overarching Artificial Intelligence statute to include a comprehensive definition of 'AI';
- Distinguish between AI and AI data centre infrastructure regulation;
- Include the purposes of AI technology as a servant controlled by humans and not a master within the AI statute;
- Eliminate the sale of economic dependency business models to vulnerable AI consumer demographics;
- Legislate for the addition of AI Impact Statements in all new Commonwealth legislation;
- Continue to deny concepts of artificial personhood in the proposed AI statute;
- In the absence of artificial personhood, review whether LLMs are statutory 'digital intermediaries' and whether the owners and operators of LLMs should be exempted from statutory defamation exemptions;
- Extend liability for abuse of AI by users where there could be criminal consequences if the AI chatbots were to be categorised as having artificial personhood to executives and officers of chatbot suppliers;²³²
- Insert a definition of 'decision' within the AI statute to remedy the deficiencies identified in *Pintarich*;
- Insert a capacious definition of 'LLM training' to include multilevel data protection objectives;
- Enhance copyright protection including web scraping from unauthorised use in LLM training;
- Introduce economic reward sharing — data dividends — between LLM providers and copyright holders in a bespoke 'Fair Use' regime;
- Compulsory de-training or destruction of LLMs as penalties for material breaches;
- Strengthen common law fiduciary protections by insertion in the AI statute of a 'best interest' test to protect vulnerable consumer demographics of AI technology products and services;
- Introduce a digital duty of care strict liability legislative model;
- Investigate whether present financial services laws for the protection of financial consumers of complex financial services and products can be emulated in a similarly complex, permanent and ubiquitous ecosystem;
- Investigate whether the present wholesale and financial consumer investor protections legislative model could be applied to AI sales and usage;
- Review consumer and defendant requirements for informed consent where AI is deployed in their usage or in litigation and ADR;
- Investigate whether present vicarious liability law can be extended to non-persons under the control of humans, this to emulate a reasonable steps defence;
- Mandate usage warnings on all chatbots including seeking independent expert advice for vulnerable demographics;
- Assist legal liability determinations by mandating transparency standards as a tool to determine to whom AI products can be sold;

²²⁸ See also the International Network for Advanced AI Measurement, Evaluation and Science: 'Australia meets with global partners on AI evaluation and measurement', *Department of Industry, Science and Resources* (Web Page, 19 December 2025) <<http://www.industry.gov.au/news/australia-meets-global-partners-ai-evaluation-and-measurement>>.

²²⁹ Noah Yim, 'Labor to launch AI Safety Institute', *The Australian* (Sydney, 25 November, 2025).

²³⁰ National Artificial Intelligence Centre, *Voluntary AI Safety Standard* <<http://www.industry.gov.au/publications/voluntary-ai-standard/10-guardrails>> (2 December 2025).

²³¹ See, eg, David A Zetoon, Reena R Bajowala and Elizabeth Harding, 'Artificial Intelligence and Data Privacy: Current Laws and Regulations in the United States and the European Union' (Webinar, myLawCLE, 12 February 2025).

²³² See, eg, Communications Office of the Attorney General State of Florida, 'Attorney General James Uthmeier launches criminal investigation into OpenAI, ChatGPT' (Media Release, 21 April 2026).

- Review and amend ss 180(2), 189(b)–(c), 190, 198D, 201B(1) and 9AC(b)(ii) of the *Corporations Act* for their legal veracity where AI is part of enterprise decision processes;²³³
- Establish regulatory policy for the mandatory or discretionary use of AI to ensure director protections in s 180(2) of the *Corporations Act* and guidance for Counsel in the Uniform Rules.

2 *Regulatory Reform* —

- Implement a bias and factual data and outcome regime policed by an independent certification authority (eg AAISI, if its mandate is reformed);
- Introduce lawyer and barrister mandatory certification disclosing deployment of AI and the extent of professional human supervision;
- Regulation of DLA deployment with certification procedures to enforce disclosure of fact and opinion, truth and falsity, and the extent of skilled human supervision;
- Reform insurance regulation to include modern enterprise and professional needs in warranties, data protection, and technological deficiencies outside the direct control of their users;
- Introduce regulatory reform to permit and certify bespoke small claims AI-assisted ADR;
- Introduce certified AI benchmarking methodologies including disclosure of open/closed-weight data to improve interpretability of LLMs;
- Introduce regulation to govern and restrict the use of ‘black box’ LLMs;
- Review existing benchmarking standards which apply in other jurisdictions, and which should apply to legal design in Australia;
- Require a chatbot warning notice including disclosure of chatbot use, geographic location and digital identification;
- Limit AI Agent deployment to their specific contractual statistically assured domain and require human supervision of their usage;
- Adapt risk management strategies from other complex environments using ‘defence in depth’ strategies;
- Include an AI accreditation requirement in the ASX Listing Rules;
- Review the Expert Witness system requiring disclosure of the usage of AI in evidence.

3 *Education, training and regulatory supervision* —

- Radically strengthen and broaden the role of and properly fund the AAISI;
- Provide the AAISI with AI audit powers once its mandate is reformed;
- Require the AAISA to provide enterprise level AI training via stakeholder delivery partners;
- Emulate and tailor the Canadian Self-Regulatory Organisation (‘SRO’) model using existing stakeholders in the Australian AI context;²³⁴
- AAISA to provide regulatory capaciousness by emulation of the Canadian Client Relationship Model (‘CRM’);²³⁵
- Prepare law faculty students for AGI and enhanced roles in enterprise governance by elective studies in Legal Linguistics and Legal Linguistics Engineering;
- Prepare law faculty students for Digital Readiness by enhanced instruction in plain language writing and usage;
- Enhance law faculty training in legal veracity methodologies where AI is deployed for and by their legal stakeholders;
- Provide law faculty fine-tuning training to allow students and micro-credential enrollees to distinguish between LLMs which best suit their contextual needs, particularly where used in client-confidential circumstances;
- Prepare and deliver a course on AI adversarial training to improve user safety;
- Mandate periodic board reviews of directors’ duties where AI is used in board documents and decision making as espoused by Justice Lee;²³⁶

²³³ See especially Bell, ‘Corporate Responsibility and Directors’ Duties in the Era of AI’ (n 34).

²³⁴ Millhouse, *Corporate Governance in Non-Bank Financial Entities* (n 89) 250 [6.32], 338 [7.33], 339 [7.36].

²³⁵ *Ibid* 294 [6.148].

²³⁶ *Star Casino corporate governance case* (n 225) 1945 (Lee J).

- Encourage broad director and trustee AI training for listed and unlisted entities as a mandatory component of Continuing Professional Development and micro-credential accreditation.

VIII CONCLUSION

The confluence of the four research themes in this paper demonstrates a future replete with hitherto unknown legal risks. These themes are interrelated — it is the deployment of AI technologies that enables intelligent enterprises, but legal veracity requires the conjoining of AI technology and legal linguistics. This results in tensions between existing contextual law and its application using new orchestration platforms. The consequence opens the pathway to AGI required in the application of AI in the law.

The pervasive nature of AI results in all enterprises becoming data organisations requiring data collection, protection, processing and knowledge dissemination. This pervasiveness generates additional legal risks. It affects all legal and compliance needs and processes across all facets of every enterprise, particularly as in-house orchestration platforms become widespread.

This pervasiveness is not limited to the automation of present processes and procedures — andromorphic adoption will lead to explosive growth in AI Agents by present demographic groups, but in addition, the recruitment of large new additional groups as part of evolving AI global democratisation.

It is too early to definitively predict how generative AI will affect the law and the legal profession. How much of the hype will come to pass, and whether the effects of AI will be revolutionary or evolutionary is not yet obvious. ‘Although the extent of those changes may not be fully evident today, early glimpses show the potential for structural disruption is real and likely to be far-reaching.’²³⁷

The immediate future lies with AI Agents deployed to meet real-world needs using auditable orchestration platforms operating in private, not public mode. Although debate has focused on whether AI technologies are ‘intelligent’—and they presently are not—the essential insight is that enterprises deploying AI tools can act intelligently. This insight should govern both the deployment of AI within enterprise-governance frameworks and the redesign and automation of enterprise workflows.

But the over-arching statutory framework is missing. Statutory intervention needs to be capacious, result in a flexible regulatory regime, led by an informed regulator, and delivered through organisations representing key stakeholders and their economic needs in a rapidly evolving technology environment. Technology may be revolutionary, but its application is evolutionary.

The challenges for lawyers are manifest: convert data into information into contestable knowledge, and deploy that knowledge strategically and intelligently throughout every enterprise. ‘AI’s novelty does not mean that its use is not subject to longstanding legal principles.’²³⁸ But it will require the adaption of existing contextual law.

It would be trite to forecast epochal change, but to emulate Sir Winston Churchill, the journey to AGI is at ‘the end of the beginning’.

²³⁷ Fong (n 29). See also J Mandal and M Ma, ‘Building for Production: A Revised Playbook for Enterprise-Ready Generative AI Solutions’ (Working Paper, Legal Innovation Through Frontier Technology Lab and Centre for Legal Informatics, Stanford Law School, August 2025).

²³⁸ Heppner (n 33) 12.