



Law Institute of Victoria 'Essential Briefing on the State of the Profession'

Address of the Hon. Chief Justice Ferguson

Thursday, 3 March 2022

- Good afternoon.
- I would like to acknowledge and pay respect to the Traditional Owners and Custodians of the Lands from which we join today. I pay my respects to those Elders, knowledge holders and leaders – past and present.
- I also acknowledge the Attorney-General, Legal Services Commissioner and other speakers.
- Thank you to the Law Institute of Victoria for bringing us together for the first briefing since 2020.
- Given what has happened since then, it's important to pause, take stock, and focus on the lessons we can take with us for the future.
- I'll start by thanking lawyers for what you've done over the last two years.
- Throughout the pandemic, you have continued to support the community and the work of the courts by transforming how you work.
- Your determination to change so you could get the work done has been remarkable.
- It's all the more impressive because, for many of you, it came at a time of great personal and professional difficulty.

- Working remotely, not having the same connections with colleagues, providing support to family including home schooling and childcare, put a significant strain on many lawyers.
- The high standards that practitioners set for themselves were tested. These difficulties affected all legal practices – both transactional and litigation practices.
- Many working in smaller suburban or regional firms were coping with great uncertainty and isolation without necessarily having the immediate support they needed. Equally, there were significant challenges for practitioners from national firms who worked across state or international borders or who were dealing with multiple jurisdictions with different COVID restrictions.
- Thank you for continuing your work for the benefit of the justice system and the community. Victoria's courts could not have continued to operate without you.
- Some of the more difficult issues that we faced over the past two years are thankfully easing. But there are still things we need to carefully consider as we move to the next phase.
- In December, the Supreme Court was planning to start this year with more in-person hearings. The arrival of the Omicron variant saw those arrangements placed on hold. We prioritised criminal jury trials but otherwise reverted to remote hearings as the default for most other matters.
- The improving conditions have seen the removal of the working from home recommendation and the relaxation of other measures. As a result, I'm pleased to say that we are resuming more in-person hearings.
- We continue to manage the logistics of providing a safe environment for more onsite presence with the aim of achieving the right balance between remote, in-person and hybrid hearings.
- This means we are taking a staged approach, and gradually increasing the number of in-person hearings over the coming weeks.
- As we move into this next phase, I think it is also important to reflect on the huge shift in technology in our courts.

- It has made it easier for some people in the suburbs, regional Victoria and interstate, or those with greater accessibility needs, to participate in hearings.
- It has been more efficient and effective for some types of hearing.
- Through streaming, more people than ever now have access to the work of the courts.
- These positive developments should not be overlooked. We should not snap back to how we worked in 2019.
- With the benefit of our experience over the past two years, some remote and hybrid hearings will have an ongoing role in the courts.
- We have heard from the profession about where it works well and where it doesn't. We intend to maximise the use of technology where it delivers a better and more effective outcome for court users. We will continue to engage with the profession as we leverage our use of technology.
- For all we have been able to achieve through the pandemic, the courts are acutely conscious of the backlogs in particular areas and the impact that delay has for people.
- The courts have put in place strategies to tackle this. Resources and technology are being directed to the areas of greatest need.
- Case management is being deployed to increase the rate of early resolutions or to narrow the issues in dispute. In all of this we rely on the support of the profession, your cooperation with each other and your ideas for better ways of working.
- That brings me to an update about another important part of our work at the Supreme Court.
- I understand how important admission ceremonies are to new lawyers and their families and the lasting effect they can have as practitioners progress through their careers.

- I am very pleased to confirm that our Court plans to resume in-person admission ceremonies, with dates scheduled from next month onwards. As always, these events are subject to health advice.
- But at this stage, I am optimistic that soon we will return to welcoming new lawyers to the profession in our Banco Court.
- For the 4,226 lawyers who were admitted on the papers throughout the pandemic, congratulations once again. As I've said in my video messages to them, it may not have been the way they envisaged their entry into the legal profession, but their admission is just as significant and important as ever.
- For those of you who are at the start of your legal career, the landscape has altered dramatically.
- We've had two years where new practitioners have entered the profession with experiences that are different to a pre-pandemic experience. Some of that has been to their advantage. Established lawyers have had to adapt their skills in the online environment, but these platforms will be second nature for many new lawyers and, as I have said, I see online hearings having a continuing role in our courts.
- There is no doubt though that starting a career in a pandemic has its drawbacks.
- It is important that we pay extra attention to mentoring new members of the profession and implementing measures to foster collegiality and 'on the job' learning.
- I would encourage firms to ensure new lawyers have an opportunity to develop and hone court craft skills, court etiquette, and the nuances of in-court advocacy.
- We must also support lawyers who are faced with ethical issues and encourage junior lawyers to seek advice from more experienced practitioners.
- I commend the Law Institute for its work in this area. The future of the profession very much depends upon development and retention of our young lawyers.
- That brings me to two issues that are extremely important to me – wellbeing, and building safe and respectful workplaces.

- Wellbeing is a priority for me. This means the wellbeing of court users, practitioners, staff, and the judiciary.
- In my experience, as lawyers we thrive when we're engaged with our work, with our colleagues and with issues we're passionate about.
- Research shows that a major cause of stress for lawyers is incivility and, in its extreme form, bullying.
- A culture of incivility is proven to deplete energy and motivation, increase burnout, and inflict emotional and physiological damage.
- Robust and vigorous legal debate and adversarial exchanges are common for lawyers, but we must always be mindful that there is no excuse for incivility.
- We must treat people with respect and dignity. Treat others as you would have them treat you.
- Judicial officers must do this as well. The matters we deal with are serious and they have great consequences for people's lives.
- Treating all people in a court environment respectfully not only makes it a better place to work, it enhances the confidence of the community in the courts.
- The Judicial College offers sessions for the judiciary to help them work on their court leadership skills and reflect on judicial conduct. We set high standards for ourselves and there are formal and informal processes in place for raising concerns about judicial conduct.
- However, this is only part of ensuring the respectful environment we want to foster. It is critical that leaders in legal practice are role models for these standards of professionalism too.
- You may have seen a statement that I made recently about the behaviour of a former Supreme Court judge. An independent investigation found that two former Associates were sexually harassed.
- I want to reiterate here today that this behaviour should never have happened and that I am very sorry that it did. Every person who works or comes into our

Court should feel safe. They must be able to feel they are respected and can trust everyone in their workplace.

- We know how hard it is to make a complaint, but we encourage people to speak up when they experience or witness inappropriate behaviour. We will investigate any complaints, past or present. Anyone who reports sexual harassment, bullying or discrimination will be supported and treated fairly.
- The responsibility to change culture lies with us. Once again, this is an area where the Law Institute and the broader legal profession are demonstrating leadership and tangible action. I am grateful for that.
- I try not to stand still and look backwards.
- Ultimately, my hope is that we take the lessons from the last two years into the future, and apply them in ways that will benefit litigants, victims, practitioners, and the administration of justice.
- These last two years have left us all well prepared to deal with whatever comes next.
- I would like to thank Tania Wolff, her predecessor Sam Pandya, Adam Awty and the entire LIV team for their dedication and hard work in the face of unprecedented change.
- Finally, I extend my deep appreciation to you, our hard working and committed lawyers; thank you for your continuing efforts in the critical role you play assisting the courts to fulfil their function in serving the community.
- Thank you.

**The Hon. Chief Justice Anne Ferguson
Chief Justice, Supreme Court of Victoria
3 March 2022**