



**2022 Australian Bar Association (ABA) Conference
State Library of Victoria
Address of the Hon. Chief Justice Ferguson
Friday, 29 April 2022**

Good morning.

I would like to begin by acknowledging and paying respect to the Traditional Owners and Custodians of the land on which we are gathered, and the lands on which those joining remotely are located. I pay my respect to ancestors of this country past and present. I extend that respect to any Aboriginal people or Torres Strait Islanders here today.

I also acknowledge Justices of the High Court; Chief Justices and judges from around the country; Dr Matt Collins QC, President of the Australian Bar Association and members of the Council of the ABA; distinguished guests and speakers, and members of the Australian Bar.

And finally I thank Róisín Annesley QC, the President of the Victorian Bar for that warm introduction.

Welcome to Melbourne.

It is a great pleasure to join you here today, in the magnificent State Library of Victoria.

I want to start by thanking Dr Collins and the ABA for choosing Melbourne to host this conference.

I am very grateful to the ABA for supporting our state and city now that restrictions have eased.

When the pandemic struck in March 2020 and lockdowns were implemented, the work of the courts around many parts of the country changed almost overnight.

For example, on some days, not a single judicial officer, lawyer or litigant set foot in the Supreme Court of Victoria.

Despite this, we were as busy as ever and the Daily List was full.

There was a collective commitment to doing everything we could to continue to serve the community.

There is a perception of judges and lawyers as being wedded to paper and tradition. That perception was largely outdated before the pandemic. Even for those on our bench who were less technologically skilled, when faced with the prospect of either not hearing cases at all or hearing them remotely, there was no hesitation to take the digital path.

I know this abrupt change brought significant personal and professional difficulties for many of you.

Working and appearing remotely, negotiating new technology, not having the same connections with colleagues, not having events like this to attend, providing support to family and with some types of work evaporating – it all put a significant strain on barristers. Even for those fortunate to have work, there was the unfamiliarity of the online court environment - of not being on your feet, in your robes, hands on lectern addressing the court or examining a witness. Many felt the loss of familiar cues.

But you adapted. You knew that your effectiveness as an advocate lay in your legal knowledge and skill and that remained – so long as you remembered, of course, to take yourself off mute.

History has shown that after times of great upheaval there can be nostalgia for the past and a desire to revert.

Progress comes from holding on to the positive change that comes from difficult times.

And there have been positives. We have found better ways of working together and serving the community.

My message to you today is simple: let's not snap back to March 2020. We need to have a discussion to bring together the best of the lessons learned through the pandemic and the best of what preceded it. That discussion began yesterday with the insights from Justice Gageler, Chief Justice Allsop and Professor Susskind. Almost all that was said resonated with me and aligned with my thinking. I want to keep the discussion going today and encourage you to do the same.

If anything, the pandemic has taught me that people's experiences have been very individual, with a wide range of views and practice. None of us should think that our experience is universal – it isn't.

We need to listen to, and learn from, the varied experiences.

Let's stop and think about what we can leave behind, what we can keep and how we can improve.

As Dr Collins put it in his conference handbook, there are many conversations to be had, and few are straightforward.

But don't lose sight of this opportunity to have a robust (always respectful) continuing discussion about what comes next. Don't lose the opportunity to be a part of shaping the way we do things for the better in the future. You have a tangible opportunity to help forge an Australian Bar tailored to serve the needs of a technologically savvy and technologically dependent community. Don't miss that opportunity.

Don't lose sight of the best that the recent past gave us.

One example is the increased flexibility about where you work.

Not being in a physical courtroom or workplace means you can operate from anywhere. The time that would be spent getting to and from work, to and from court, or waiting at court can be better spent. Whether on more productive work or time with family and friends or other interests.

The accelerated developments in technology have also made it far easier for people from suburban and regional areas, interstate or overseas to participate in hearings whether as lawyers, parties or witnesses.

There are benefits for lawyers, but more importantly there are benefits for your clients and the community. Reducing the costs of litigation and improving the efficiency and effectiveness of court processes improves access to justice. When it comes to our processes, practice and manner of presentation, the community expects the courts and the Bar to keep up with contemporary methods (if not be ahead of the game).

The barristers who will be in demand are those who are focused on and well placed to serve the needs of their clients in this new environment. That means being equally skilled in both in person and remote hearings and actively looking to reduce costs through the use of technology. As a Court we are working to retain and refine processes that improve the experience of the court user and the effectiveness and efficiency of the system. We are not looking to snap back, we are looking to move forward and do better with what we have learnt.

Greater public access

In our experience, live-streaming has also given more people greater access than ever before to the work of the courts.

Since the onset of the pandemic, the public live stream pages that were created for the Court's website have had around 150,000 unique visits.

For example, at its peak, the live stream of a nine-day civil trial and directions hearing had over 5,000 unique observers, with 150 to 250 people regularly watching at any given point.

To put those figures into perspective, on this day three years ago, 669 people, including the profession and the public, passed through our physical security entrances.

I know there are mixed views about the impact of live streaming.

But something that sometimes gets lost in the discussion is that public attention has long been part of the work of the courts. In high profile cases in the past, public galleries were full but their capacity was limited. Pressure came from being watched by a packed courtroom with journalists there to publish what happened. Now more than ever people are seeking direct access to information and the physical constraints of a building no longer determine how many can have that access.

We haven't seen this scale of direct interest for many years.

With the benefit of our experience over the past two years, some remote and hybrid hearings with streaming will have an ongoing role in the courts.

There will be a session here about the implications of live streaming for judges, advocates and the administration of justice.

Like so many others today, that's a discussion worth having.

Before I conclude, I want to say something about an issue I feel strongly about.

Wellbeing is vital for a healthy, well-functioning and sustainable profession.

After more than two years of a pandemic, prioritising our wellbeing is more important than ever.

Wellbeing is affected by how we are treated. It is the responsibility of each of us (the judiciary included) to treat people decently; treat everyone with respect and dignity; do not be rude.

I emphasise again today that we will continue to work to ensure the courts – your workplaces – are safe, respectful and inclusive for all. You can do the same.

Wellbeing is also influenced by whether we are able to develop and learn in a supportive environment. For example, the pandemic hit the junior bar at the start of their careers. That was touched on yesterday. Now is the time for experienced members of the Bar to go out of their way to make connections with newer members. On top of the natural mentor role that comes with having readers, I urge every senior member of the Bar to identify an additional three or four juniors to nurture and

counsel. It does not need to be as intense as the mentoring relationship with a reader, but the time you devote to each additional less experienced barrister will see a stronger, more skilled and well-rounded Bar develop. You will be making a significant contribution to the overall wellbeing of the Bar and to its overall success.

In conclusion, despite the complexities ahead, I am very confident that there is reason for real optimism.

The Australian Bar has worked extremely hard and with great skill and adaptability in the face of uncertainty.

You have done so from your own practice, in separate jurisdictions, in different states and territories.

This conference will offer invaluable insights into how you emerge from the pandemic. It is a chance to listen and discuss these issues on a national scale. I urge you to remember that there is no one person who knows everything; there is no one person who has all the good ideas; there is always more than one way to successfully do most things. Be open to the possibilities.

I congratulate the ABA on its excellent and varied program.

I hope you all take something away from this unique opportunity to help shape your future.

Thank you.

The Hon. Chief Justice Anne Ferguson
Chief Justice, Supreme Court of Victoria
29 April 2022