



“The Way Forward: Placing Innovative Ideas into Practice”

Technology, Innovation and Change in the Supreme Court of Victoria

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Introduction

1. Good morning. I would like to acknowledge the traditional owners of the land on which we are meeting – the Wurrundjeri people. I pay my respects to their Elders, past and present.
2. I also thank the Law Institute of Victoria and the organisers of the Future Focus Forum for inviting me to be here today.
3. The subject matter of the Forum is substantial and timely. Much has been said about technology and change in the legal profession in the last few years. Barely a week passes without another report or article about digital disruption and the challenges and opportunities posed by new technologies. In a report published earlier this year, the Law Society of New South Wales referred to there being a "tidal wave of innovation and change washing through the legal profession".¹ Automation, artificial intelligence, the rise of social media, big data, cloud computing, encrypted digital currency, blockchains and smart contracts are but a few of the

¹ The Law Society of New South Wales Commission of Inquiry *"The Future of Law and Innovation in the Profession"* (2017) ("**FLIP Report**")



recent trends in innovation and technology. No member of the legal profession is oblivious to, or immune from, the impacts of rapidly changing technology upon the legal landscape. Nor are the Courts. We are in this together.

4. The Courts, as the third arm of Government, have long been considered to be a bulwark of legal tradition. But recent years have seen the Courts surge forward in their embrace of technology in the delivery of more efficient practices and processes. It might be said that the Courts were starting from a low base. But coming from a position where there has been little investment in technology and innovation for decades will often mean that the potential for efficiency gains is far more pronounced.
5. The journey of innovative change within the Supreme Court has been set within a coherent framework of values including: accessibility; transparency; competence; timeliness and equality before the law. All of these values can be found in the *International Framework for Court Excellence*, which the Supreme Court has adopted and which underpins how we deliver access to justice and the rule of law. The journey of change has also required an agile model of project planning and delivery, a strong governance structure, a willingness to do more with less and a culture of continuous improvement.
6. I will be talking this morning about two case studies involving innovative change in the Supreme Court of Victoria. One concerns the Court's Digital Strategy; an ambitious and critically essential five year plan for the digital transformation of the Court's processes and services. The other relates to reforms in the Commercial Court and the tangible benefits they have delivered. Hopefully, these examples will have some relevance to the work you will be undertaking today in planning for further innovation and change in the legal sector more generally.



Commercial Court reforms

7. As noted in the Law Institute of Victoria report prepared by Katie Miller on "*Disruption, Innovation and Change*", successful innovation and change means understanding the needs of clients² (and, in the case of the Court, its users). It also means being prepared to re-examine long-standing processes and to identify ways of improving their component parts³.
8. To examine these propositions further, I would like to draw on a project I have been personally involved in; the reforms which have recently taken place in the Commercial Court.
9. The Supreme Court of Victoria has an extensive history of accommodating the particular needs of the business community in the management and hearing of commercial cases. This is because the Court has long recognised that certainty, predictability and timeliness are the lifeblood of commerce. And increasingly, commercial litigants and their lawyers have come to demand expedition and commerciality in decision-making.
10. In addition, a few years ago the Court experienced:
 - a surge in commercial proceedings;
 - an increase in the *complexity* of cases. For example, we witnessed the emergence of mega-litigation, including an increase in group proceedings; and

² The Law Institute of Victoria report on "*Disruption, Innovation and Change: The Future of the Legal Profession*" prepared by Katie Miller (2015) ("**the Miller Report**"), pp3, 16.

³ Ibid, pp3, 10.



- a corresponding increase in trial times. Over a number of years, the average length of commercial trials effectively doubled.

11. In effect, growth had exceeded capacity.

12. Doing nothing was not an option. It would have resulted in ever increasing delays and a reduction in the quality of outcomes delivered by the Court.

13. So, from 1 September 2014, the Supreme Court embarked on a series of incremental and important reforms in its commercial jurisdiction. The objectives of the reforms were to enhance service delivery and to manage commercial matters more effectively and efficiently.

14. Time doesn't permit me to go through the Commercial Court reforms in great detail. But the key elements of the reforms were as follows:

- There was a targeted allocation of proceedings to lists managed by Judges with extensive specialist and commercial law experience;
- Commercial cases were actively Judge-managed;
- A streamlined process for the resolution of shareholder oppression proceedings was implemented;
- A Duty Judge System was introduced for the determination of urgent applications in commercial matters;



- A Judicial Registrar was appointed to oversee a newly established specialist Commercial Court Registry; and
- Technology became instrumental in the administration of cases.

Evaluation of Commercial Court reforms

15. Earlier in the year we decided to evaluate the effectiveness of the reforms. It was important to understand if they had actually delivered tangible benefits to Court users or whether we needed to adjust our strategy. We collected data for a period of time *prior* to the commencement of the reforms on 1 September 2014 and for a period of time *following* the reforms. The timeframe of the two data sets was identical (around two and a half years for each period).

16. What the data revealed has been very pleasing. These are some of the key findings:

- Despite there being no additional Judges in the post-reform period and a 65% increase in Judge-managed initiations, finalisations increased by an impressive 50%; and
- In Judge-managed lists, the time from initiation to trial decreased from 17 months to approximately eight months.

17. At the same time, the review identified some future challenges for the Commercial Court. These include an ongoing trend towards longer and more complex trials and an increase in pending matters.

18. Confronting and responding to these challenges will invariably require the introduction of new innovative practices and a willingness constantly re-evaluate and shift focus where necessary.



Supreme Court Digital Strategy

19. I would like to now turn to the exciting and transformational change which is underway within the broader Supreme Court as a result of our Digital Strategy.

20. The Supreme Court commenced work on the Digital Strategy over two years ago. The aim was to use technology and innovation to deliver higher quality services to all Court users. However, this did not mean indiscriminately dropping a large box of technology into the Court.

21. The development of the Strategy involved the creation of a Steering Committee (of which I am a part) who would provide feedback to the project team, communicate with the rest of the Court and authorise the undertaking of important work within a limited fiscal envelope. In other words, sound governance was key.

22. The Committee started by documenting the various deficiencies in the Court's technology and infrastructure. Challenges and opportunities were grouped and prioritised. Overarching goals and principles were articulated. Best practice was considered in other jurisdictions. The needs and expectations of our users were paramount. Security of data was sacrosanct. And an implementation plan was developed with a clear roadmap and project milestones.

23. The resulting Digital Strategy has enabled the Court to engage in a systemic process of change which is both realistic and coherent. This is not the use of technology for technology's sake. But the use of technology as an *enabler* of innovation. Digital transformation with the stated aim of delivering more effective, efficient and affordable access to justice.



24. The Supreme Court's journey of digital transformation has involved many discrete but intersecting paths. Each separate initiative and project is important in its own right but, when taken together, make the change all the more profound and exciting. I would like to briefly note a few of the key projects that fall within the Court's broader Digital Strategy.

E-filing

25. From 1 August 2014, e-filing began to be used for new matters commenced in most Judge-managed lists within the Commercial Court. It now forms one of the key pillars of the Court's Digital Strategy.

26. The e-filing platform also comprises an electronic Court file, case administration and an ability to process payments. Users can file and access documents 24 hours a day, 7 days a week from anywhere in the world.

27. There have been three significant upgrades to the e-filing platform since its rollout. Each has followed important feedback from Court users. Specifically, we asked our users what they liked and didn't like about the service.

28. The most recent update occurred around the same time the Court also upgraded its legacy case management system. The e-filing platform is now directly integrated with the Court's case-management system. This, in turn, creates efficiencies in the administration of cases. For example, key metadata relating to a file can be automatically pushed to the case management system without a manual clerical process. But the upgrade has also enabled the Court to re-examine and re-imagine how Judges can access and interact with the Court's electronic file.



The Judges' Portal

29. The Digital Strategy Project Team used the Court's existing IT systems to create a Judge-centric view of the electronic file within our document management environment. We call this the "Judges' Portal". The Judges' Portal is currently available to Commercial Court judicial officers and can be used both in chambers and on the bench. It takes its visual and design cues from a traditional paper file and includes all of the court documents, conveniently indexed and tabulated. In addition, the Judge's Portal pulls data from the case management system to allow the judicial officer to view critical information about the case, to use his/her judicial calendar and to work on judgments in a secure environment.

30. This innovation would not have been possible without the foundational work devoted to upgrading the Court's e-filing platform and case management system. In other words, innovation can breed innovation.

31. It is expected that e-filing and the Judges' Portal will be progressively deployed across the whole Supreme Court as funding becomes available. At the same time, existing manual practices and procedures will be mapped and reviewed to identify smarter and more efficient ways of conducting the business of the Court. Not simply replicating long-standing analogue processes in a digital environment.

Courtroom technology upgrade

32. Another important element of the Court's Digital Strategy relates to the in-court experience of the parties and the Judge.



33. To date, it is only mega-litigation that has been the subject of electronic trials within the Supreme Court. These have been facilitated by specialist external providers. The vendors have supplied the entire technology solution and have been responsible for setting-up, operating and later removing their own hardware.
34. The Supreme Court's courtroom technology project means that all physical courtrooms should have the necessary equipment to facilitate the electronic trial of any matter by 2020. Not simply mega-litigation.
35. Practically speaking, it is expected that the upgrade will facilitate remote testimony from vulnerable witnesses and those outside the jurisdiction, reduce movement and transportation costs associated with accused persons who need to give evidence in court, and enable the digital display of evidence in the courtroom and the better use of electronic court books. Parties will be able to bring their own devices and utilise our secure wi-fi network. E-trial providers will also be able to set up and pack up more quickly. In addition, there will be more efficient links to transcription providers and the live streaming and web casting of proceedings.
36. All of this means investing in hardware which is fit for purpose, capable of integrating with the Supreme Court's systems and which can be utilised by external providers. We will be approaching the market with no fixed assumptions about what it can offer by way of technology. The pace of change means that whatever investment is made, it should, as much as possible, be future-proofed.
37. Critically, this upgrade delivers greater access to technology for a broader array of Court users. And because an electronic trial can potentially be shorter than a conventional one, there can be a resulting saving in time and cost.



38. More than anything, I think this aspect of the Digital Strategy epitomises the idea that sometimes innovation means working better with what you have. Even heritage Courts can be retrofitted to accommodate cutting edge technology and hardware. We are determined that our 19th century built environment should not be an impediment to a 21st electronic trial.

Technology in Civil Litigation Practice Note

39. These important upgrades have allowed the Court to set a new benchmark for the use of technology in the conduct of proceedings. The benchmark is particularly apparent in the Court's new *Technology in Civil Litigation Practice Note SC Gen 5* which commenced operation on 30 January 2017.

40. The Practice Note covers the use of electronic filing, discovery of documents between the parties (including the use of Technology Assisted Review), and e-trials.

41. The Practice Note does not mandate how or what technology should be used in a particular case. In this way, it is "technologically agnostic". It doesn't insist on a "one-size fits all" approach but instead is flexible enough to be used in cases of varying size and complexity. It does this by detailing the facilities the Court can provide and outlining protocols which may be used by the parties.

42. There are a number of important presumptions found in the Practice Note. For example, dealing in hardcopy documents is to become the exception rather than the rule. And there is an expectation that parties engage with each other and the Court at a very early stage about the most efficient deployment of technology. This not only reduces cost but also makes the conduct of the case easier and more efficient for both the parties and the Court.



43. Recently, the Court has been applying the Practice Note to the running of e-trials for smaller matters which don't necessitate the engagement of a third-party e-trial provider⁴. In effect, the Court has run these e-trials in-house. To the best of my knowledge, no other superior Courts around the world are currently doing this. It is the next logical step in establishing an end-to-end paperless Court.

Change management

44. Change is not always easy. As noted in the Miller Report, we recognise that change something that is learned and developed with experience and time⁵.

45. This brings me to another important element of the Supreme Court's Digital Strategy. The first phase of the Strategy has largely involved foundational work. Upgrading legacy systems. Remediating aging infrastructure. The next critical phase of the Court's digital transformation involves change management. This means preparing our people for new technologies and processes. We are trying to engender a culture of continuous improvement.

46. And our greatest chance at innovation is our people. People who are adaptable to change, have a natural curiosity, a willingness to learn and an understanding of the bigger picture within the Court and the justice system. People with digital and analytical skills who routinely engage with

⁴ In a number of matters in the Common Law Division, the electronic Court Book has been compiled in fully text-searchable PDF format with a hyperlink index to documents. The Court has supplied the hardware to enable the Court and witnesses to access copies of the electronic Court Book. The parties have also brought their own hardware to access, and if necessary, annotate their copies of the Court Book. The Judge's Associate has operated the Court Book and maintained a list of documents tendered during the trial so a supplementary volume of the Court Book can be compiled. In the future, the Court may train its Registry Officers to fulfil this role in some e-trials.

⁵ Miller Report, p 5.



modern IT infrastructure and applications. People who are prepared to help review and re-engineer business processes within the Court to find more efficient ways of doing things without compromising the quality of the ultimate outcome. The Court will continue to recruit and retain these type of people to ensure we have a strong and agile 21st century workforce.

Engagement with the community

47. Lastly, the Supreme Court's Digital Strategy identifies opportunities for the Court to better communicate with its users and the community at large. A modern Court must seek to explain to the public the nature of the work it performs. It must also be visible in delivering access to justice and the rule of law. As Chief Justice Ferguson noted in her recent swearing in, “we may have to put further thought into how we communicate – both as to the methods of communication and the language that we use.”⁶

48. Again, technology can help here. For example, the Court is currently rebuilding its website. We will use audience-based navigation to ensure each type of Court user (practitioners, self-represented litigants, students, members of the media, Court staff etc) will be directed to the information *most* relevant to them. Smart information architecture will allow users to navigate the *digital* corridors of the Court to find the information they require when they require it.

49. It may be that our website can act as a central hub for information relating to individual cases: e-filing for all cases; hearing details; the ability to access documents for practitioners associated

⁶ Remarks of the Hon. Anne Ferguson, Chief Justice of Victoria on the occasion of a Welcome sitting in the Banco Court, 12 October 2017



with the case; a platform for inspecting Court documents for the wider public; judgments and judgment summaries.

50. Timely and informative posts from the Supreme Court's various social media accounts and podcasts about topical decisions and changes to Court process can also link back to the website. In addition, the live streaming and on-demand web casting of matters will mean a greater visibility of court proceedings.

Looking forward

51. There are other opportunities presented by a seamless electronically enabled Court. We are not far away from being able to harness our case data in a way that allows us to better forecast trends and workload pressures and to deploy judicial and courtroom resources accordingly. We can also see on the near horizon a scenario where witnesses can give evidence remotely in a way that does not diminish the quality of their evidence or the immediacy of their presence in the Court room. And critically, we are on the cusp of creating a truly end-to-end paperless Court where matters are commenced electronically, managed electronically, heard electronically and archived electronically.

52. At the same time, the Court needs to continue to scan the landscape and to engage with the legal profession, technologists and policy makers to explore more cutting-edge possibilities and innovations. For example, could improvements in voice activated software allow transcript to become cheaper and more accessible for a broader array of Court users? Could online dispute resolution platforms be used to triage and organise parties for Court ordered mediation or even facilitate the start of negotiations? Is there scope for an online Courtroom for the determination of less complex applications outside of traditional Court hours? Is there a legitimate role for the



use of artificial intelligence to assist Judges in undertaking legal research and in sorting and analysing evidence? Could court orders be translated into encrypted code and made part of blockchains to facilitate compliance and enforcement? These are exciting questions for exciting times.

Conclusion

53. As we prepare for and embrace innovative change, Courts and the legal profession should first identify our important and non-negotiable values. Values like accessibility, transparency, competence, timeliness and equality before the law. We must also identify and understand the needs of our clients and users. And we need to remember that technology is not an end in itself. It is simply a driver of transformational change to achieve more efficient practices and processes.
54. Implementing innovative change sometimes means doing more with less. It requires a robust governance structure, and an organisational culture of continuous improvement where workplace leaders and staff are mutually invested in the process. It means pausing and assessing the impact of the change to see whether we are travelling in the right direction or need to alter our course.
55. And lastly, it involves an honest recognition that we cannot possibly anticipate every future challenge and opportunity we will face. But it is those future challenges and opportunities which demand further innovative ideas. This ensures both the Courts and the legal profession remain relevant and effective in providing access to justice and the rule of law.