The International Framework for Court Excellence

I don't know of any country in the world that doesn't have a judicial system – or at least any that doesn't claim to have one. We all may not share the same idea of what a judicial system is – but, I daresay, at least three features are universally recognised as attributes of one.

There are the courthouses, probably the most visible manifestation of a judicial system. Then, inside them, are the judges – industrious, diligent and sometimes highly visible in striking coloured robes. And, of course, there is the framework of laws. Justice is dispensed according to them. The laws are the least visible. These days you go to your screen to see them, be they in a statute or in a legal text. There they sit sombrely in black on a white background.

Mind you, sometimes very controversial laws are enacted. They can take on their own colour, metaphorically anyway. We've had a recent example of this in my state with amendments to dangerous prisoner legislation. They were meant to allow the executive government to by-pass court decisions that release dangerous prisoners from indefinite detention. Just a few weeks ago, our Court of Appeal declared the amendments to be constitutionally invalid. Far be it for me to suggest the particular hue that those amendments took on as a result.

Typically, we speak of the judiciary as the "third arm of government". Usually we do this in a context of reinforcing the independence of the judiciary from the legislative and executive arms of government. But the "third arm" expression also serves to remind us that the judicial system is an arm of government. It is an emanation of the state, provided by the state for those for whom the state exists–it is the level playing field where citizen and citizen or citizen and state can joust. They play out their disputes, all accepting the umpires call as final and binding.

A catch phrase of modern times is "accountable government". We expect our legislators and our executive to be accountable. For them, public demands of what is required to give account are quite intense and, at times, quite personalised. The media sees to that. Whether they always do that fairly is another matter.

A traditional view of how the judicial branch of government gives account of what it does is quite different. According to this view, account is sufficiently given by the publication of reasons for judgment. The reasons are to set out adequately the facts found and how the court applied the law to the facts to justify the orders made or sentence imposed. Now, that is as it should be for individual cases.

But decisions of judges are made within a judicial system. What of accountability of the system itself? Aren't those whom it serves entitled to ask these questions and others like them:

- Does the system have core values?
- It so, what are they? Why have they been selected?
- Does the system assess its performance against those values? How does it do that?
- Does the system use the assessment results to modify how it works?
- What checks are done to see that modifications bring about real improvements?

And if those are legitimate questions, who should be providing the answers?

In recent years, many who work in and around judicial systems throughout the world have come to regard questions such as these as legitimate. To answer them for a given system requires an effective systemic examination and appraisal of the functioning of the courts within that system. The answers are important in themselves for the information they provide particularly to those responsible for the functioning of the system. But, beyond that, comprehensive positive answers will offer more than accountability. They will give a factual and philosophical platform for enhanced public confidence in the courts that comprise the judicial system.

No less important are the benefits of the examination and appraisal process for individual courts within the system. For one, identifying and articulating core values informs the role of a particular court. They guide how it should operate. For another, achieving stellar ratings against selected benchmarks tell the story of an improved court. I could go on. Overall, those who engage with the court as litigants or jurors will be better served and, hopefully, the morale of those who work within it will be heightened.

This morning, I would like to introduce you to one approach that is being taken by courts around the world to become more effective, efficient and responsive.

The International Framework for Court Excellence was put together by an international consortium consisting of groups and organisations from Europe, Asia, Australia and the United States. It was originally launched in 2008. The goal of the consortium's effort has been the development of a framework of values, concepts and tools by which courts worldwide can voluntarily assess and improve the quality of justice and court administration they deliver, no matter whether the court is based in a developing country or an established democracy.

The heavy lifting in developing the framework document and promoting it has been done principally by the Australasian Institute of Judicial Administration (the AIJA) and the National Center for State Courts in the US with the involvement of the Subordinate Courts of Singapore and the Federal Judicial Center also in the States. The AIJA is an independent institute that draws its membership from all levels of the Australian and New Zealand judiciary, legal profession, court administrators, court librarians and legal academics. Its principal objectives are research and education, focusing on court administration and judicial systems. The National Center for State Courts provides counselling, training, research and evaluation to court systems throughout the United States and elsewhere. It acts as an information clearing house in relation to all areas of judicial administration.

I am particularly proud to say that the AIJA, of which I am a board member, has played a leading role in developing the framework document. This has been principally through the efforts of our Deputy President, Mr Laurie Glanfield AM, former head of the Attorney-Generals' Department in New South Wales, and Professor Greg Reinhardt, our executive director. The International Consortium for Court Excellence is about to establish a permanent secretariat. With the financial assistance of the National Center for State Courts, the secretariat will be housed in Melbourne at the AIJA under Professor Reinhardt's capable supervision.

Returning to the framework itself, may I say that an attraction of it is that it has been conceived for courts by courts. As a result, it is not a managerial system superimposed on judges. Rather, it is a model refined for consistency with the unique elements of judicial administration. Crucially, the principle of judicial independence is fundamental to it.

However, as the framework acknowledges, judicial independence cannot be employed as a code for lack of accountability or immunity from scrutiny. But, on the other side of the coin, accountability and scrutiny do not mean that systems and processes used elsewhere – for example, in business or in government administration – to scrutinise performance are seamlessly adaptable to the judicial system and its courts. They are not.

Systems and processes for courts must recognise that judicial independence is challenged fundamentally by externally-imposed "key performance indicators" that purport to measure judicial deliberation and judging by the profitability criteria of commerce or the efficiency dividend concept of administration. Generally speaking, business models are not suitable to judicial work. Judging is unique and occupies a particular and vital place within a functioning democracy.

A balance can be achieved by reference to a process of self-review and self-governance that uses tailor-made criteria and processes. These are ones in which the two arms of government that provide and approve the funding for a judicial system, and also the broader community, can have confidence. The international framework strikes the balance. It provides judges and court administrators with the tools for self-governance and accountability and, just as importantly, it provides a model through which a court can demonstrate self-governance. This benefit, in turn, strengthens a court's independence and boosts the case for a sustainable budget.

The framework also provides a "common language" by which courts in differing jurisdictions (and across international boundaries) can compare, contrast and work together to achieve this balance. Later, I will mention a range of countries where it has been used. You will be surprised, I think, at just how international it is.

That courts traditionally have a justifiable aversion to "managerialism", "corporatisation" and "bureaucracy" has been recognised by the consortium. Certainly, we were healthily sceptical of those types of "isms" so far as they might impact upon a framework like this. We ensured that the framework was built upon the values of the rule of law and that it recognises, as it must, the crucial function of courts as the independent third arm of government.

The framework provides a resource for assessing a court's performance against seven detailed areas which are, in the eyes of the consortium, necessary for a court to be truly excellent. It provides clear guidance for

courts intending to improve their performance and it provides a model methodology for continuous evaluation and improvement that is specifically designed for use by courts. It also builds upon a range of recognised organisational improvement principles while reflecting the special needs and issues that courts face.

The framework is documented. In paper form it now consists of some 34 pages of explanatory text and then five appendices. There's a self-assessment questionnaire, a sample template for an Improvement Plan and a set of performance measures. The fourth and fifth appendices are examples of court performance management policies and tools and, finally, a self-assessment checklist.

The Consortium recognises that there is a broad international agreement regarding the core values that the courts apply in carrying out their role. The key values to the successful functioning of the courts are:

- Equality before the law
- Fairness
- Impartiality
- Independence of decision-making
- Competence
- Integrity
- Transparency
- Accessibility
- Timeliness

and

- Certainty.

These core values guarantee due process and equal protection of the law to all those who have business before the courts. They also set the court culture for providing direction for all judges and staff for a proper functioning court.

Values such as fairness and impartiality set the standards by which courts conduct themselves. The values of independence and competence are primarily related to the ability of the judge to make decisions based solely on a thorough understanding of the applicable law and the facts of the case uninfluenced by external pressures or considerations. Integrity includes the transparency and propriety of the process, the decision, and the decision-maker. Justice must not only be done but be transparently seen to be done.

Accessibility incorporates the ease of gaining entry to the legal process (including reasonable filing fees and other costs, access to counsel and, if needed, an interpreter) and the use of court facilities effectively. The ability to obtain accurate, complete information about the judicial process and the results of individual cases is essential to accessibility. Timeliness reflects a balance between the time required to properly obtain, present, and weigh the evidence, law and arguments, on the one hand and unreasonable delay due to inefficient processes and insufficient resources, on the other.

No less important is the guarantee of certainty: that is, that a decision will, at some point, be considered "final" whether at first instance or through an appeal process.

The whole framework itself recognises that a journey towards court excellence is primarily a journey built upon a strong respect for and adherence to shared court values.

Unlike many existing initiatives employed by courts throughout the world to measure or improve specific areas of a court's activities or services, the framework takes a holistic approach to court performance. In other words, it represents a "whole of court" approach to achieving an excellent court rather than simply presenting a limited range of performance measures directed to limited aspects of court activity.

Historically, court performance measures have been devised by the money managers at Treasury. Although a broad understanding of key areas and standards for court performance does likely exist in government treasury circles, courts need more than a collection of disparate quality and quantitative performance measures which in and by themselves may be meaningless, or worse, misleading.

The absence of a court-specific framework (and the inadequacy of existing benchmarking and performance measurement systems at an international and national level) inspired the Consortium to develop this framework. It is the product of an international attempt to identify a process for achieving court excellence regardless of the location or size of the court or the resources or technology available to it. It is designed to apply to all courts and to be equally effective for sophisticated large urban courts and for smaller rural or remote courts. It includes courts which are striving to evolve in developing countries.

A court achieves the recommended holistic approach by working on seven "pillars". The holistic character of the framework is reflected in the wide range of separate, but interrelated, areas which these seven pillars together represent. They support a court in being truly excellent overall. These pillars are:

Pillar 1. Court leadership and management, recognising that inspiring leadership and proactive management in an organisation are crucial for court success and excellence. These are the drivers.

The next three pillars are about systems and enablers.

Pillar 2. Court planning and policies, advocating that an embedded practice of refining, implementing, and assessing court policies is essential for effective management and strong leadership.

Pillar 3. Court resources (human, material and financial), reflecting the truism that excellent courts manage all available resources properly, effectively and proactively.

Pillar 4. Court proceedings and process, embodying the principle that the quality of court proceedings depends upon the quality of court rules and procedures and of their application by the judges and the quality of court support (including technology).

The final three pillars are about results.

Pillar 5. Client needs and satisfaction, incorporating the important aspect that the "search for excellence" must take the needs and perceptions of court users into account.

Pillar 6. Affordable and accessible court services, recognising that excellent courts are affordable and accessible for all litigants.

Pillar 7. Public trust and confidence which is included because, in general, a high level of public trust and confidence in the judiciary is an indication of the successful operation of courts.

The framework provides a methodology in which these seven pillars or areas are examined cyclically. The core values guide the examination. Each cycle involves four fundamental activities. First, a self-assessment is undertaken – this is a health check of the court and involves analysis of performance across all of the seven areas for court excellence. Second, an in-depth analysis builds upon the self-assessment to determine the areas of the court's work which are flagged as capable of improvement. Third, an Improvement Plan is developed. It details the areas identified for improvement, the actions proposed to be taken and the results sought

to be achieved. Fourth, through a process of review and refinement, progress in implementing the Improvement Plan is monitored.

This four step process is substantially repeated when the court is ready to undertake a fresh self-assessment to determine its progress. It is recommended that courts should aim to do an annual self-assessment, but the timing is a matter for each court.

The self-assessment is done initially by questionnaire. The framework provides the questionnaire. For each of the seven "pillar" areas, between five and nine criteria are listed. Here are some examples. For court planning and policies, the first one is that the court has a strategic plan setting out its goals, targets and plans for improvement. For the court resources area, the second and third criteria are that the court has identified training needs of court staff and meets them, and that the court conducts regular professional development for judges and staff. And for the court proceedings and processes area, the second and third criteria are that the court has a system for actively managing its cases and looks for improved ways to resolve cases effectively, and that the court successfully balances the workloads of judges and court staff.

Mind you, the questionnaire in the appendix to the framework document is not one that must be slavishly followed. The framework itself envisages that criteria may be modified to suit the particular circumstances of the court in question.

Participants respond to the questionnaire individually. To respond to it, you are asked to select from six options how you rate your court's performance on each criterion. The options are on an ascending scale: none; reactive; defined; integrated; refined and innovative. None gets a score of zero and innovative, a score of five points. There is a rather detailed system for aggregating the individual responses from all participants to reach an overall single figure score. Once the self-assessment process is completed, an analysis of it is done with a view to developing the Improvement Plan. It is very much up to courts how they monitor implementation of the Improvement Plan. Naturally enough, on annual self-assessments you are looking for an upward trend in the overall score.

We have adopted the framework in the Supreme Court of Queensland. I will give you some brief personal impressions of it. The first is that the questionnaire is a healthy reality check. Be prepared for a thud, first time round. You might think your court is punching above weight but your

colleagues, and the senior court administrators, might think performance is decidedly below par in some areas. Scores for any given criterion can vary markedly. Next, when the questionnaire results have been collated, it is essential to a good in-depth analysis that the participants meet and discuss the results. This process gives good insight into why scores are as they are. Opinions on shortcomings and failures, as well as successes, are ventilated. In turn, the discussion highlights where the "crunch" areas are, and, hopefully, generates positive ideas on how to handle them. Thirdly, do not regard completing one cycle as all you need do. In our court, we have formed an IFCE Committee which continues to identify any problem areas, to suggest solutions for them and, importantly, to implement the Improvement Plan. There are six judges on the committee, including the chief justice, the president of the court of appeal and the senior judge administrator.

I need to stress that we involved several senior court administrators. Their participation and engagement is essential. They keep you conscious of the logistical opportunities and constraints within the system.

I must confess that our efforts are overshadowed by the achievements of the Supreme Court of Victoria in implementing the framework. It has established within the court a dedicated office staffed by several senior court officers who are engaged full-time in implementing the strategy. The Family Court of Australia is currently undertaking a very comprehensive "roll out" of the framework adapted to its jurisdiction.

The international framework was first given prominence at an Asian-Pacific courts conference in 2010. It was held in Singapore and 220 speakers and delegates from 56 countries attended. A second edition of the framework document was launched in March this year in Auckland. The District Court in New Zealand is now implementing the framework.

Recently, a shorter version of it for developing countries has been produced. I know personally that it was enthusiastically welcomed by many chief justices of the smaller south-west Pacific island nations at a seminar in Brisbane last November.

Well, just how extensive has the take-up of the framework been? Here are the facts. As at June 2013, the international framework for court excellence was being used in 42 jurisdictions and 21 different countries. I have mentioned two of them – Australia and New Zealand. The others include Abu Dhabi, Bangladesh, Dubai, Guam, Indonesia, Kazakhstan, Lebanon, Malaysia, Singapore and the United States. Right now, the

framework is being implemented in the Ukraine with over 200 judges responding to the questionnaire online.

By no means is the framework one that caters for one type of legal system to the exclusion of others. It is being used in civil law systems as well as common law systems to equally good effect.

To adopt a description sometimes applied to our federal Constitution, the international framework is indeed "a living document". Its sphere of influence is spreading; it, itself, is undergoing revision and adaptation. Importantly, it is an instrument for good. It produces positive improvements in courts. It is a pathway to excellence.

If you would like to know more about the framework, the place to go is its own website: www.courtexcellence.com. Or you could attend the AIJA conference on Timelines in court proceedings and process to be held in Melbourne from 16 to 17 May next.

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