The Pursuit of Excellence and Innovation in Courts and Tribunals

AIJA Conference

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The Revised Framework for Court Excellence[1]

Background:

The traditional challenge for courts and tribunals has been to maintain independence in decision-making while at the same time ensuring government and community confidence in the manner in which they carry out their role. Concepts of accountability, performance measurement and transparency have often been seen to conflict with the notion of independence in decision-making. There have been a variety of views on accountability and performance measurement expressed within the judiciary and judicial administration.

The battlefield has centred on performance measurement and reporting but more recently courts and tribunals have increasingly recognised that public confidence is strongly linked to values such as timeliness, fairness and transparency. These values are essentially core values for courts and tribunals which, if met, engender strong levels of confidence and respect in the community for the role these important institutions play in society. Today courts are more open to publishing information on their performance and reporting on their services and reform initiatives.

The International Consortium for Court Excellence developed the International Framework for Court Excellence in 2008 to provide a framework of values and a methodology to assist courts and tribunals to improve the quality of justice and court/tribunal administration they deliver. The Framework identifies the critical importance of maintaining public trust and confidence. At the time of the initial launch we indicated that we regarded the Framework as a living document and that it would be updated from time to time.

The Framework has been applied by courts for over 4 years now and the Consortium considered last year that it was timely to collect and consider the feedback and experiences of courts that have implemented the Framework. We decided to revise the Framework and that task was completed earlier this year. We have chosen this Conference to launch the revised version.

[1] Mr Laurie Glanfield AM, Deputy President, AIJA and Director General of Department of Attorney General and Justice, New South Wales, Australia

Last year the Consortium also embarked upon the task of seeking to identify agreed global court performance measures which would be of assistance to all courts and tribunals in measuring performance, identifying areas for improvement and evaluating the success of initiatives or reforms implemented. While this work is still at an early stage the opportunity has been taken to incorporate into the revised Framework examples of performance measures linked to the Framework's seven areas of excellence.

The theme of this conference is the pursuit of excellence and innovation and the revised Framework strongly reflects both concepts within that theme.

Application of the Framework

Extent of Implementation

Naturally I am more familiar with the extent of implementation of the Framework within the Asia Pacific region although the Framework has been extensively used throughout the world.

It is important to distinguish between different levels of implementation or use of the Framework. Full implementation of the Framework involves the rigorous application of the quality methodology including the self-assessment process, the full review and development of an Improvement Plan and the adoption of the continuous improvement approach to reform and review. Australian courts that have adopted this approach include the NSW Land and Environment Court, the Supreme Court of Victoria, the County Court of Victoria, the Magistrates Court of Victoria, the Supreme Court of Queensland and the District Court of Queensland. In New Zealand the District Court is in the course of implementation. Other courts to have fully implemented the Framework include courts in Dubai and the Ukraine. The Ukraine has been an active participant in Framework discussions and in June 2011 held an International Court Excellence Conference.

Guiding Strategic Planning

The Framework has been used as a guide to strategic planning and reform as distinct from strict adherence to the continuous improvement methodology. For example, many courts have adopted the core court values and used the seven areas of court excellence to shape their own approach to instituting reform and improvement. For some courts this has involved undertaking a stocktake of initiatives being undertaken in the court and looking to see whether any of the seven areas of court excellence have not been addressed. This identification of particular aspects of a court's administration has then been used to inform a more traditional strategic review approach.

Courts that have used aspects of the Framework to inform and facilitate their internal strategic planning processes include Malaysia, Brazil, Indonesia, Lebanon,

Kazakhstan, Bangladesh and Papua New Guinea. In Australia the Family Court and the Federal Court have both used the framework in this manner.

Introductory Version

In 2012 the Consortium finalised a short and simpler version of the Framework in response to feedback from courts and tribunals that simply did not feel they had the resources or the time to apply the full Framework. This "introductory" or short version incorporates a simpler assessment process but follows a similar assessment, review and improvement approach to enhancing court performance. This version has been used by many courts. For example, it was used at the Pacific Judicial Council's Annual Forum held in Kosrae State (FSM) and attended by Chief Justices and senior court administrators from Pacific countries such as Western Samoa, Federated States of Micronesia (FSM), Guam, the Northern Mariana Islands and Palau. It has also been of assistance to many countries including Nepal, the Philippines and Abu Dhabi.

As a result of feedback the opportunity has also been taken to revise this version and the revised short version is also being launched at this Conference.

Adaptation of Framework for other Systems

The Framework is available for organisations and courts to adapt as they wish although the Consortium considers it is important to maintain only one authorised version as the benchmark. So far as we know the first Tribunal organisation to adapt the Framework is the Council of Australian Tribunals (COAT), which has created its own version of the Framework with modifications to suit its own tribunal perspectives. In May 2012 COAT published its Framework for Tribunal Excellence. This framework is now being used by a number of Australian tribunals and will form the basis of the establishment of the new NSW Civil and Administrative Tribunal which will see an effective amalgamation of all NSW tribunals under the one "super-tribunal".

Many courts across the world have used the Framework to formalise the link between their core court values and their reform initiatives. Many examples of these initiatives were presented at the 2010 Asia-Pacific Courts Conference in Singapore.[2]

A more recent example is the USAID-funded Ukraine Rule of Law Project (UROL), which in cooperation with the Consortium is helping the Ukrainian judiciary to increase transparency and accountability of the judicial system, build its democratic leadership and support Ukrainian civil society in its efforts to contribute to its anti-corruption and judicial reform activities.

[2] http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=65581 (N.B. scroll down webpage for papers).

The project used the Framework to develop court performance standards. Court initiatives involved 2 pilot programs: an external citizen report cards pilot and an internal court performance evaluation based on performance standards.

Feedback on the Framework:

Much of the earliest feedback centred on the need for a simpler version of the Framework and particularly one which could be readily translated and easily used. The World Bank and other court organisations such as the US National Center for State Courts saw value in a simpler format which could be used by smaller and developing courts world-wide. Indeed as I have noted following the development of the shorter introductory version there has been significant demand for its use in court improvement programs throughout the world.

Although there has been limited feedback on this introductory version the feedback we did receive identified a need to align the introductory version more closely with the full version and to improve the assessment scoring process to enable courts to be more discerning in scoring the performance of courts and the success of initiatives undertaken. The effective three point scale in the shorter version was seen to limit the ability of courts to distinguish, for scoring purposes, between initiatives that had just commenced and those that were well developed. Distinguishing between less and well advanced initiatives is critical to identifying the relative priority for new reform initiatives.

The National Center for State Courts has used the short version for many international workshops and in its work with developing courts. Through these workshops Dan Hall[3], who has been an active and invaluable member of the Consortium, has provided guidance on the use of the Framework to courts across the world.

As to the full version of the Framework a number of individuals and courts have taken the time to provide feedback and suggestions to the Consortium on their experiences in using the Framework. The first court[4] to implement the Framework provided extensive feedback on its initial experience and its continuing journey in undertaking its subsequent self-assessments. Barry Walsh, who facilitated the court's initial assessment and planning process, provided considerable assistance in suggesting a more simplified approach to the wording of the self-assessment questionnaire.

Complexity of Scoring

However, most responses centred on the complexity of the scoring and assessment process. The Framework adopted standard quality management methodology with its self-assessment process requiring assessment of three aspects of performance

[3] Daniel J Hall, Vice President, Court Consulting Services, National Center for State Courts, Denver. USA
[4] NSW Land and Environment Court, Sydney Australia

(and initiatives), namely, “approach”, “deployment” and “results”. Courts found the distinction between assessing the “approach” and the degree of “deployment” confusing and overlapping. Part of the assessment of approach involved considering how broadly the initiative covered key areas of a court’s work yet the same consideration was required in assessing the extent of deployment. This aspect of complexity needed to be addressed in any revision.

Benchmarking between Courts

The Dubai International Finance Centre Courts (DIFC Courts) and other courts proposed establishing a basis for comparison or benchmarking between courts. The Consortium Executive has previously considered this issue but as current structured assessments and “scores” are undertaken by courts themselves. Essentially a court’s score represents its collective subjective opinion, supported by its own evidence, of how it is performing. That assessment is not independently verified and is really only capable of serving as a benchmark against which the court measures its progress.

While courts are free to compare results the Consortium does not consider establishing an independent international accreditation and assessment process is feasible or desirable at this time. To enable inter-court comparisons considerable resources would be required to establish and maintain an international accreditation system and currently the Consortium is heavily dependent on volunteer support for its current efforts.

Focus on Court Users and the Community

Feedback from Judge Jennifer Marie[5] of the Singapore Subordinate Courts and the DIFC Courts also identified the need for better recognition in the Framework of client or customer centric services.

Traditionally courts have not regarded themselves as having clients and therefore their procedures and practices have centred on their own needs in running efficient courts. This has often resulted in listing and other practices, which may be efficient for the court but create considerably greater costs and inefficiencies for the users of court including legal professionals, prosecutors, witnesses and the community generally. Although the establishment of court user groups has allowed courts to hear feedback on these concerns there has not been an overriding interest in satisfying the concerns of users or the community.

In part courts have been relatively immune from the same consumer pressures public companies have experienced over recent decades because the courts have a virtual monopoly on the services they provide. As Judge Tan Siong Thye[6] stated at the Ukraine Court Excellence Conference; “It is easy to take the view that the

[5] Deputy Chief District Court Judge, Subordinate Courts of Singapore.
[6] Chief District Court Judge, Subordinate Courts of Singapore.

judiciary, being a monopoly, does not require the same drive to change and reform as a company selling its products and services in a competitive economy. Such an attitude is not good for the country."[7]

Times have changed and courts across the world are looking for ways to improve both their performance and community confidence in their work. Courts are now extensively undertaking user surveys reflecting a court climate more accepting of the relevance of a user or client focus.

Many of a court's users never experience more than their interaction with the court registry and whether the experience relates to an inquiry, filing a document or making a payment their perception of the court's performance, efficiency and helpfulness will be based on this interaction. Only a very small proportion of those who come into contact with a court participate in a court hearing before a judge. It was strongly suggested that the Framework needed to more fully reflect the reality of a court's interaction with the community and the importance of a court being responsive to client needs. Excellence in court services is the responsibility of every Judicial Officer and every staff member.

Focus on joint involvement of Judges and Court Staff

Incidentally this view also supports the Framework's emphasis on ensuring that the continuous improvement process requires the full involvement of the whole court; both judges and court and registry officers. If the assessment process, which is directed to identifying the areas in need of improvement, only involves the perspectives of the judges of the court then the needs of the public using the court's registry are completely overlooked. Indeed the performance of the registry would be likely to be seen only from the judicial perspective and is unlikely to reflect how court users would rate their experience. The Framework emphasises the need for all judges and staff to be involved because in many circumstances frontline staff are both the first and the only members of the court to hear from disgruntled court users.

Innovation

Feedback from the Subordinate Courts of Singapore also proposed greater attention to the need for courts to encourage and support innovation across all areas of a court's performance and services.

Technology is a key aspect of increasing innovation in our courts. We live in a society where technology is continually advancing and courts, in providing services to the community and the public, cannot afford to lag behind.

Singapore has a vision to become a paperless court system where documents are filed, served, extracted and stored electronically (electronic filing), an e-Calendar

[7] Report on Ukraine International Court Excellence Conference, www.courtexcellence.com, IFCE Newsletter December 2011 p.4

system which helps the Subordinate Courts of Singapore to effectively maximise the use of its resources by providing a real-time overview of the Subordinate Courts' utilisation and insight into the caseload of each individual court. Around the world courts are introducing similar modern technologies and the role for innovation is to computerise into a modern efficient court not merely computerise archaic inefficient practices. In New South Wales courts are using electronic case management, on line court call-overs, e-filing, digital recording of transcript and video conferencing for giving evidence and for offenders in custody in criminal matters are all part of everyday life for a modern court.

Identification of the increasing importance of innovation to courts is not just a reference to the use of technology but more extensively a fresh way of thinking about how courts carry out their functions. Courts are shrouded in precedent and tradition and much of this adds stability and certainty to the role of a court. However, modern law practices are substantially different to law practices of the past. Courts are no longer exempted from the community's expectation that businesses and governments will adopt modern practices, especially in how they deliver services.

Put simply courts are expected today to operate in a modern and efficient manner. For example, court users have (or are prepared to spend) less time to wait for hours to be called as witnesses and in many courts arrangements are now made to ensure the time of witnesses, especially expert witnesses such as medical practitioners, is not wasted. The increasing use of video technology allows many doctors to remain at their surgery or hospital to provide essential medical services whilst fulfilling their witness obligations. While this has helped many expert witnesses the lack of similar or flexible arrangements for other witnesses often ignores the substantial impact of poor court and party scheduling of witness appearances.

We need to move away from an entrenched court-centric culture. Many courts continue to list all matters to commence at the start of the day and all parties and witnesses are expected to be in attendance at commencement time even though many may not be required until late in the afternoon or at all. Courts often do not consider the cost to the community of continuing to operate as they have for decades. A culture of innovation and continuous improvement allows courts to empower their judges and staff to think of better ways to manage both cases and interactions with parties and members of the community.

We cannot rely on past performance or old solutions to solve new challenges. An increased focus on a culture that nurtures and rewards innovation will assist courts to make better use of limited resources while also delivering better services.

Key aspects of revision of the Framework documents:

All of the feedback received has been considered and wherever possible built into the revised Framework documents. Turning first to the full Framework document I will outline the changes made to reflect feedback and ensure improvement.

Full version:

Plain Language

The first significant change has been the simplification of the language adopted throughout the Framework. The earlier Framework reflected its origins as a document drafted by a committee and the opportunity has been taken to use plain language, remove duplication and simplify explanations. This has resulted in a significantly different document which should be easier to read and to translate into alternate languages.

The greatest impact of adopting plain language will be seen in the simpler language adopted in the self-assessment questionnaire and the scoring table. The questionnaire is the heart of the Framework's quality methodology and sets out under each of the seven areas of court excellence a list of statements reflecting excellence in various practices and requiring assessment by a court of its performance against those statements.

Over recent years many enquiries have been made of members of the Consortium executive as to the particular meaning of some of the statements in the original Framework assessment table. Courts, of course, were and are able to interpret these statements as they wish but maintaining a consistent approach to interpretation has been crucial to consistency in assessment. Clearly the existing wording was creating difficulties in the assessment process with participants unnecessarily distracted with discussion on interpretation detracting from the principal purpose of the assessment. Clarifying these statements to minimise varied interpretations should allow more focused assessment sessions.

The second principal area of revision has been in relation to the merging of the separate assessments of "approach" and "deployment" into a single assessment. Courts will now assess the extent to which a court has developed and implemented actions addressing each of the statements listed for each area of court excellence.

No change has been made to the "results" assessment as this remains a vital and separate consideration. The principal question to be asked is; has the court's initiative (its deployed approach) secured the desired result?

Scoring

Considerable feedback included varying suggestions for a simplified scoring approach. The current complexity in averaging scores, then applying a complex and varying multiplier to obtain a total score was seen to be both numerically challenging and unnecessarily complex. The scoring has been simplified and the opportunity also taken to reweight some of the seven areas of excellence.

While Public Trust and Confidence remains the most important single item for a court to consider the previous excessive weighting in the table failed to take into account

that public trust and confidence would be primarily gained through good performance under the other six areas for excellence. A review of the statements confirmed that many of these statements were directed to increasing the quality of performance in areas reflecting aspects vital to community confidence (such as accessibility, timeliness and fairness).

Linking Performance Measures and Performance Management Policies

Considerable additional attention has been given to the measurement of performance and progress and the distinction between court performance measures and court performance management policies. Performance measures have their focus on quantitative and qualitative assessment of the functioning or performance of a court. They will involve objective and some subjective (primarily survey/feedback) data or information.

On the other hand court performance management policies represent the collection of levers and court processes available to a court to effect change and these can be adjusted to drive improvement in court performance. The revised version lists a range of examples of these policies and tools in Appendix D. Dr Pim Albers[8] has been extremely helpful in providing ideas for refinement and improvement of the Framework, particularly from a European perspective.

The revised Framework also includes some new resources such as;

- A sample template for an Improvement Plan. Many courts are keen to compare ideas with other courts and the Consortium was asked whether we could provide assistance with some templates to guide more consistent approaches to documenting reform initiatives and the form of an Improvement Plan.

- An extensive list of sample performance measures aligned to each area of excellence and linking each specific measure with a relevant outcome.

- A list of examples of Court Performance Management Policies and Tools. Courts should not underestimate the capacity of court policies to effect improvements in court performance. For some judges the use of the expression “court policies” is confusing but in fact whether the court issues a practice note or adopts a particular process or procedure the court is effectively implementing a policy on that particular matter. These policies remain one of the most powerful tools courts have to change practices and

[8] Dr Pim Albers, Contact point EJN in civil matters, Ministry of Security and Justice, Judicial System Department, The Hague, The Netherlands.

improve performance to meet the court's values including timeliness and efficiency.

- A short list of some key websites, resources and tools which may be useful for courts has been included at the front of the framework together with contact and support details.

- The assessment checklist and related provisions of the revised short version have been incorporated as a schedule to the full Framework to reinforce the link between the two documents but also to provide some assistance to courts implementing the Framework. The checklist includes useful lists of actions courts might take under each of the seven areas of court excellence to improve their performance.

Introductory Version:

The introductory or short version was published early in 2012 and therefore has had a limited life. It has, as I indicated, been used extensively over the past year in the Asia-Pacific region, with developing courts and through judicial strengthening development programs.

The revised introductory version of the Framework (Thinking of Implementing the International Framework for Court Excellence?) has been more closely aligned to the full version of the Framework allowing both documents to be used as a reference to provide assistance or ideas to courts. This will allow courts to use either document and essentially follow a similar approach to continuous improvement.

Amendments have been made to provide greater focus on client or user needs and the creation and promotion of a culture of innovation. The Checklist has been amended to include statements specifically raising these aspects for consideration and assessment.

While the statements in the Self-Assessment Questionnaire in the full version have been simplified, courts may now use the more detailed list of actions included in the Checklist to gain a greater understanding of the kinds of initiatives or reforms which may be undertaken.

The previous complicated weighted scoring system has been highly modified and a simple integer multiplier replaces the previous complex fractional multiplier approach.

The weighting for each of the seven areas for court excellence have been adjusted to align fully with the full Framework document.

Where to now:

The Consortium is very keen to facilitate the international sharing of court initiatives and reform programs through its website (www.courtexcellence.com) and through conferences and regional forums.

The Consortium relies on voluntary contributions from key individuals and its supporting organisations and courts. Its forward program includes finalising its work on “Global Measures for Court Performance”, producing more regular newsletters, facilitating regional court quality forums and developing more templates to support courts implementing the Framework.

Conclusion:

Both versions of the Framework remain living documents and the Consortium encourages feedback on them and on the experience of courts that use the Framework. Courts across the globe are facing similar challenges with limited resources and increasing demands. The sharing of innovative ideas for improving court performance and capacity will greatly assist and inform all courts as they consider their own court improvement and reform programs.