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'BETTER JUSTICE?' OR 'SHAMBOLIC JUSTICE?': GOVERNMENTS' USE OF INFORMATION TECHNOLOGY FOR ACCESS TO LAW AND JUSTICE, AND THE IMPACT ON REGIONAL AND RURAL LEGAL PRACTITIONERS

This paper reports the results of a study on whether government use of information technology potentially compromises access to law and justice by Queensland regional and rural (RR) legal practitioners. The paper describes current approaches to the use of information technology by state and federal governments, and provides an insight into the challenges and opportunities identified by individual RR legal practitioners, policy-makers and the judiciary on the use of such technology. The paper makes recommendations to promote increased access to law and justice for RR legal practitioners when using government information technology.

Introduction

Legal practitioners are subject to many forces outside of their control, including regulatory changes to the law; impacts on the economies of communities in which they practice; fluctuating government policies on funding law and justice programs, and changing technologies.

In recent years, the use of information technology in the legal field has changed from 'private use' by lawyers, such as for accessing legal software programs and online research tools, to enabling greater public access to law and justice institutions. Information technology offers governments the potential to significantly reduce institutional access costs as well as delivering the benefits of greater access. The questions are: from the perspective of regional and rural (RR) legal practitioners, are the claimed or potential benefits of information technology used by governments being realised? and, are there opportunities for government to improve access to justice through the use of information technology so that such access really does offer 'better justice'?

The key concept underlying the questions is 'access'. Australians may have a constitutional right to justice, together with rights provided by statute, case law and international agreements, but if justice cannot be 'accessed' by advocates for justice, does the right in fact exist?

This paper investigates these questions and concerns as part of a study into the impacts of government use of information technology for regional and rural legal practitioners. The study is based on fourteen interviews with individuals who are members of one of three groups involved in the delivery of legal services: RR legal practitioners, policy-makers in metropolitan locations, and members of the judiciary.

The findings of this study provide an insight into the opportunities, challenges and barriers to the increasing use of information technology for providing access to law and justice by government. The paper concludes by making a number of recommendations based on insights gained from the study, which aim to contribute to improving access to the institutions of law and justice within RR Australia.

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RR Australia is of particular interest because, as various commentators have observed, 'rurality'² has a particular impact on the reality of 'the equal provision of justice for all Australians'.³

A number of indices are used to define what is regional and what is rural.⁴ This paper uses the Access to Legal Services Index (ALS), developed as part of in-depth research into RR legal practice.⁵ The ALS Index relies upon the following criteria: population, access to the state/territory court system, access to professional law societies, and access to legal practitioners (both solicitors and barristers).

Literature review

Susskind predicted, as early as 1996, that the practice of law would be revolutionised by information technologies.⁶ In *The Future of Law* he accurately forecasted the use of information technology in law,⁷ because 'lawyers are in the information business'.⁸

Lawyers acquire information through education and training, capture and retain information as part of their stock-in-trade, and sell information to clients who ask for it to be applied to their circumstances. Lawyering is, arguably, more information intensive than any other industry or profession.⁹

Legal practices that were quick to recognise and utilise information technology would have had a competitive advantage¹⁰ gained by automation. However, Susskind urged that the use of information technologies by lawyers should be used for innovation not merely automation,¹¹ for example, using information technology for research, improved communications and systematised client file management rather than mere word processing. Susskind anticipated that the strategic use of information technology could be a 'major enabler' in reducing geographical differences and distances.

Indeed, community legal centres have strategically used their ever-diminishing pool of funding to invest in select technologies to maximise their ability to communicate with isolated populations and clients in need of social justice, for example through the use of video-conferencing.¹² The approach taken with the use of

² Refer to P J Cloke, 'An Index of Rurality for England and Wales' (1977) 11 *Regional Studies* 31; and P Cloke and G Edwards, 'Rurality in England and Wales 1981: A Replication of the 1971 Index' (1986) 20 *Regional Studies* 289; Kim Economides and Mark Blacksell, 'Access to Justice in Rural Britain: Final Report' (1987) 16 *Anglo-American Law Review* 353; Kim Economides, Mark Blacksell and Charles Watkins, *Justice Outside the City: Access to Legal Services in Rural Britain* (Longman Scientific & Technical, co-published with John Wiley & Sons New York, 1991); Kim Economides, Mark Blacksell and Charles Watkins, 'The Spatial Analysis of Legal Systems: Towards a Geography of Law' (1986) 13 *Journal of Law and Society* 161; Kim Economides, Mark Blacksell and Charles Watkins, 'The Distribution of Solicitors in England and Wales, (1988) 13(1) *Transactions of the Institute of British Geographers* 39; Kim Economides, 'The Country Lawyer: Iconography, Iconoclasm, and the Restoration of the Professional Image' (1992) 19 *Journal of Law and Society* 115; Kevin MacDougall and Reid Mortensen, 'Bush Lawyers in New South Wales and Queensland: A Spatial Analysis' (2011) 16(1) *Deakin Law Review* 75; and Richard Coverdale, Richard, 'Postcode Justice: Rural and Regional Disadvantage in the Administration of the Law' (2011) 16(1) *Deakin Law Review* 155.

³ Richard Coverdale, 'National Rural Regional Law and Justice Conference Preface: Essays from the First National Rural Regional Law and Justice Conference 2010' (2011) 16(1) *Deakin Law Review* ii.

⁴ ARIA is an index of the accessibility of places to service centres, classifying locations with reference to road distance of service towns of different sizes. It does not provide any reference to access to legal services. See 'Accessibility/Remoteness Index of Australia (ARIA)' <<http://www.gisca.adelaide.edu.au>>. See, also, The Australian Standard Geographical Classification (ASGC), which is a hierarchical geographical classification, defined by the Australian Bureau of Statistics (ABS), used in the collection and dissemination of official statistics.

⁵ For further details on the ALS Index, see Caroline Hart, *The Prevalence and Nature of Sustainable Regional, Rural and Remote Legal Practice* (Law, University of Southern Queensland, 2014) 90.

⁶ See, generally, Richard Susskind, *The Future of Law: Facing the Challenges of Information Technology* (Oxford University Press, 1996); Richard Susskind, *Transforming the Law: Essays on Technology, Justice and the Legal Marketplace* (Oxford University Press, 2000); and Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press, 2008).

⁷ Susskind (1996), above n 6.

⁸ Ibid 79

⁹ Ibid.

¹⁰ Ibid. For a discussion of competitive advantage, See Jay B Barney, 'Firm Resources and Sustainable Competitive Advantage' (1991) 17(1) *Journal of Management*, 99.

¹¹ Susskind (2008), above n 6, 227. Peter Drucker noted the need for innovation rather than mere automation in his article: 'The Coming of the New Organisation' (1988) *Harvard Business Review* 3, 350, in which he stated 'most computer users still use the new technology only to do faster what they have always done before, crunch conventional numbers. But as soon as a company takes the first tentative steps from data to information, its decision processes, management structure, and even the way its work gets done begin to be transformed'.

¹² Mary Dracup, *Linking Law: Practical Guidelines for Delivering Law to Rural Victoria Using e-Learning Technologies*, (Centre for Rural Regional Law and Justice, Deakin University, 2014); S Forell, M Laufer, and E Digiusto, 'Legal Assis-



such technologies has been to trial, test and review their use, and to monitor their effectiveness with clients, including whether or not the technologies may 'support or inhibit the utility of video conferencing for the provision of legal services'.¹³ This approach has not assumed that adoption of technologies will suit all clients; rather clients are given a choice in the use of such technologies.

Australian governments across all jurisdiction use information technology to provide services. Often, the motivation for utilising information technology is linked to opportunities for gaining significant cost-savings. However, recent inquiries investigating such government use of information technologies reveal a lack of integration and strategic approach, and lack of appropriate consideration of the implications for citizens' rights and impacts on broader questions of law.¹⁴ The most comprehensive examination of access to justice has been The Productivity Commission's 'Inquiry into access to justice arrangements', carried out in 2014.¹⁵ The terms of reference for the Inquiry included:

[A]lternative mechanisms to improve equity and access to justice and achieve lower cost civil dispute resolution in both metropolitan areas and regional and remote communities, and the costs and benefits of these, including analysis of the extent to which the following could contribute to addressing cost pressures: the use of technology.¹⁶

The inquiry received over 330 submissions from courts, law academics, community legal centres and peak law bodies, including the Law Council of Australia.¹⁷ The Law Council's submission to the Productivity Commission noted that: Australia's legal assistance service providers are chronically underfunded; Australia's court system is underfunded; the legal profession has sought to meet the demand with pro bono or reduced-rate legal service; and the unmet legal need in Australia is a significant problem with social consequences.¹⁸

In addition, the Law Council submitted that the cost of delivering justice is high and geographic isolation is an issue, as is the attrition of lawyers in regional, rural and remote areas. The Law Council stated that access to justice can be improved through better use of technology by courts and tribunals (and in legal education), which would result in opportunities for reducing court filing fees and in proceedings to improve access to justice and efficiency of court processes.¹⁹

The Joint submission of the Centre for Rural Regional Law and Justice and the National Rural Law and Justice Alliance (the Alliance) to the Productivity Commission focused on technology initiatives that can promote and support access to justice and have a preventative impact through the provision of information, including legal information and referral websites.²⁰

tance by Video Conferencing: What is Known?' (Paper 15, Justice Issues Law and Justice Foundation of New South Wales, November 2011). See Queensland Association of Independent Legal Services Inc, 'Queensland Community Legal Centres' use of Technology: Literature Review and Discussion Paper' (August 2014); and Legal Aid Queensland, 'Technology Bring Justice to Rural and Regional Queensland', (2003) 5(28) *Indigenous Law Bulletin* 20.

¹³ Forell, Laufer and Digiusto, above n 12, 16.

¹⁴ Government invested in micro-chip technologies as a means of providing licensing, and health and social access services. See Caroline Hart, 'The Conjurer's New Card Trick and the Illusion of Privacy: A Discussion of the Privacy and Transparency Issues Associated with the Proposed Australian Government Health and Social Services Access Card' *University of Tasmania Law Review* (2008) 25(1) 5; and Caroline Hart, 'Micro-Chipping Away at Privacy: Privacy Implications Created by the New Queensland Driver Licence Proposal' *Queensland University of Technology Law and Justice Journal* (2007) 7(2), 305. The analysis in these papers indicates that government sometimes invest quickly in new technologies without having first carried out a thorough examination of the implications for rights and broader questions of law; for example a citizen's right to privacy. Comparisons can be drawn with current policies on using technology to achieve cost savings to government without sufficient consideration on the impact on a citizen's right to access justice.

¹⁵ Productivity Commission, 'Access to Justice Arrangements, Productivity Commission Inquiry' (Report No 72, Vol 1, 05 September 2014).

¹⁶ *Ibid*, 8(f), v.

¹⁷ For a full list of submissions, see <<http://www.pc.gov.au/inquiries/completed/access-justice/submissions>>.

¹⁸ Law Council of Australia, *Inquiry into Access to Justice Arrangements: Productivity Commission* (Submission No 96, 13 November 2013) 7.

¹⁹ *Ibid*.

²⁰ Centre for Rural Regional Law and Justice and the National Rural Law and Justice Alliance, 'The Productivity Commission, Inquiry into Access to Justice Arrangements (Submission 20, 21 June 2013) 8.



In any geographical location, clients need to have a choice in the method of communication, provided that it is effective. Face to face contact between lawyer and client is required in many circumstances, however video conferencing, Skype and other IT options, if accessed more frequently and effectively, can provide access to legal services that work in conjunction with face to face contact.²¹

However, the Alliance also submitted that the use of technology in regional and rural locations is dependent upon a number of factors, including: the existence and effectiveness of infrastructure; compatibility technology between the parties; legal service providers being willing to engage in the use of information technology, and costs are not a barrier.²² The submission emphasised that the essential objective of using the technology should not simply be to achieve a cost-saving. If essential infrastructure (for example the National Broadband Network (NBN)) is not available to support the use of information technology, then there will be a denial or reduction of access to justice; alternative methods of access should be provided. The cost-savings achieved overall can be used to fund the necessary support.

The Productivity Commission's Final Report 2014 stated that use of technology heralds

The end of the quill pen ... [t]echnology is widely recognised as having the capacity to generate time and cost savings for the courts and their users.²³

Although investment in information technology can bring about both savings and improvements in access to justice through 'case management software, e-lodgement facilities, electronic trial technologies and technologies to assist self-represented litigants',²⁴

[I]nvestment in information technology has been uneven across jurisdictions, with the availability, quality and use of technology varying widely between and within jurisdictions. Even relatively basic uses of information technology, such as conducting less complex directions hearings by telephone, do not appear to be utilised as fully as they might be.²⁵

The Commission concluded that increased reliance on information technology would need investment by the courts and would have a nett positive result.²⁶

The Commission, therefore, has highlighted a contradiction in governments' use of information technology: firstly governments offer no choice but to access justice through the utilisation of information technology; secondly, governments do not make use of basic communication technologies, such as the telephone. Recommendation 17.2 provides that:

Australian, State and Territory Governments and courts should: consider, and reach agreement on, the most effective mechanism to increase coordination and leveraging of technology solutions across and within jurisdictions, including the compatibility of the systems used nationally.²⁷

In the draft report, The Commission requested information about the 'greater use of court information technology strategic plans and/or greater coordination and leveraging of technology solutions across and within jurisdictions'²⁸ and the investment in technologies to better assist self-represented litigants and help them to be most cost effective.²⁹ However, in the final report The Commission did not provide any final recommendation on a cross-jurisdictional strategic plan for the use of court information technologies.

Two other reviews of government use of information technology worth noting are: 'Review of the Civil and Criminal System in Queensland'³⁰ and the Queensland Government, 'Queensland Commission of Audit,

²¹ Ibid.

²² Ibid.

²³ Ibid 19.

²⁴ Ibid 573.

²⁵ Ibid 575.

²⁶ Ibid, 578.

²⁷ Ibid 684.

²⁸ Productivity Commission, 'Access to justice arrangements' (Draft Report, April 2014) 66.

²⁹ Ibid.

³⁰ Queensland Government, *Review of the Civil and Criminal Justice System in Queensland*, December 2008, <http://www.justice.qld.gov.au/_data/assets/pdf_file/0020/26291/Review-of-the-civil-and-criminal-justice-system-in-Queensland.pdf>.



2013'.³¹ Neither of these reports indicate the need for a national strategic plan for government use of information technology for the delivery of legal services.

Life as a regional and rural legal practitioner

Academics have identified the challenges faced daily by RR lawyers - whether they are in private legal practice³² or community legal services - and how they are forced to adapt to new technologies.³³

Overall, the literature highlights important and beneficial features of the use of information technology for the legal profession and as a means of access to justice. Susskind emphasises that to maximise information technology its use should be innovative and strategically incorporated into an organisation, including in training.³⁴ Governments were initially slow to use information technology as a means of delivering legal services; however, once governments saw the opportunities for cost savings, they quickly did so.

As already noted, there are gaps in the provision and support of technological delivers. Particularly, governments do not provide the requisite choice on how to access institutions of law and justice; this is especially a concern where connectivity to infrastructure, such as the NBN, is absent and thus access to the government platforms is compromised. The lack of choice means that RR lawyers, who are trying to adopt and utilise the new information channels to maintain their competitive advantage in a changing profession³⁵ are severely disadvantaged, as are the communities in which the lawyers practice.

Co-production theory and the burden on legal practitioners accessing justice

Co-production theory³⁶ acknowledges that clients (ie, legal practitioners) are not 'passive recipients of government services but [are] active agents in the service interaction'.³⁷ The theory is relevant to the discussion of government use of information technology for the provision of legal services on the grounds that government requires (without an option) the legal profession as a co-producer to participate in the delivery of the services. Prior to the use of information technology by government, the role of the legal profession would have been simply that of 'customer' utilising government services. Information technology now requires lawyers to play a greater role in the completion of various legal services. Further, it requires knowledge of and skills in the use of the technology. This is particularly the case for RR legal practitioners who do not necessarily have a choice of whether or not to use the technologies - unlike metropolitan counterparts who may have the option of accessing physical legal services. This changed relationship between government and legal practitioner creates additional challenges for RR legal practitioners when using government technology.

³¹ Queensland Government, 'Queensland Commission of Audit' (Final Report, February 2013) <<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2498.pdf>>.

³² Caroline Hart, 'Sustainable Regional Legal Practice: The Importance of Alliances and the Use of Innovative Information Technology by Legal Practices in Regional, Rural and Remote Queensland' (2011) 16(1) *Deakin Law Review* 225; and Caroline Hart, 'Business Structures and Sustainable Regional Legal Practice: The Use of Incorporated Legal Practices by Regional, Rural and Remote Legal Practitioners' (2012) Special Edition, *International Journal of Rural Law and Policy* 1.

³³ Kaz Eaton, 'One size Does Not Fit All: Legal Needs of Women in Regional, Rural and Remote Australia' (2001) 26(2) *Alternative Law Journal* 64; Jeff Giddings, Barbara Hook and Jennifer Nielsen, 'Legal Services in Rural Communities: Issues for Clients and Lawyers' (2001) 26(2) *Alternative Law Journal* 57; Trish Mundy, *Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW: A Literature Review* (Northern Rivers Community Legal Centre, 2008); Trish Mundy, 'Recruiting and Retaining Lawyers: A Problem in Rural, Regional and Remote Communities' (2009) 34 *Alternative Law Journal* 34; Coverdale, 'Postcode justice', above n 2, 187; McDougall and Mortensen, above n 2, 75. Hart (2011), above n 32.

³⁴ Susskind (2008), above n 6, 79

³⁵ Hart (2011), above n 32.

³⁶ Bill Ryan, 'Co-Production: Option or Obligation?' (2012) 71(3) *Australian Journal of Public Administration*, 314, 314; J Alford, *Engaging public sector clients: From service delivery to co-production* (Palgrave Macmillan, 2009) 23.

³⁷ Ryan, above n 36, 315, 321.



Legislation to enable governments' use of information technology

The Queensland Government has made legislative amendments to ensure the authorised practice of information technology for the provision of legal services, including passing amendments to the *Uniform Civil Procedures Rules 1999* (Qld),³⁸ and the *Electronic Transactions Act 2001* (Qld).³⁹

Currently, RR legal practitioners have access to the following courts using information technology:

Queensland Courts: The Magistrates Court (civil) have electronic lodgement (eLodgment);⁴⁰ the Supreme and District Courts (both civil and criminal jurisdiction) have access to electronic trials (eTrials)⁴¹ using the Queensland Court's Wi-Fi service; the Supreme and District Courts (civil jurisdiction) also have the ability to search civil files (eCourts).⁴² The courts offer party search facilities to litigants via the internet.

Federal Courts offer the following online services: e-Lodgement can be used for electronic lodgement of applications and supporting documents in federal law matters;⁴³ e-Courtroom is a virtual courtroom used in the management and hearing of some matters before the Federal Court or Federal Circuit Court,⁴⁴ including ex parte applications for substituted service in bankruptcy proceedings and applications for examination summonses. This online service is integrated with e-lodgement.

Family Court of Australia offers online services through the Commonwealth Courts Portal.⁴⁵ Clients and legal practitioners can eFile certain family law documents. The service is available 24 hours a day. The following documents can be eFiled: divorce and supplementary documents; initiating applications; and response to initiation applications. The Family Law Courts, using the Commonwealth Courts Portal, requires the potential user to first register to file or gain access to the family and federal law files.⁴⁶ Once registered, the user can: access files; view and organise files; view recent activity; view court diary; view subpoena permissions and documents; view court events, orders and documents; eFile supplementary documents; notify by email; and eFile applications.

National Electronic Conveyancing. The *Electronic Conveyancing National Law (Queensland) Act 2013* provides for the adoption in Queensland of the national law relating to electronic conveyancing. The Act provides a legislative framework in Queensland for the implementation and operation of a national electronic conveyancing system. The system (national e-conveyancing) allows for land conveyancing transactions to be completed in an electronic environment and instruments to be lodged directly into state and territory electronic land registers. It removes the need to have paper documents signed and to attend a physical settlement.⁴⁷ The Act amends the *Land Title Act 1994* (Qld) and the *Land Act 1994* (Qld). The Act authorises the registrar of titles to operate or authorise the operation of an Electronic Lodgement Network. The national law also provides for the authorisation of legal practitioners to undertake transactions through the electronic lodgement network on behalf of clients; the signing of documents through digital signature;

³⁸ The amendments relate to the following rules: Rule 112 to enable ordinary service to be performed by electronic means prescribed by practice direction; Rule 967 to enable electronic filing of documents; Rules 975A to 975I deal specifically with electronic documents; Rule 975H provides for a request for electronic judgment under Rule 283; Rule 975L provides for an application for an enforcement warrant.

³⁹ *Electronic Transactions Act* (Qld) 2001, s 3 provides as one of its objects to provide a regulatory framework that enables business and the community to use electronic communications in their dealings with government. Schedule 1 provides for exclusions from the Act, including '[a] requirement or permission for a person to file a document'. The schedule also excludes other matters relating to court documents.

⁴⁰ See Queensland Courts, *Electronic Lodgement*, <<http://www.courts.qld.gov.au/court-users/practitioners/electronic-lodgement-elodgment>>.

⁴¹ See Queensland Courts, *Electronic Trials* <<http://www.courts.qld.gov.au/court-users/practitioners/electronic-trials-etrials>> viewed 24 February 2017.

⁴² See Queensland Courts, *Search Civil Files* <<http://www.courts.qld.gov.au/services/search-for-a-court-file/search-civil-files-ecourts>>.

⁴³ See Federal Court of Australia Website, *elodgment* <<http://www.elodgment.fedcourt.gov.au/dLodgment/login.aspx?ReturnUrl=%2felodgment>>.

⁴⁴ See Federal Court of Australia Website, *eCourtroom*, <<http://www.ecourtroom.fedcourt.gov.au/eCourtroom/default.aspx>>.

⁴⁵ See Family Court of Australia, *Commonwealth Courts Portal* <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/ccp/commonwealth-courts-portal>>.

⁴⁶ See Family Law Courts, *Guide to Using the Commonwealth Courts Portal* <<http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Publications/Family>>.

⁴⁷ *Electronic Conveyancing National Law (Qld) Bill 2012*, Explanatory Notes, 1.



and the powers of the registrar to conduct compliance examination to revoke or suspend an operator's approval.⁴⁸ The *Act* includes provisions to supplement the *Electronic Transaction Act* and support the status and legal efficacy of electronic conveyancing. Queensland Civil and Administrative Tribunal (QCAT) is the responsible tribunal for the *Act*.⁴⁹ The review of decision by the *Act* is by appeal to QCAT.⁵⁰

Methodology

RR legal practitioners are particularly vulnerable to problems arising from government use of information technology because of their geographic isolation from face-to-face options for delivery of legal services, infrastructure limitations for the delivery of information technology, and lack of training and professional support. Despite negative impacts being particularly felt by RR legal practitioners, they are not consulted by government in the development of policies and strategies concerning the use of information technology. This study interviewed⁵¹ a range of relevant parties to identify the issues and challenges they face concerning the introduction and use of information technology.

Each interview was for approximately 60 minutes and focused on participants' experiences of using technology for accessing law and justice services. Prior to the interview, participants were provided with questions related to the project, information about the interview and how it would be run, as well as consent forms and advice that they could withdraw from the project at any time.

Data from the interviews was collected by written notes which were transcribed. The transcription was forwarded to the participants for amendment, deletion or addition. This method of data collection was based on the author's experience with her doctoral research in which legal practitioner-participants expressed concern at being recorded. In one case only, the interview was conducted via Skype. All interview data was made non-identifiable by allocating a number to denote that interview. References to the participants relates to their role and location in terms of either 'metropolitan', 'regional' or 'rural'.

The research was phenomenological in nature, therefore concerned with understanding behaviour from the participant's own perspective and not intended to be objective.⁵² The 'point of view' or 'bias' of the participants which motivated their involvement in the research study is an important component of the issues raised. An objective of the research is to raise findings which would become the basis for further research and reflection.⁵³

Primarily, the research project focused on three sources of interview data: the challenges, opportunities and issues experienced by RR legal practitioners; the view from the judiciary when using government information technology for accessing legal services; and insight into those who had an opportunity to influence the policy and use of the technology. The research does not deal with private use of information technology⁵⁴ used widely by legal practitioners;⁵⁵ it focuses only on RR legal practitioners' use of government information technology.⁵⁶ Neither does the paper discuss the extent to which information technology should be used to deliver substantive areas of law and justice, such as criminal law.

⁴⁸ Ibid 5.

⁴⁹ *Electronic Conveyancing National Law (Qld) Act 2013*, s 7.

⁵⁰ Ibid s 9.

⁵¹ University of Southern Queensland Office of Research, Ethical Approval Number H14REA179.

⁵² Clark E Moustakas, *Phenomenological research methods* (Sage Publications, 1994), 5.

⁵³ Ibid.

⁵⁴ For an analysis of the private use by regional and rural legal practitioners of technology, refer to Hart (2011) above n 32, and Hart (2014), above n 5, generally.

⁵⁵ For example, in document assembly - Lexis Nexis, private precedent files; legal research - subscription and non-subscription databases; document storage - Cloud. Also communication with clients and staff - through email etc. Some legal practices also make use of social media.

⁵⁶ For a review of case studies of other jurisdictions in Australia and New Zealand on the use of information technology for the provision of legal services, refer also to Queensland Commission of Audit, (2013), above n 31, 3-350 - 3-351. The examples include streamlined prisoner court appearances, online court lists, web-based video conferencing, online court, electronic filing appearance system. For examples of how information technology is used in California, USA, refer generally to James E Cabral, Abhijeet Chavan, Tomas M Clarke, John Greacen, Bonnie Rose Hough, Linda Rexer, Jane Ribadeneyra and Richard Zorza, 'Using Technology to Enhance Access to Justice', (2012) 26(1) *Harvard Law Journal*, 231.



Group One - legal practitioners located regionally and rurally. Seven RR legal practitioners were interviewed. These practitioners all had practising certificates as solicitors. Legal practitioners who held a principal practising certificate are described as either 'principals' or 'sole practitioners'. Employed legal practitioners are either working in 'private practice' or in 'state government'.

Group Two - members of the judiciary. Three judiciary members from a regional location (magistrates' court) and one from a state Supreme Court were interviewed.

Group Three - policy makers from metropolitan locations involved in the development and implementation of information technology decisions used to deliver legal services throughout Queensland, including regional and rural Queensland, were interviewed. Two of the policy makers were from state government, and one from a federal law representation group.

RR legal practitioner participants were recruited through the Queensland Law Society's, *Proctor* and the Downs and South-Western District Law Society newsletter, and also by recommendation and invitation. Policy-makers and members of the judiciary were by invitation.

The sample for this study was small and generalisations from the conclusions are, therefore, limited. However, as Miles and Huberman⁵⁷ and Patton⁵⁸ argue, a small sample size is acceptable for qualitative research when the aim is to study the topic of inquiry in depth. Yin⁵⁹ further suggests that a sample of eight to ten interviews are ample for qualitative research.

Pilot study

A small pilot study involving five participants from Group One and Group Three was carried out to assist with shaping the interview, including the type of questions to be asked and the duration of the interview. The initial focus of the study was to be on these two groups alone but, at the suggestion of participants in the pilot study, the judiciary group was included in the main study.

Results and discussion of the interview data

The interviews with the legal practitioners and members of the judiciary, provided rich data reflective of perceived issues, not only concerning their own experiences, but also anticipated issues that may be experienced by isolated legal practitioners and self-represented litigants. This part of the paper expands on these results, reflecting on remedies advanced by participants.

Accessing law and justice websites

Legal practitioners indicated that they accessed a full range of government information technologies including: for research using the Supreme Court website; and for e-filing, conveyancing, party searches, register searches, local government searches, tracking judgments through e-courts and video-conferencing. These participants identified that the particularly good websites were those belonging to the Office of Fair Trading, the Queensland Court's website and the New South Wales District Court (for e-filing).

Benefits associated with using information technology

Legal practitioners indicated a number of benefits resulting from the use of information technology, including increased access to information, reduced travelling commitments and improved efficiencies in the legal practice.

One of the benefits anticipated for the administration of justice in various reports were the financial benefits;⁶⁰ this was, indeed, consistently supported during the interviews as being enjoyed by enforcement agencies (eg, Queensland Police Service) by both policy-makers and the judiciary; as noted by this regional magistrate:

⁵⁷ Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis* (Sage Publications, 2nd ed, 1994).

⁵⁸ Michael Quinn Patton, 'Evaluation, Knowledge Management, Best Practices, and High Quality Lessons Learned' (2001) 22(3) *The American Journal of Evaluation* 329.

⁵⁹ Robert Yin, *Case Study Research: Design and Methods* (Sage Publications, 4th ed, 2009).

⁶⁰ Productivity Commission (September, 2014), above n 15, 573.



Using the IT to access the prisons saves police and the prisons money. The costs for transporting prisoners are huge. It minimises the risks, but for the courts - there aren't any savings.

Increased access to information

Legal practitioners stated that the use of information technology provided greater opportunities for accessing information including for legal research on government law and justice websites, for example, courts' websites. In some cases this function was considered more informative and useful than commercial subscription databases, as noted by this employed legal practitioner in private regional practice: 'Better than LexisNexis!'

Access to the law (judgments and commentary) is essential for regional and rural legal practitioners for maintaining connectedness to the law, and for issues relating to ethics and competency. The technology was also considered a benefit for viewing progress on matters tracking through the courts, as noted by this legal practitioner, a principal in a private regional practice:

The Queensland Courts website - e-court - you can look at any matter - Supreme Court, District Court - and see any matter. You can look at the list of documents - claim, defence, reply ... if any interlocutory or affidavit. The list is useful and should be in the Magistrates Court. With the Federal Circuit Court, you can see the content of the document. Other jurisdictions don't have that access to those documents. If the magistrates' court could have the same information.

The ability to track a matter through the court revealed some inconsistency between the Supreme Court - which allowed for such tracking - and the magistrate's court which did not provide the same information.

Reduced travelling commitments

Geographic isolation was identified as a major problem by the RR legal practitioners and information technology was recognised as the most efficient methods of dealing with the problem. For example:

Current e-filing is 100 per cent. You can't operate in a Federal Court using paper. It's all electronic. The Federal Court is well set up. E-filing is intuitive - and offers great advantages to RR legal practitioners. It's much easier. You can do it from your office. With the National Electronic Conveyancing - you can be in [regional location] and do a conveyance between [remote location] and [regional location].

And this regional magistrate also noted the benefits of access to technology for the purposes of video-links for certain aspects of trials:

There is video link from one court to another, and to the prisons. We have cameras on the computers and to the Registrars ... We use Jabber. Video links are very common in the [regional] Magistrates Court. We do six video links to the prisons ... It occupies the day. On Thursday we link to the Children's Detention Centre. We get clear pictures, and there are multiple screens in the court. It is compatible with the physical submission. We would use it for sentences or bail applications. We don't conduct trials. But we do have telephone links for trials with child protection, where experts are giving evidence and for civil trials. We may take specialist evidence.

However, limitations on access to the NBN, emphasised the inequitable access to the technology and the advantages yet to be gained. The reality for the RR legal practitioner is that their need for the NBN is greater than that of their metropolitan counterparts who can still access legal services physically.

Improved efficiencies for legal practice

A major benefit for RR legal practitioners is that technology facilitates improved efficiencies for legal practice. The literature goes even further to suggest that information technology will transform the practice of law.⁶¹ The comments from legal practitioners indicated that the efficiencies were a significant benefit. However, an impediment to enjoying the benefits required overcoming a hesitancy by some legal practitioners towards information technology, as noted by this employed legal practitioner in a regionally located state government law office:

At first I was not a fan because of the extra handling, but it has become easy to use. I use it regularly - I have some expertise. At first, I said: "Do we have to do this?" I've overcome the hurdle: the quickness! You can do it in the morning, file in the afternoon and send it to the other party's solicitor. Before you had to sign, copy, send to a town agent. It was a week's turnaround - not the same day.

⁶¹ Susskind (1996), above n 6; and Susskind (2008), above n 6.



This hesitancy to use by some legal practitioners was also observed by one policy-maker (in a metropolitan location) who stated that legal practitioners need to maintain consistency of knowledge comparable to that of their clients. The policy-maker noted that rural clients may have superior knowledge in the area compared to their legal advisors, and that this may reflect negatively on regional legal practitioners.

The extent that Queensland farmers use software ... This will create a gap between clients and their legal advisors. These aren't just young farmers. They are using robotic tractors to till the land. The NBN was to bridge that gap. It's affordable Internet access at a reasonable speed. I assume in my comments that the National Broadband Network is available.

In the comment above, the policy-maker particularly highlighted the assumed connection to the NBN. This is a recurring theme among metropolitan policy-makers. It indicates a lack of information about the level of infrastructure and services that are available in RR Australia. RR legal practitioners do need to adapt and to deal with new situations and technologies in order to sustain their practices, but that adaptation is hindered when the infrastructure to access these institutions via technology assumes a level of internet connectivity that is absent.

The lack of empathy and ignorance of threshold infrastructure, such as the NBN, experienced throughout parts of regional Australia by policy-makers impacts to the detriment of the resulting policy directions and levels of support offered to RR legal practitioners.

The following comment of a policy-maker in a metropolitan location not only reflects a lack of knowledge but also assumes an attitude amongst RR legal practitioners that is not necessarily accurate:

We have to differentiate between an unfriendly use of information technology and whether there is a lack of technological aptitude - where someone wants to be spoon fed. There is an assumption that it can't be done. The 'mystery threshold'. There is a psychological impact of IT on regional lawyers.

The underlying assumption in this comment, is that the RR legal practitioner does not want to make any effort. Proper investigation and consultation by metropolitan policy-makers into infrastructure available throughout RR Australia would provide a valuable dimension to how governments' use information technology for the delivery of institutions of law and justice.

Disadvantages associated with using information technology

Legal practitioners consistently commented on the disadvantages associated with the use of information technology, including increased costs and fees; the strict compliance requirements for lodging electronically (over and above physical lodgement); the poor quality of the technologies themselves that were not intuitive, user-friendly or integrated, as well as websites that were not up-dated or used out-dated programs; poor protocols on instructions for using the technologies; the absence of support from government staff for using the technologies; the inability to share technologies available to other professions and the de-humanising aspect of the technologies and the potential for inequitable access to law by those with reduced means.

Increased court costs and fees

One of the recommendations of the Productivity Commission's report was that court administrative costs should be reduced.⁶² Despite this, increased costs were uniformly commented upon by legal practitioners both in terms of e-filing costs and costs associated with multiple attempts at using the technologies due to mistakes.

Negotiable costs that penalise individuals

Perhaps an unintended consequence of government use of information technology is reflected in the comment below regarding individuals (as opposed to law firms) who want to search registers who may be disadvantaged by having to pay full fees whereas legal practitioners, who perform many searches, may negotiate a discount. The requirement for a third party provider to carry out the search turns a government function into a commercial transaction:

⁶² Productivity Commission, above n 15, Recommendation 17.2, 573.



We do lots of searches - bankruptcy, titles searches. You have to search for land tax certificates... You have to use a third party provider - info track and CITEC. You can use these to negotiate a fee. If you do lots of searches then the fee can be negotiated down. It can make a big difference - to costs. Private entities - have to pay a fee to search. The individual cannot search directly. It is restrictive for self-represented litigants, or for sole practitioners who may not use the systems very often.

Strict compliance required by legal practitioners

A number of legal practitioners commented on the strict compliance required for dealing with the technologies, in particular, lodgement. Lodgement with courts is strict, but there was the sense that the standards had increased. The following comment from an employed legal practitioner working in a state law office in a regional location, reflects this:

If you try to file a document you are not meant to, then they get up you: 'Are you aware?' You can be suspended from e-filing for misuse. I'm usually very apologetic - they will forgive you. I'd not heard about that sanction before.

And this employed legal practitioner in a regional private practice commented on the need for expertise from within the law firm:

You need to get it right before lodgement ... there is strict formatting. You should have the corrections in places. This takes it away from the lay person and forces people to use a practitioner. There is complexity in the transaction. The Titles Office - you need secure ID ... a barcode. The number changes. It updates. The Titles Office gives you another password that changes. There is expertise needed in the [electronic] lodgement. It is done every morning here, so the expertise is built quickly. We would lodge about a hundred a week. You have to scan the document, enter the details. It must be perfect.

Poor quality government websites

A common theme amongst legal practitioners was that, although they were expected to be 'pedantic' in their interactions with the technologies, this was not reciprocated by government staff. Legal practitioners expressed concern over the quality of government websites in that they were 'not intuitive', or 'user-friendly'; that they were 'not integrated', 'up-to-date' or 'compatible'. There were also issues with government using incompatible software to the legal profession.

This legal practitioner, a sole practitioner in a rural location, commented on governments' poor maintenance of websites and technology hardware:

The Queensland Government Court site hadn't updated their website. I'd filled out the form they had on it, but I had to do it again because their own website wasn't up to date. They are not contributing.

This issue may be resolved through better support from government services, more user-friendly programs, consultation and improved training for RR legal practitioners.

Most of the legal practitioners identified the need for training to provide confidence and competence in dealing with the technologies. For those legal practitioners who were part of larger legal practices or organisations, the training was provided in-house. Sole practitioners, however, may not have access to time or resources to obtain the training, as identified by this employed legal practitioner working in a government law office, located regionally:

We had a couple of lessons from [name of organisation]. The training was vital! Sole practitioners may not use it, but a young sole practitioner would use it - it's generational. There is an evolution of humans. We are becoming more sophisticated. The idea of building upon IT. Children can do something with IT.

This legal practitioner went on to add that training should occur as part of professional practice, rather than at law school because the technologies were changing too quickly.

Shifting administrative work back onto legal practitioners

A number of regional and rural legal practitioners commented that the use of technology by government had increased their work load, and was a cause of stress. The example of stamping was raised by this sole practitioner in a rural location:



Nowadays all stamping is by the web - this causes work. All the details are put in by my law firm. This shifts the work back to my resources in the law firms. There are three staff in [regional location of government office] ... But I write to them that they need to do it right otherwise there are issues. I shouldn't have to do this. This adds to my stress and there are work issues on my staff.

In this particular interview, it is worth noting that the legal practitioner became increasingly agitated in recalling the circumstances. This comment highlights the negative implications of the theory of co-production, when seen in practice. When the co-producer is called upon to carry out tasks for which they are not resourced, it can create stress. The burden of the task becomes even more onerous when the legal practitioner seeks help or identifies errors with the system but finds there is no response. The legal practitioner is required to deal with the system as part of their profession, but when the system is flawed, unhelpful and unresponsive to the issues, the situation becomes highly stressful. Co-production might suggest that the devolution of elements of government functions to the legal profession is too great, becoming an 'obligation rather than an option'.⁶³ There is no control over the situation for the legal practitioner.

Even the judiciary are expected to assume an administrative role in the absence of court staff, as noted in this comment from a regional magistrate:

The technology both assists and it is also negative. For example, with the Christmas arrangements, JAG [Justice and Attorney-General] have five magistrates across Christmas. If you're in [rural location] you use the phone not the video ... staff won't come in on a Saturday, they won't be there to assist. Ten years ago, each centre would have a magistrate available. This tied everyone down, but it was better justice.

Lack of administrative support by court staff

Legal practitioners commented on the inability to contact government staff. One legal practitioner commented that even when court staff were contacted to request support and assistance, legal practitioners were told that the 'advice' sought was characterised as 'legal advice' for which the court staff declared they were not qualified or able to provide. The legal practitioner insisted that the advice was simply 'administrative support' that was sought but to no avail.

Removal of choice

Another legal practitioner commented that, when faced with the choice of an efficient electronic interaction with legal services or a physical interaction, they would choose the latter on the grounds of maintaining a 'personal involvement'. The preference for human interaction over electronic suggests that the use of technologies may be 'dehumanising'.⁶⁴ A similar comment was made by another legal practitioner in relation to always choosing face-to-face interactions when the matter related to their client, for the reason that it maintained a relationship with the judiciary and colleagues in the profession.

These comments confirm the LCA's submission that 'choice' in how legal practitioners (and others) interact with institutions of law and justice is essential.⁶⁵

Inequitable and unjust outcomes

With legal services increasingly being moved into electronic interactions, there may be some unintended inequitable or unjust outcomes for some legal practitioners (and self-represented litigants). The comment below from an employed legal practitioner in a regional private practice, for example, highlights a number of implications from electronic conveyancing:

The conveyancing platform is online - there is no physical settlement. There is the potential for problems for regional practice. There is skill needed to do it properly ... [name of firm] have conveyancing clerks. It is difficult to get it [a conveyance] to settlement. There are electronic protocols ... There is a pilot for later this year - April 2015 [?] This will take legal practitioners without trust accounts out of the game. You need a trust account. Due to the expense or lack of accreditation - it could be an issue for sole practitioners. They will need to maintain their knowledge level.

⁶³ Ryan (2012), above n 36.

⁶⁴ Cabral et al (2012), above n 56, 302.

⁶⁵ Law Council of Australia (2013), above n 18.



The first implication is that there will be no choice in how a conveyance will occur: it is all electronic. The second implication is that there is a level of expertise involved in using the system. For legal practices that have dedicated conveyance staff, it will not be an issue, but for the legal practice that does only a few conveyances, the expertise may not be built. The third implication is that a trust account is needed.

From the perspective of policy-makers, the needs of self-represented litigants had been identified; as noted by this policy-maker:

We have to engage with the consumer and provide information when needed; to make processes simple and to allow self-service, including the tribunals, so that SRLs [self-represented litigants] can access the right information when they want it.

The language of this policy-maker is worth commenting on: first legal practitioners are considered ‘consumers’, with the inference that providing access to law and justice is a commercial transaction, rather than a right capable of being exercised by all citizens; secondly, ‘providing information’ or engaging with the legal profession will occur ‘when needed’ - It is a retrospective engagement - after the event - rather than a consultative interaction and consistently considered across all law and justice services, with government support networks in place.

Government has the opportunity to gain significant cost savings by replacing functions previously carried out by employees with a combination of technology and legal practitioners (or their staff). Effectively, government has out-sourced these functions onto the legal profession (or individuals). A portion of these cost savings should be directed towards ensuring full access to these institutions for all, and not just for those who possess the requisite technical expertise and infrastructure.

Impact on client-legal practitioner relationship

Perhaps of greater concern with the use of information technology is its impact on lawyer-client access. The comments below from a regional magistrate, acknowledged the discretionary nature available when using information technology, and providing the client with access to their lawyer prior to a hearing:

The negative is that there are reduced access to lawyers by the clients. And not all magistrates provide that access before a trial.

This magistrate went on to add:

There is a practice direction on using the technology. There were problems in the past, where video link was not seen as desirable because the lawyers couldn’t see their client before court. The video link took away from the ability to see the client. But you can arrange video link into the prison to arrange that ... there was resistance from legal practitioners ... that it interfered with the solicitor client relationship.

Absence of national approach and jurisdictional inconsistency

The Productivity Commission did not ultimately make a recommendation that a national approach be developed for the use of information technology; it did, however, seek views on whether and to what extent the leveraging of co-ordinated technology solutions across and within jurisdictions could occur.⁶⁶ The comment below from a principal legal practitioner in a rural location identified the limitations of the technology in terms of legal practitioners being able to lodge across jurisdictions that created inefficiencies for their legal practice:

Queensland Courts are behind with e-filing. The only document you can file in Queensland - other than QCAT - are in the Magistrates’ Court. And you can only file a claim and a request for default judgement. The Defence has to be filed so you have to find a way. If I’m suing a citizen of [regional location] in [metropolitan location], it has to be filed in [metropolitan location]. I have to file it or get a town agent - it’s crazy. Same if a client is sued in [regional location]. I can’t see why this is the case.

The response to ‘a strategic approach’ was made by this policy-maker, who stated that, although there was no national strategy, the Queensland strategic approach included ‘being collaborative’, to ‘make use of pilots’, to ‘seek uniformity’ and to ‘learn from the mistakes of other jurisdictions’. One of the proposed methods of implementing this ad hoc approach relied upon the following action:

⁶⁶ Productivity Commission (April, 2014), above n 28, Information Request 17.1, 66.



We collaborate with our interstate colleagues. There is no national strategy. Through the Council of Chief Justices though ... We share successes with other people. We are liaising with [another state] about their success with the jury system.

While that particular policy-maker expressed confidence in the judiciary being able to exchange 'successes' through conferences, at the magistracy level, it appeared that funding for attendance at national conferences was no longer forthcoming. The comment below from a magistrate indicates that, conversely, there are reductions in opportunities for national conversations among members of the judiciary:

We used to have annual conferences. We have the Chief's meeting. But no conferences anymore. We had some South Australian and Victorian magistrates at a conference a while ago. If you want to go to a conference you have to pay for it yourself.

Government has been one of the biggest users of technologies for the provision of services, including use of smartcard technologies. The approach used in these instances have been to pursue 'interoperability' both within jurisdictions, including local and state, and across federal and state jurisdictions.⁶⁷ 'Interoperability'⁶⁸ meaning that the information technology systems and processes are integrated and coordinated - an approach that, it seems, is being deliberately avoided in the pursuit of justice. The example of governments' strategic approach to the use of other information technologies indicates that the capability for integration and coordination exists, but there has been a decision not to apply it for access to justice. In no other function or duty for which government is responsible would such a deliberate avoidance and absence of strategic planning and coordination be endorsed, and an *ad hoc* policy be adopted.

Systems in transition

Another issue relates to lack of systems in place to manage the transition from paper-based to electronic information, as highlighted by a comment made by an employed legal practitioner in a state government law office, located regionally:

Unless the other party has filed online, you can't view court materials online. This is a shortcoming - a negative. You have to ask for copies. The two systems are not integrated - the paper copy and the online copy. My recommendation is that the material filed in hard copy should be scanned and made available.

One policy-maker expressed an awareness of the transitional nature of governments' use of information technology:

The transition from paper-based to electronic needs to account for equity to access in terms of legal practitioners who struggle with the technology, and self-represented litigants who may be alienated (or prevented from accessing) legal technology. At the moment we are running two inconsistent systems. The old business model and the new business model. There is transition. This will involve a time period. There are different court districts. If a matter is lodged in [remote location] that is paper based, we can't just transfer it electronically. When it's all electronic, then we can deal with the transfer much more easily. If the data is all electronically available, then we can shift it around to where the capacity and demand is available, including the regions. This is globalisation on a state level.

We are going to do legislative changes to allow magistrates to hear matters in another location, for example, if the Magistrate was sick. For example the [metropolitan location] Magistrate can hear a matter from [regional location] if there was a problem with the [regional location] Magistrate, and vice-versa.

Policy-makers acknowledge that it could be likely that the adoption of new technologies may potentially put governments in a permanent state of transition, and any strategic approach should note that perpetual transitory state. For legal practitioners and the judiciary, this signals that the future promises to be equally filled with uncertainty and resulting stress.

⁶⁷ Refer to Hart's earlier work on the use of micro-chips in smart cards for use in driver licences, Hart (2007) above n 14; and the proposed (but not implemented) Health and Social Services Access Card, Hart (2008) above n 14. Both of these proposals offered the opportunity for governments to acquire access to extensive and detailed data from its citizens, not just in relation to the purpose for which it was collected, but potentially across a network of government departments' databases. At the time of the proposals, privacy legislation did not exist in Queensland.

⁶⁸ The literature on 'interoperability' is extensive; including the benefits and cautions surrounding the capabilities of information technologies to link. Refer to Benoît Otjacques, Patrik Hitzelberger and Fernand Feltz. 'Interoperability of e-Government Information Systems: Issues of Identification and Data Sharing', (2007) 23(4) *Journal of Management Information Systems* 29-51.



Poor quality protocols

The Productivity Commission recommended that '[a]ll courts should have practice guidelines and checklists which cover ways to use information technology to manage the discovery process more efficiently'⁶⁹ Legal practitioners identified that the guidelines need to go beyond that process, commenting negatively on a range of existing protocols. Legal practitioners used examples, including the instructions on using websites, and the instructions on using technologies as part of the court process involving the judiciary.

One employed legal practitioner in a regional location commented that their legal practice had circumvented the lack of instructions provided by government to access the technology:

Because protocols don't exist, the practice manager has written them for government assessment. The government only does so much.

Prejudiced for using information technology

One of the most significant issues regarding the use of information technology involved the use of a telephone hearings. The actual technology employed is not sophisticated, but highlighted a range of issues relating to the need for consistency between technologies to ensure equitable and fair access to justice, as pointed out by a principal in private practice, located regionally:

I had the worst experience of my life in a [name of tribunal] hearing conducted by telephone. I was in my client's board room. The [name of tribunal] member was in a regional town and the opposition in another regional place. It was shambolic. Unsatisfactory. The proceedings didn't proceed as would have done in the usual situation. The evidence not heard was a problem. There was an eagerness to allow the parties to not travel. But the execution left a lot to be desired. If I'm not there in person before the judiciary, then I'm prejudiced ... that if my client can't be bothered to be physically there, then it's prejudiced. I wouldn't conduct a point of substance before a district court judge as things stand without being there. I need to see a really clear declaration that the parties are not going to be prejudiced by Skype. But - I also don't see why that shouldn't happen. For costs - sometimes you don't know if it's going to be a point of substance.

A practitioner or self-represented litigant, therefore, may be prejudiced for not being physically present. If information technology is to be used as a solution to the geographic isolation of significant parts of Queensland, then attention must be given to the protocols for judicial proceedings to the extent that no litigant (or legal representative) is prejudiced either directly or indirectly.

Loss of solemnity of the court-room context

The comment below from the same legal practitioner provides a clear direction on aspects that are needed to improve the context of e-court room appearances:

My view is that any remote trials ought to be conducted from a dedicated facility. If it's from a Skyped appearance ... that court room could be geared so that it is from a dedicated space to cure the solemnity and control issues. This could take work. To have a protocol built in so that it is dealt with systemically. On the [regional location] matter, there will be an interlocutory matter. I will drive to [regional location]. If there was a protocol with buy-in from the judge and court staff ... Some court staff who are parochial - they can vary from registry to registry. 'That's not how we do it here mate!'

We need a protocol so that if I go to the [regional location] Court House and conduct the entire proceeding without losing anything. You need buy-in. A sensible protocol to impose the regime for people, so that it is all known. Get the direction set - a protocol. Everyone is on the speaker phone. A protocol in place that works well. Why should the legal practitioner and clients have to have this remote facility and to check the court room? This should be part of the infrastructure. I wouldn't have to check water for the judge and mics are working!

This legal practitioner identified the issue as being a loss of 'solemnity and control'. The solutions do not require additional financial costs or infrastructure, merely the establishment of clarity from the judiciary on supporting the use of technologies - 'buy in' - and the appropriate preparation by court staff of the virtual court room, in the same way that they would prepare a physical court room. Again, legal practitioners identified the 'pushing back' onto the individual of tasks that would have been - prior to the use of

⁶⁹ Productivity Commission (September, 2014), above n 15, Recommendation 11.6, 57.



information technologies - carried out by the government service provider rather than the user. Not being physically present, then, may result in a lack of control in terms of the solemnity of the court room.

Impact on quality of the evidence

There were also impacts on the quality of evidence because of the inability to see 'non-verbal' communication, as noted by this legal practitioner in private practice in a regional location:

The witnesses and client lost the sense of solemnity - it was diminished in their minds. It began to feel more like a mediation than a solemn trial. People were talking over one another - it was far from ideal. The decision-maker can't see the witnesses' demeanour - the non-verbal stuff I could hear the member getting frustrated. There were a number of moments that were indecorous. I had a sense that it was not controlled.

Similar comments were made by other legal practitioners about not being physically present and that it diminished not only their ability to put forward their client's case but also meant they missed out on an opportunity to establish connections with their colleagues.

From the perspective of the judiciary, the quality of the information technology can also have an impact. This comment from a regional magistrate noted the impact of an absence of body language:

The phone has the disadvantage of not seeing the non-verbal aspect. I wouldn't use it if there were issues of credibility. You ask if the parties are agreeable. If the parties have any issues. If you have a document but you can't produce it ... how do you produce the document? There are ways around it, but not with all evidence.

The issues highlight the need to develop protocols that ensure users of technology are not unfairly disadvantaged either by the quality of technology. The lack of physical presence, evidentiary issues or any underlying perception that lack of physical presence in a court room equates to lack of interest or disrespect by the parties for the court.

Limited access to video-conferencing support by court staff

The Productivity Commission recommended the use of online technologies for the purpose of procedural or uncontentious hearings where appropriate, and examination of whether there should be a presumption in favour of online court facilities for certain types of matters or litigants.⁷⁰ That recommendation has been taken up in a number of state jurisdictions, including Queensland,⁷¹ particularly with regard to reducing prisoner transport. However, all of the legal practitioners commented on the absence of support from government staff to make that recommendation effective. This employed legal practitioner in a regional state government law office made the point clearly:

Some court staff are reluctant users of the equipment at the court houses. There is a culture of lack of enthusiasm with the staff using the IT.

And this policy-maker spoke of efforts to resolve the issue:

Policy-makers are aware of some of the issues relating to support from government staff noting that government court staff had been notified of their need to 'assist, to facilitate and support legal practitioners' use of court video-conferencing.

However, the issue appears not to be resolved.

Inequitable access to video-conferencing facilities

Facilities may be available in other government departments but not able to be used. For example, the legal profession cannot access unused facilities owned by Queensland Health; the following comment was made by an employed legal practitioner in state government, located regionally:

⁷⁰ Productivity Commission's (April, 2014), above n, 28, Draft Recommendation 17.1, 66.

⁷¹ Queensland Commission of Audit, (2013) above n 31, 3-348.



Health are very protective of their IT. The technology is there but not utilised to maximum potential ... Health has a fortress mentality; that their equipment is only for talking to hospitals. But hospitals are in most towns. Queensland is de-centralised. I would like to see video-conferencing facilities in hospitals to be used to connect with [name of agency office] at no charge to the person. It's a sunk cost. We are very generous with sharing our resources.

And this comment from a policy maker agreeing with the approach of 'shared facilities':

Health has over 2000 video-conferencing end points as part of their tele-health. Justice has 169. There should be shared facilities. It should be like the local public library and internet access. It's not a big leap to extend this to video-conferencing systems. There is Viber and Skype and FaceTime - lots of alternatives.

It seems that the legal profession takes a more generous approach to sharing their facilities with 'Health', as noted by this regional magistrate:

We had a Health person want to use the court's IT. We get enquiries from around Australia who use the IT. Someone wanting to watch a sentencing. We get enquires from other courts asking to share. We get requests from Health and Education. We charge. It requires a staff member in the room. We charge other courts. There is a list of who is charged, and a schedule of fees.

Only a whole-of-government approach to information technology resources would see an end to the 'fortress mentality', and enable consistent access to unused facilities for the benefit of the public. Again a strategic approach - even if only at state level - would assist with the allocation and access to these facilities.

Approach of the judiciary

One senior member of the judiciary provided valuable insight into a range of problems and issues faced by colleagues, associated with the use of information technology, including: concerns about technical problems compromising evidence and quality of court processes, and the need for court protocols, as noted below:

There are polarised views and approaches to the use of technology ... may be evident in judges, government officials and legal practitioners. This should be recognised and addressed with training and evidence of cost-savings and increased access to law and justice.

Technical problems in courts are an issue. Therefore, we are careful about the nature of the quality. The quality can influence what the IT does allow. It can influence the evidence being given. If there are IT problems, judges will adjourn.

The judiciary as champions of information technology

One area that all participants (legal practitioners, magistrates and policy-makers) in the research study agreed on was that a 'top-down' approach emanating from the senior judiciary as champions for the positive use of information technology would have an impact on its uptake within the legal profession generally. This member of the judiciary recognised the power of the judiciary in being able to influence the entire legal profession:

While some judges are strong advocates of the use of IT, most judicial officers are fence-sitters. They need to have the benefit explained to them, to see it, before they will use IT.

And this comment from a policy-maker:

Courts are at the top of the food chain. The courts can have an impact on the profession. When courts shift to running all court business using information technology, then the legal practitioners will need to change. We are engaging with the profession. If you wish to survive you must be prepared to use information technology.

Thus, it is incumbent upon the judiciary to champion the use of information technology, law societies to provide training and promote information technology use, and court room staff to provide support and acceptance.

Senior legal practitioners as champions of information technology

In private practice, the use of information technology (where there is a choice) is considered a commercial decision. However, the decision as to the extent of use of information technology may also be related



to the level of confidence partners and principals have with technology.⁷² This employed legal practitioner in a regional private practice spoke of the impact older legal practitioners have on the uptake and use of information technology:

Decisions made by partners who are 'old school'. We don't generally use video-conferencing because most clients are from the region or [metropolitan location]. We have clients from all over Australia and the world. Skype is not used. We do visits on demand [at rural location]. We go to [metropolitan location]. The partners are more comfortable. This was a decision of the partners.

Conclusions and recommendations

There are significant benefits for RR legal practitioners from the use of information technologies as a means for accessing justice, including increased access to court and research information, reduction in travelling commitments and improved efficiencies for legal practice.

However, there are also challenges and disadvantages associated with its use, including: increased costs associated with accessing the technologies; stricter compliance requirements; and dealing with technologies that are not intuitive, user-friendly, integrated or up-to-date. In some circumstances, the protocols for accessing law and justice through the technologies are not comparable with physical access, resulting in a sense of prejudice and loss of justice. There are also issues concerning the absence of support by government staff to facilitate access to the technologies, as well as concern that use of technology can be dehumanising. Of significance are the disadvantages that may be experienced by sole practitioners and self-represented litigants whose access to law and justice may be curtailed by forcing use of information technology.

Potential solutions to the challenges and issues concerning use of information technology to deliver better access to the judicial system relate to implementing 'best practice' among other jurisdictions, and working towards consistent and integrated technologies. Accessible training for RR legal practitioners is essential, especially given their greater need for competence and confidence in using the technology to deal with their geographic isolation. The judiciary also needs to champion the use of technology and law societies need to more readily promote (and accept use of) new information technologies. Finally, RR legal practitioners need to remain adaptive to new ways in which legal services are delivered.

To maximise their success in legal practice, RR legal practitioners need to identify factors that will help them transition to greater use of technologies (such as better training, overcoming hesitancy and championing or encouraging the use of new technologies). At the same time, they should recognise that some factors are beyond their control (such as inequitable access to the NBN, government policies and cultures that do not support the use of the technologies, and poorly developed and maintained websites and portals).

From the perspective of policy-makers, there is an erroneous assumption concerning RR legal practitioners' access to the NBN and its availability throughout RR Queensland. There is some awareness concerning the need for protocols to ensure that there is equity in the delivery of law and justice in both physical and online court rooms.

Views about the use of information technology are polarised amongst government court staff, the judiciary and legal practitioners, with some members of the judiciary readily taking up opportunities to use technology in their court rooms and other member more hesitant and still requiring the physical presence of parties in court.

Analysis of the qualitative data from the three interviewed groups lead to a number of policy recommendations for improving the use of information technology by the Queensland government for the delivery of legal services, and so increase the opportunities for RR legal practitioners to access the justice system:

1. Develop a state strategy in consultation with the RR legal profession. The strategy primarily needs to factor in the disparate access to the NBN throughout RR Queensland. The strategy should take into account the quality of software to ensure it is intuitive, user-friendly and comparable to sys-

⁷² Refer to Hart (2011), above n 32.



tems used by the legal profession. The strategy should adopt an integrated, consistent, best practice approach. The paramount objective of the strategy should be to increase access to justice, with cost-savings a secondary objective.

2. Develop a whole of government approach to innovatively share information technology resources in RR Queensland. Carry out a cost/benefit analysis that considers factors that including maximising use of information technology facilities in RR Queensland and maintaining their quality as a result of the shared facilities.
3. Better support systems for utilising information technology, especially for those from RR locations where there is no opportunity to seek alternative 'physical' support. Such a culture of support and assistance should be promoted among government staff, and should include regular reviews of information provided on websites and hardware provided to ensure they are up-to-date. A key feature of the strategy needs to address the reality that information technology will continue to develop, and that the period of 'transition' may be a permanent factor.
4. Put in place protocols to replicate the physical court room in cases where information technology is used to deliver access to critical aspects of law and justice, including trials and the delivery of evidence to ensure parties are not prejudiced or disadvantaged.
5. Analyse the impact of information technology to ensure that such use does not compromise the right to access law and justice by self-represented litigants and sole practitioners.

Currently, the Queensland Government appears to be using information technology primarily because of the potential to reduce the costs of providing access to justice. Unfortunately, such prioritisation has effectively compromised justice for those with limited access to the information technology infrastructure and with limited expertise. Maximising opportunities to increase access to justice should be the primary goal for utilising information technology, with cost saving gains a secondary goal.

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