

## **E-trials CPD**

1 December 2015  
Courtroom 29 on Level 8

### **Existing system**

I have been asked to talk about the Court's existing system and approach and possible developments for the future. At present our e-Trial software system is used for larger cases involving more than 500 documents or complex cases where there are multiple parties and issues and sometimes overseas witnesses. The system is also useful for long criminal trials involving documentary fraud or computer based crime and commercial claims. Some appeals are also conducted electronically, particularly where the trial was an eTrial.

The significant advantage of the system is that it was set up very cheaply by our talented in-house IT staff to be available for little or no expense to litigants. In this building we have 14 courts equipped to conduct eTrials but the facilities are not being used nearly as often as they could and should be. The system was launched in 2007 and is still rare in Australia as an example of Court leadership in promotion of eTrials. The cost then was about \$60,000, excluding hardware, paid out of the court's existing budget. The operating system in the courts is Microsoft Windows, the networked version of which includes SharePoint which provides the backbone for the eTrial system at no extra cost. As virtual servers are used, the hardware cost was also effectively nothing. The court requires the documents to be loaded, onto an Excel spreadsheet pursuant to a template devised by the SharePoint administrators. They maintain and populate the site for trials, provide user names and passwords and assist the parties, counsel, solicitors, associates and judges in the use of the system.

Proceedings managed for an e-trial preferably need the active involvement of the court from the start to ensure that the parties have exchanged all the relevant documents in a form accessible to everyone, including the court. Practice Direction 10 of 2011 governs the use of technology for the efficient management of documents in litigation. It is designed to ensure that disclosure is made in a standard format because of the

need to have a uniform system to allow the documents to be loaded most easily onto the court's e-trial system. Essentially the parties need to present a DVD with an Excel database of their documents in a form that our IT staff can load into the eTrial database as easily as possible. Our staff also provide and maintain the in-court technology. Earl Wood is here to help answer the technical issues that may arise in any discussion here today.

In a typical courtroom there is a screen in front of the judge, another in front of the associate as well as a control panel for the associate to control what screens are enabled in the courtroom. There is a printer outside the judge's entrance to the court close to the associate and four screens installed on the Bar table with another screen in the witness box, screens in front of every second juror and a large screen in the courtroom and a further large screen for the public gallery. There is also a projector enabling documents to be projected onto all screens.

As I said, the judge's associate controls the operation of the screens, although a witness is also able to mark a document on the screen in front of the witness. At present, the electronic document is not altered but the associate should be able to print the screen as marked by the witness and save that "print screen" as a new exhibit.

A limitation from the judge's point of view is that, if a judge wishes to annotate an electronic document, it needs to be saved separately from the eTrial database. From my point of view, it would be preferable if the judge's own annotations to the eTrial database could be saved in such a way that they were linked to the relevant documents but not accessible to the parties. The same should apply to the parties.

The transcript from the trial can be added to the database as the trial proceeds and the whole database can be searched either for a simple string of characters or by some simple Boolean searches to assist in finding relevant documents and passages in the evidence.

It is also quite feasible for written submissions to be loaded onto the system as the trial progresses with hyperlinks to the existing exhibits to permit speedy access to them during oral submissions.

The advantage of the system is that it is cheap, easy to implement, flexible and able to be remotely accessed from anywhere in the world as I established to my own satisfaction when I was in Cambridge, England recently. It does not have all the bells and whistles that some of the commercial operators provide but is very useful for all that.

### **Possible developments**

We would like to see greater use of the system, one reason why this workshop has been organised. My own view is that the system should be capable of being used in almost any case, not just the complex multi-document cases for which it is used presently.

That seems unlikely to occur quickly unless the court proceeds towards an electronic filing and document system. Such a system would promote the use of electronic documents generally, in the Applications jurisdiction and elsewhere.

Curiously the Court of Appeal has had access to electronic versions of the appeal books for years – ever since the former Court of Appeal registrar, Neville Greig implemented the scanning at the same time as photocopying of the appeal records. Unfortunately those files are only accessible to the judges in a normal appeal, not the practitioners.

Trials have occurred in the Planning and Environment Court and in the Commercial List in running more of those cases electronically. The Registry in the P&E Court is effectively electronic now. There are other matters heard in the Applications List, for example the *Dangerous Prisoners (Sexual Offenders) Act* applications, where the file contains a large bulk of material. In many such cases, only a relatively small part of the evidence is referred to in any particular application. Having an electronic file would make the conduct of those applications significantly more efficient, especially

if the written submissions were electronically linked to the file and any relevant authorities.

In the interim, it seems to us that there are other techniques to encourage greater use of the system. We should try to identify those matters which have the potential to be e-trials earlier. One area that seems to have the potential for greater use of electronic documents is, curiously enough, the criminal jurisdiction. Most criminal files will come in electronic form from the police authorities and be the depositions produced to the Magistrates Court which would, then, if the matter is to proceed to trial on indictment, be capable of being sent in that form to the superior courts. We are shortly to investigate the possibility of establishing such a system in consultation with the professional bodies, the DPP, Legal Aid and the Queensland Police Service.

It is already the case in criminal trials that the practitioners are more used to the use of projectors for the display of photographs and other physical evidence and some practitioners and judges are beginning to use PowerPoint to assist in addressing and summing up to the jury.

## **Conclusion**

We are open to suggestions about how the technology can be used otherwise to enhance the efficiency of the court's operations. I hope that this seminar will be one source of inspiration for all of us.