

24 October 2024

The Hon Judge Gething
District Court of Western Australia
Level 10, 500 Hay Street
PERTH WA 6000

By email: judge.gething@justice.wa.gov.au

Dear Judge Gething

MANAGEMENT OF DIGITAL EVIDENCE IN CRIMINAL CASES

Thank you for your letter dated 29 August 2024 and the opportunity to comment on this matter.

The Law Society is pleased to learn of the Infrastructure and Courts Initiatives and is generally supportive of the two Initiatives. The Law Society has set out its response to the particular feedback sought on the Court Initiative below:

The functions or features the Law Society considers to be critical to the Court Initiative

The Law Society would like to express the need for infrastructure to be sufficiently resourced, intuitive and practical for users to ensure that all practitioners and self-represented persons have genuine access to justice. That is supported by technology which is user-friendly and fit for purpose (including appropriate back-end storage, security requirements and access capabilities). The current eCourts system lacks some of these qualities.

In particular, the Law Society considers that the following functions and features would be of importance for this Court Initiative:

- The collection of documents on the disclosure and trial briefs should be searchable. This will greatly assist in navigating electronic briefs and make electronic briefs more user-friendly;
- There ought to be an option for practitioners, prosecutors and litigants to download, save and print documents. While in the long term it would be ideal for all practitioners and litigants to solely work from electronic copies, it is the experience of the Law Society that many practitioners prefer to use paper copies in at least some contexts. Further, there may be instances where paper copies are required. It is also unfortunately common experience that electronic systems will at times malfunction and the ability to save and print documents may be required in such instances and to enable a trial to proceed in the event of technical issues. However, it may not be appropriate for such features to be accessible to jurors, in order to reduce risks of on-sharing or removing exhibits from the jury room;
- Some self-represented litigants will not have access to the internet or a device appropriate for viewing electronic briefs. It is not uncommon for self-represented litigants to not have access to a computer. Further, as the Court would be aware, incarcerated self-represented litigants will not ordinarily have internet access, and even providing offline computer access for viewing court documents in a prison setting

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may be inappropriate in some instances. Accordingly, WA Police (and other prosecuting agencies) ought to have the option to print and serve a physical disclosure brief where use of the platform is not feasible;

- The platform needs to be compatible with both Microsoft and Apple systems. Some law firms operate entirely on Apple systems;
- An option for marking electronic documents is also considered useful and would reduce the need to print documents if annotations need to be made. It would also be necessary where a witness is asked to annotate a document to be tendered as an exhibit;
- Provision of iPads or other suitable devices for use by jurors would also be appropriate;
- The naming conventions within an electronic brief should be such that the document and type of document (e.g. statement, image) is readily identifiable, to assist in navigating the eBrief, rather than only using document numbers, for example.

Further, to the extent that it is anticipated that the Court Initiative would also be utilised across the board in criminal matters in the Magistrates Court, consideration ought to be given to the access that will be afforded to government agencies other than WA Police which have investigative and prosecutorial functions (for example, Work Safe, Department of Transport and Department of Fisheries, the State Solicitor's Office and Local Governments) and whether these agencies also need to be consulted. Consultation with the Commonwealth Director of Public Prosecutions may also be appropriate.

Is the Law Society aware of any current issue which might fundamentally impact its ability to run Electronic Trials

The Law Society has consulted with the relevant Committees and no feedback was provided as to any current issues relating to this initiative.

Is the Law Society aware of any platform/application for digital evidence and/or Electronic Trials which is being successfully used in another jurisdiction

The Law Society is not aware of any platforms or applications for digital evidence and/or Electronic Trails presently used in other jurisdictions. However, it has come to the Law Society's attention that Teams and Skype are regularly used in Victoria and New South Wales, and the courts there have embraced this technology. The Law Society believes this could be a good working model to follow, as there are many benefits to using this technology such as reduced costs, accessibility, and convenience for witnesses and expert witnesses.

Other matters

Further, the Law Society strongly advocates for funding to improve court resources and infrastructure to regional courts and multi-function police facilities. Some regional courthouses do not currently have waiting rooms, interview rooms, drinking water or toilets. These basic amenities are critical to ensure access to justice and the proper conduct of court proceedings. While the Law Society is appreciative of efforts to enhance the digital capabilities of courts, it is crucial that regional courthouses do not get left behind.

In addition to the improvement of court resources and infrastructure, the Law Society advocates for legislative reform to improve digital practices in the profession. This includes supporting legislative reform to enable affidavits, statutory declarations and deeds to be witnessed electronically and by Audio Visual Links. These reforms would bring WA in line with other jurisdictions and community expectations, and also benefit those living in remote, regional and rural WA.

If you have any query please contact Susie Moir, General Manager Advocacy and Professional Development on smoir@lawsocietywa.asn.au or telephone 9324 8646.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Paula Wilkinson', with a long horizontal flourish extending to the right.

Paula Wilkinson
President