JUSTICE IN A CHANGING WORLD – THE RESPONSIVE BENCH[*]

The Hon Michelle Gordon AC[†]

In an era defined by rapid global transformation – technological disruption, shifting social expectations, and widening intersection with legal systems – the role of the judge is evolving. No longer solely arbiters of legal correctness, judges are increasingly called upon to be stewards of justice in its fullest sense: substantive, procedural, and participatory. In the face of rapid change, increasing scrutiny and limited resources, judicial case management becomes not just a tool of efficiency, but a vehicle for fairness, inclusion, and responsiveness. This moment invites us to reflect not only on how we manage cases, but on how we shape justice itself – attuned to the voices of those we serve and the world in which we serve them.[3]

A Introduction

1 When I was offered appointment to the Federal Court of Australia, I called a mentor who knew me well. We had worked together for years. He knew how much I loved building a case and the thrill of arguing it in court for a client. I asked him what was going to replace the joy of those highs. He said, "Running a good trial." So that became my lodestar. Running a good trial.

2 Since that conversation, I have reflected deeply, both publicly and privately, on the role of a judicial officer.[4] Now, 18 years later, I realise that my lodestar was incomplete or, maybe, I misunderstood the advice.

---

[*] This is an edited version of the keynote address delivered by the author at the Australian Judicial Officers Association, 2025 Colloquium, on 10 October 2025, in Perth, Western Australia. The keynote address was delivered on the land, seas and waterways of the Whadjuk Noongar people where they practice their law, values, languages, beliefs and knowledge, as they have done for millennia. My thanks to Adehlia Ebert, Tyrone Connell and Annie Jiang for their invaluable assistance in its preparation. Any errors or omissions are mine.

[†] Justice of the High Court of Australia.

[3] The first draft of the title and the abstract were AI generated: see [63]-[64] below.

[4] See, eg, Ceremonial - Swearing in of Gordon J - Canberra [2015] HCATrans 140; Gordon J, "The Rule of Law – What We Share and Must Defend" (Australian High Commission, 8 March 2018); Gordon J, "Automation, Innovation and the Rule of Law – Oil and Water?" (Australasian Institute of Judicial Administration Conference, 26 May 2018); Gordon J, "The Integrity of Courts: Political Culture and a Culture of Politics" (2021) 44(3) *Melbourne University Law Review* 863; Gordon J, "Taking Judging and Judges Seriously: Facts, Framework and Function in Australian Constitutional Law" (2023) 49(1) *Monash University Law Review* 1.

3 Running a good trial or any hearing in a courtroom is not a standalone task or objective. We know it is part of something bigger. As judicial officers, we play a critical role in upholding the rule of law in our inherited democracy. We're custodians of an institution that's larger and more enduring than any one of us. "Running a good trial" as part of that institution and in pursuit of our obligation to provide fair and efficient administration of justice according to law is essential to that mission.

4 But these institutions – democracy; the rule of law; the administration of justice – are not static, and they evolve and develop with the world around us. Justice itself is not some abstract idea. It is not a static concept with fixed content. As judicial officers, we give content to justice through our actions and decisions. In this article, I will suggest one framework for giving content to justice. I think of justice as having three interrelated aspects: substantive, procedural and participatory. I want to bring these aspects of justice to bear on how judges approach the administration of justice, including anything and everything that has the ability to affect the court system.

5 This article will proceed in three parts. First, I will explore developments that are occurring in the world around us, and how as judicial officers we might respond to them. I will explain why, in light of these changes and challenges, we should be conscious of our role as not only adjudicator, but also as systems reformer, leader and learner. Second, I will explain my view of justice as comprising substantive justice, procedural justice and participatory justice. Third, I will connect these ideas and explore how we can manage our work in ways that meet global challenges we face in a way that delivers justice according to law, whilst ensuring that our institutions are not only maintained but maintained in a way that engenders trust and respect.

B Judge as adjudicator, systems reformer, leader and learner

Global context and the judicial role

6 We may come from an island nation, but as judicial officers we do not live on our own island. We are part of a global community, and that matters more than ever in a world that feels increasingly divided.

7 We are fundamental components of a larger whole. We belong to, and play a crucial role in, larger institutions. These include the judiciary, the

justice system, government, and democracy itself. As the High Court recognised in *D'Orta-Ekenaike v Victorian Legal Aid*:[5] "Judicial power is exercised as an element of the government of society and its aims are wider than, and more important than, the concerns of the particular parties to the controversy. … No doubt the immediate parties to a controversy are very interested in the way in which it is resolved. But the community at large has a vital interest in the final quelling of that controversy."

8 Moreover, we are part of a wider community, and we are not immune from forces – local, regional, national and global – which are reshaping our world. Those forces bring challenges and opportunities. Challenges include so-called "truth decay", or the proliferation of disinformation and devaluation of truth in our societies.[6] Opportunities include AI,[7] which I will address below.

Threats to judicial independence

9 Some global challenges affect judicial officers directly. We exist in a time of increasing attacks on the judiciary and judicial independence. In a recent report, the United Nations Special Rapporteur on the independence of judges and lawyers highlighted attacks on judicial independence as a hallmark feature of autocratisation and democratic decay.[8] These attacks are of particular concern when they come from the executive branch.

10 In the United States, judges face growing criticism from both the public and the executive. First, polarisation fuels claims that judicial rulings are

---

[5] (2005) 223 CLR 1 at 16 [32].

[6] Kavanagh and Rich, *Truth Decay: An Initial Exploration of the Diminishing Role of Facts and Analysis in American Public Life* (2018); Menon CJ, "The role of the judiciary in a changing world", *Supreme Court of India Day Lecture Series 1st Annual Lecture* (2023) at 13 [17]; Bell CJ, "Present and future challenges to the rule of law and for the legal profession", *Opening of Law Term Dinner Address 2025* (2025) at [11]-[16].

[7] See Niall CJ, "In Conversation: Chief Justice Richard Niall", *Law Institute Journal* (2025) at 12-13; Semple, "Could artificial intelligence in decision-writing improve access to justice?", *Slaw* (2025).

[8] Satterthwaite, *Report of the Special Rapporteur on the independence of judges and lawyers*, UN Doc A/HRC/53/31 (13 April 2023) at [16].

acts of partisan policymaking.[9] Second, judges who rule against the current administration may face public insults, threats, the sharing of personal information about judges and their family, or even impeachment attempts. Members of the executive branch have questioned whether the executive must obey court orders, directly undermining the role of the judiciary as a check on executive power.

11 In Afghanistan, women judges faced direct threats to their lives after the Taliban returned to power in 2021, and many were forced to flee the country to avoid reprisals from those whom they had sentenced.[10] Many of these women had worked in antiterrorism courts and sentenced Taliban members to prison.

12 In a recent speech, Lord Reed, President of the Supreme Court of the United Kingdom, observed that criticism of the courts might have particular resonance with the public in an age of considerable disenchantment with established institutions.[11] That kind of disenchantment accompanies an erosion of trust in institutions like the judiciary. And here in Australia, we know we are not immune. Court Services Victoria has recently reported that threats to harm or kill a judge, court staff or a member of their families more than doubled in Victoria in 2024.[12] The causes are deep and complex – the consequences profound.

13 Against this backdrop, it is incumbent upon all of us to think critically about the roles and responsibilities of the judicial officer. We are not, and should never consider ourselves to be, confined to the mechanical resolution of disputes.

14 Given our central role in the administration of justice, and the large and rapid changes we face, in addition to being good adjudicators we must

---

[9] Bazelon and Schwartz, "Seven Chaotic Months in the Life of a New Federal Judge", *The New York Times Magazine* (online, 30 June 2025) <https://www.nytimes.com/2025/06/30/magazine/federal-judge-amir-ali-trump-usaid.html>.

[10] Lamb, "'I am going to find you': the plight of Afghanistan's female judges", *The Sunday Times* (online, 16 August 2025) <https://www.thetimes.com/article/f46eaf4a-a626-4f62-8df1-41f68cf065ad>.

[11] Lord Reed, "Trust in the Courts in an Age of Populism", *The Peter Taylor Memorial Address 2025* (2025) at 1-4.

[12] Vedelago, "Threats to judges amid rising court safety issues", *The Age* (Melbourne, 30 September 2025) at 1, 4.

also be individual reformers, leaders and learners. I have borrowed the description of the role of a judicial officer as not only adjudicator but also systems reformer, leader and continuous learner from Chief Justice Sundaresh Menon of the Supreme Court of Singapore.[13]

15 What does it mean to be an adjudicator, systems reformer, leader and learner? As systems reformers, we have a responsibility to reimagine and reshape the justice system. As leaders, we act to improve it. And as learners, we build the skills and knowledge needed to properly discharge our role.[14]

16 We cannot resolve disputes mechanically, without asking how we, as individuals and as an institution, can better deliver justice. As Chief Justice Menon said, "we should … recognise the value in being active participants rather than mere passengers in transforming our justice systems".[15] I suggest our individual active participation as reformers, leaders and continuous learners is just as essential to our mission of administering justice as is running a good trial.

Listening and learning

17 How can we be better administrators of justice? A simple way to start is to ask and listen. As judicial officers, we are uniquely placed to observe how best to administer justice – we see the system up close. However, we do not have all the answers. Indeed, it would be against the interests of justice and, more broadly, against the interests of democracy, if we were to assume that we had all the answers as to how best do our job. Our work changes as the world in which we live – locally, regionally, nationally and globally – changes.

18 Within our immediate world, some of the best insights come from members of the legal profession – the advocates who experience the litigation process from the bar table and who play an integral role in

---

[13] Menon CJ, "Opening Remarks", *Judicial Education Townhalls* (2024) 8-13.

[14] Menon CJ, "Opening Remarks", *Judicial Education Townhalls* (2024) 7-10, especially at 8 [9], 11 [13], 12-13 [16].

[15] Menon CJ, "The role of the judiciary in a changing world", *Supreme Court of India Day Lecture Series 1st Annual Lecture* (2023) at 22 [34]. See also Menon CJ, "Opening Remarks", *Judicial Education Townhalls* (2024) 7-10.

upholding the rule of law.[16] This is a lesson that I learned myself. As a trial judge, after significant trials, I would ask Court Registrars to invite each member of counsel and solicitor involved in the case to say (without attribution) what the Court did wrong, what could have been done better, and how the process might be improved.

19 It was humbling, reminding me that I did not have all the answers or necessarily know best how to manage a case. However, by asking and listening, I learned how the system could be reformed in order, ultimately, to better administer justice. And the system was changed. After one trial, we changed how experts were engaged from the commencement of the management of the case and, after another trial, how expert conclaves were run prior to trial. The feedback was invaluable – the good and the bad.

20 Nor should we confine our attention to what our own courts (or even courts in other Australian jurisdictions) are doing. All of us can learn much from the experiences of others.

21 As adjudicators in the modern world, we can also be better administrators of justice by embracing technological change in the world around us. Failing to do so would run counter to our role as systems reformers and learners. While the world reforms around us, the judicial system must reform as well.[17]

22 This brings to mind the incredible work of Dr Soon Soo Gog, the Chief Skills Officer at SkillsFuture Singapore. SkillsFuture Singapore is a national movement which aims to promote lifelong learning and skills development in Singapore. Dr Soon Soo Gog recognises that change, particularly technological change, is occurring at an accelerating rate and that society must be able to continuously up-skill. In her words, "[i]f we don't drive change, then change will come upon us."[18]

---

[16] See Martin AM SJA, "The Communist Party Case, the Role of the Advocate and the Rule of Law", *Hearsay* (2025). See also Niall CJ, "In Conversation: Chief Justice Richard Niall" (2025) (June) *Law Institute Journal* 12 at 12.

[17] See, eg, Bell CJ, "Leading in the Law", *Keynote address to the "Leading in the Law" 2025 summit* (2025) at 14 [53]; Niall CJ, "In Conversation: Chief Justice Richard Niall" (2025) (June) *Law Institute Journal* 12 at 12.

[18] Soon Soo Gog, "Are we future ready?", *Shahzada Dawood Learning Circle*. See also Soon Soo Gog, "Skills for the future" (2025) 12(1) *Asian Management Insights* 20.

AI and the future of justice

23 This, of course, raises the topic of AI. My view is that, like other technological innovations, AI can both enhance and curtail the administration of justice.[19]

24 First, let me be clear about what I mean by "AI". Artificial intelligence refers to a "'constellation' of processes and technologies enabling computers to complement or replace specific tasks otherwise performed by humans".[20] AI goes beyond generative AI tools, although particular attention has recently been paid to the use of generative AI in the courts. I will come to discuss ways in which we might adopt and adapt to AI, in its many forms, as judicial officers.

25 AI, like any technology, is not without its risks. Indeed, phenomena like "hallucinated" cases and questions as to confidentiality and privacy safeguards[21] are real concerns that undermine the administration of justice and waste the court's time. The use of AI by lawyers and judicial officers also raises ethical concerns. Practitioners need to consider issues of confidentiality and privilege when inputting information into AI tools, and relying on inaccurate and / or false AI-generated content may breach a practitioner's duties to provide independent legal advice in a competent and diligent manner and to not deceive or mislead the court.[22] Judges misusing or becoming overly reliant on AI could also erode trust in the judiciary.[23] These concerns have prompted some judicial institutions, such as the Canadian Human Rights Tribunal, to entirely exclude the use of AI from writing decisions or analysing evidence.[24]

---

[19] See Gordon J, "Automation, Innovation and the Rule of Law – Oil and Water?" (Australasian Institute of Judicial Administration Conference, 26 May 2018) at 15.

[20] Satterthwaite, *Report of the Special Rapporteur on the independence of judges and lawyers*, UN Doc A/HRC/53/31 (13 April 2023) at [27].

[21] See Supreme Court of New South Wales, Practice Note SC Gen 23: Use of Generative Artificial Intelligence (Gen AI) at [7].

[22] See Givoni, "Interview with Lisa Fitzgerald - AI and legal ethics" (2025) 27(5&6) *Internet Law Bulletin* 98 at 98.

[23] Browning, "The Dawn of the 'AI Judge'? Generative Artificial Intelligence and Its Impact on Appellate Courts" (2025) 25(2) *The Journal of Appellate Practice and Process* 341.

[24] Semple, "Could artificial intelligence in decision-writing improve access to justice?", *Slaw* (2025).

26 As judicial officers, we cannot afford to bury our heads in the sand. We must adapt and respond to the challenges before us. AI is a reality of the world today and will only grow in significance.[25] Its capabilities have already developed at an astonishing rate.[26] Already, new generative AI software is being developed that hallucinates less than earlier versions.[27] It also presents opportunities to *improve* our deliberation and decision-making.

27 We need to respond to the risks of AI but also welcome the opportunities it may bring. In brief, we should learn how we can safely embrace AI to reform our work.

28 I have referred to two global trends that may shape our work as judicial officers: erosion of trust in institutions like the judiciary; and the emergence of AI. As individual judicial officers, how can we actively respond to these changes? Below, I will describe lessons I have learned, in Australia and elsewhere, about how we can address, and adapt to, these changes around us.

C Justice as encompassing substantive, procedural and participatory justice

29 It is important to give some content to the concept of justice. As adjudicators, systems reformers, leaders and learners, our ultimate goal is to administer justice. But what does justice mean? More importantly, what *should* it mean?

30 There are many ways of conceptualising justice.[28] For example, a sociologist, a philosopher and a linguist will all have different ways of understanding and defining justice. I do not aim to craft a definition of justice that applies across all contexts and all professions. Instead, my

---

[25] See Niall CJ, "In Conversation: Chief Justice Richard Niall" (2025) (June) *Law Institute Journal* (2025) 12 at 13.

[26] Menon CJ, "The Future of the Legal Profession: A Shared Vision", *Opening Address at the Legal Profession Symposium 2025* (2025) at [50]. See also Mollick, "The recent history of AI in 32 otters" (2025) *One Useful Thing*.

[27] See Phiddian, "OpenAI claims its newest chatbot GPT-4.5 should 'hallucinate less'. How is that measured?" *ABC News* (20 March 2025); Mollick, "Using AI right now: A quick guide" (2025) *One Useful Thing*.

[28] Tan, "In pursuit of justice: The place of procedure in judicial case management" [2022] *Singapore Journal of Legal Studies* 423 at 423.

understanding of justice is specific to the judicial role and intended to be of practical benefit to us as systems reformers.

31 In my view, justice might be seen as having three aspects: (1) substantive justice, (2) procedural justice, and (3) participatory justice.[29] Those three aspects of justice are intrinsically linked; each reinforces the others.

Substantive vs procedural justice

32 Substantive justice is, to put it plainly, about "getting it right". It is about making decisions that achieve the legally correct result.[30] Historically, substantive justice was considered the primary goal of the judiciary. Measures aimed towards procedural and participatory justice, to the extent they were considered at all, were seen as secondary to, and often in tension with, the pursuit of substantive justice.[31]

33 Procedural justice is about ensuring that the process by which decisions are made is fair.[32] It looks to whether all parties to a decision have been

---

[29] See, eg, Giudice, "Asymmetrical attitudes and participatory justice" (2006) 4 *Cardozo Public Law, Policy & Ethics Journal* 15; Moorhead et al, "Just satisfaction? What drives public and participant satisfaction with courts and tribunals: a review of recent evidence" (2008) *Ministry of Justice Research Series 5/08*; Gensler and Rosenthal J, "Measuring the quality of judging: It all adds up to one" (2014) 48 *New England Law Review* 475; Liebenberg, "Participatory justice in social rights adjudication" (2018) 18 *Human Rights Law Review* 623; Toohey et al, "Meeting the access to civil justice challenge: Digital inclusion, algorithmic justice, and human-centred design" (2019) 19 *Macquarie Law Journal* 133; Pinsler SC, "The ideals in the proposed rules of court" (2019) 31 *Singapore Academy of Law Journal* 987; McKeever, "Comparing courts and tribunals through the lens of legal participation" (2020) 39(3) *Civil Justice Quarterly* 217; Chang and Zhang, "Procedural justice in online deliberation: Theoretical explanations and empirical findings" (2021) 17(1) *Journal of Deliberative Democracy* 105; Semple, "Better access to better justice: The potential of procedural reform" (2022) 100(2) *The Canadian Bar Review* 124; Tan, "In pursuit of justice: The place of procedure in judicial case management" [2022] *Singapore Journal of Legal Studies* 423; Kong et al, "The humanising imperative for effective participation: Humean virtues and the limits of procedural justice" (2025) 21 *International Journal of Law in Context* 453.

[30] Semple, "Better access to better justice: The potential of procedural reform" (2022) 100(2) *The Canadian Bar Review* 124 at 136-142.

[31] Tan, "In pursuit of justice: The place of procedure in judicial case management" [2022] *Singapore Journal of Legal Studies* 423 at 425.

[32] Gensler and Rosenthal J, "Measuring the quality of judging: It all adds up to one" (2014) 48 *New England Law Review* 475 at 478; Chang and Zhang, "Procedural justice in online deliberation: Theoretical explanations and empirical findings" (2021)

given meaningful opportunities to participate, understand the case against them, and respond to that case, as well as the neutrality of the forum, the perceived trustworthiness of the professional participants, and the degree to which all people are treated with dignity and respect.[33] There has been increasing recognition of the importance of procedural justice. Indeed, research suggests that people are more likely to accept a decision if they perceive the process as fair, regardless of whether the outcome is in their favour.[34]

34 Literature on case management of disputes often focuses on the need to resolve a tension between procedural justice on the one hand and substantive justice on the other.[35] I do not accept that these concepts can be considered in isolation or as always opposed. They might equally foster and reinforce each other.

Participatory justice

35 In addition to substantive and procedural justice, I think justice has an important third aspect: participatory justice. Participatory justice is about the meaningful involvement of individuals in the legal processes that

---

17(1) *Journal of Deliberative Democracy* 105 at 106; Semple, "Better access to better justice: The potential of procedural reform" (2022) 100(2) *The Canadian Bar Review* 124 at 136-137, 145-147; Tan, "In pursuit of justice: The place of procedure in judicial case management" [2022] *Singapore Journal of Legal Studies* 423 at 423; Kong et al, "The humanising imperative for effective participation: Humean virtues and the limits of procedural justice" (2025) 21 *International Journal of Law in Context* 453 at 455.

[33] Gensler and Rosenthal J, "Measuring the quality of judging: It all adds up to one" (2014) 48 *New England Law Review* 475 at 478, quoting Young J and Singer, "Bench presence: Toward a more complete model of federal district court productivity" (2013) 118 *Penn State Law Review* 55 at 80.

[34] Williams et al, "Participation as a framework for analysing consumers' experiences of alternative dispute resolution (ADR)" (2020) 47(2) *Journal of Law and Society* 271 at 276-277, citing Tyler, "Procedural justice and the courts" (2007) 44 *Court Review* 26; Grootelaar and van den Bos, "How litigants in Dutch courtrooms come to trust judges: The role of perceived procedural fairness, outcome favourability, and other socio-legal moderators" (2018) 52 *Law and Society Review* 234.

[35] See, eg, Tan, "In pursuit of justice: The place of procedure in judicial case management" [2022] *Singapore Journal of Legal Studies* 423 at 423, quoting *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [9] (Andrew Phang JC).

affect them.[36] A legal system that is not accessible risks deepening disadvantage.

36 For many, involvement in the legal system can be an incredibly disempowering experience. They face a powerful institution that can profoundly affect their rights. For those living with disadvantage, that imbalance is even greater.

Barriers to participation

37 It is no secret that many people face serious barriers to participating in the legal system. The barriers fall into three broad categories: (1) practical barriers, such as the financial and temporal costs of participation or a lack of access to resources (such as the internet); (2) emotional barriers, such as the stress of participation and distrust of the system; and (3) intellectual barriers, such as the inability to understand legal jargon.[37] People from disadvantaged groups often face multiple types of barriers, or experience these barriers in an exacerbated way. For example, people with disabilities may face barriers with respect to communication as well as practical barriers in accessing the necessary support, adjustments or aids to participate; *and* emotional barriers arising from misconceptions and stereotypes about their reliability and credibility as witnesses.[38]

38 Despite progress, these barriers persist. A 2014 report by the Productivity Commission found that the cost of legal services prevented effective access to the legal system for the vast majority of Australians.[39] A 2023 survey in Victoria identified that, where legal need existed, 78 per cent

---

[36] Liebenberg, "Participatory justice in social rights adjudication" (2018) 18 *Human Rights Law Review* 623 at 628; McKeever, "Comparing courts and tribunals through the lens of legal participation" (2020) 39(3) *Civil Justice Quarterly* 217 at 217-225; Williams et al, "Participation as a framework for analysing consumers' experiences of alternative dispute resolution (ADR)" (2020) 47(2) *Journal of Law and Society* 271 at 273.

[37] McKeever, "Comparing courts and tribunals through the lens of legal participation" (2020) 39(3) *Civil Justice Quarterly* 217 at 224-225. See also Semple, "Better access to better justice: The potential of procedural reform" (2022) 100(2) *The Canadian Bar Review* 124 at 131.

[38] See, eg, Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report No 124 (2014) at 192.

[39] Toohey et al, "Meeting the access to civil justice challenge: Digital inclusion, algorithmic justice, and human-centred design" (2019) 19 *Macquarie Law Journal* 133 at 135.

went unmet, meaning that unmet legal need was the norm rather than the exception.[40] The same study showed that unmet legal need was particularly high for some groups, including First Peoples; single parents; and people who are low income, not working, or reporting severe mental distress. Finally, in 2025, an independent review of the National Legal Assistance Partnership observed that gaps in legal aid have persisted since the Productivity Commission report and that financial hardship is increasing in the current cost of living environment.[41] Barriers to participation should be of concern to us as systems reformers. The harsh reality is that if people cannot meaningfully access the law and the legal system, and participate in them, the consequences for the justice system and society are profoundly far-reaching and negative.

39 Procedural and participatory justice can help to break down some barriers. When the process is fair, impartial, and efficient, people are more willing and able to participate. Clear legislation and procedural rules that promote efficiency can reduce the financial and temporal costs of participation.[42] Active judicial management can promote greater opportunities for participants to be informed and heard,[43] and improve their understanding of the legal process.[44] For example, an active judicial case manager can

---

[40] "The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need", *Victoria Law Foundation* (Web Page, 30 August 2023) <https://www.victorialawfoundation.org.au/research-publications/puls-volume-1#Background-item>.

[41] *Independent Review of the National Legal Assistance Partnership Final Report* (March 2024) at 58, 182.

[42] See, eg, *Federal Court of Australia Act 1976* (Cth), s 37M; *Civil Procedure Act 2005* (NSW), s 56; *Civil Procedure Act 2010* (Vic), s 7; *Uniform Civil Rules 2006* (SA), s 3; *Uniform Civil Procedure Rules 1999* (Qld), s 5; *Rules of the Supreme Court 1971* (WA), O 1 r 4B; *Supreme Court Rules 2000* (Tas), r 414A; *Supreme Court Rules 1987* (NT), O 1A r 1A.01; *Court Procedures Act 2004* (ACT), s 5A. See also Semple, "Better access to better justice: The potential of procedural reform" (2022) 100(2) *The Canadian Bar Review* 124 at 156. See also Pinsler SC, "The ideals in the proposed rules of court" (2019) 31 *Singapore Academy of Law Journal* 987 at 997, quoting *Then Khek Koon v Arjun Permanand Samtani* [2014] 1 SLR 245 at [177].

[43] Gensler and Rosenthal J, "Measuring the quality of judging: It all adds up to one" (2014) 48 *New England Law Review* 475 at 477. 486.

[44] McKeever, "Comparing courts and tribunals through the lens of legal participation" (2020) 39(3) *Civil Justice Quarterly* 217 at 221-224.

seek to narrow disputes and encourage the use of plain English in the proceedings.

40 Procedural justice can also reduce the emotional costs of participation.[45] It stands to reason that, when a person's rights could be affected by a legal decision, giving them notice, clear information, and the opportunity to be heard demonstrates to that person that the legal system respects their dignity and agency.[46]

Substantive, procedural and participatory justice as interconnected

41 Procedural and participatory justice are not only ends in themselves; they also promote substantive justice.[47] The more people meaningfully participate in the process, the more likely the decision itself will be correct.

42 When litigants are engaged and able to make their case, courts get better facts and arguments.[48] Engaging with informed, prepared litigants gives decision-makers a better understanding of the case.[49] In other words, we become better adjudicators. Clear procedural rules promote transparency

---

[45] Semple, "Better access to better justice: The potential of procedural reform" (2022) 100(2) *The Canadian Bar Review* 124 at 146.

[46] Liebenberg, "Participatory justice in social rights adjudication" (2018) 18 *Human Rights Law Review* 623 at 628; Kong et al, "The humanising imperative for effective participation: Humean virtues and the limits of procedural justice" (2025) 21 *International Journal of Law in Context* 453 at 455.

[47] McKeever, "Comparing courts and tribunals through the lens of legal participation" (2020) 39(3) *Civil Justice Quarterly* 217 at 224; Williams et al, "Participation as a framework for analysing consumers' experiences of alternative dispute resolution (ADR)" (2020) 47(2) *Journal of Law and Society* 271 at 279; Semple, "Better access to better justice: The potential of procedural reform" (2022) 100(2) *The Canadian Bar Review* 124 at 154.

[48] Liebenberg, "Participatory justice in social rights adjudication" (2018) 18 *Human Rights Law Review* 623 at 628; Semple, "Better access to better justice: The potential of procedural reform" (2022) 100 (2) *The Canadian Bar Review* 124 at 146.

[49] Gensler and Rosenthal J, "Measuring the quality of judging: It all adds up to one" (2014) 48 *New England Law Review* 475 at 490. See also Moorhead et al, "Just satisfaction? What drives public and participant satisfaction with courts and tribunals: a review of recent evidence" (2008) *Ministry of Justice Research Series 5/08* at 50-51.

of decision-making, making it easier for errors to be identified and addressed.[50]

Legitimacy of judicial decisions

43 Procedural and participatory justice also protect the legitimacy of judicial decisions. The more the procedure by which a decision is made is seen to be fair, the more the outcome is seen to be just.[51] This is vital in a time where judicial decisions are criticised as the product of personal bias or being "out of touch". Unlike elected officials, our legitimacy does not derive from the votes but is reliant on public trust and political restraint.

D Substantive, procedural and participatory justice in the management of litigation

44 Substantive, procedural and participatory justice have direct, practical relevance for our work as judicial officers. Let's bring these ideas to life. As judges, we often ask ourselves: if I take this step in managing the matter, or make this decision, will it be in the interests of the administration of justice? Is it substantively just? Is the process just? Does it promote participation – physically, intellectually, substantively? If we are to innovate and embrace change in how we do our work, we must ask ourselves the same questions. Does this change advance the objectives of substantive, procedural and participatory justice? Below are some examples of innovation and change that inspire me.

45 Think of a case as moving through a pipeline with three stages. By this, I mean the journey or life cycle of a case before a court. By a "case", I mean more than trials or disputes. People come before courts in many ways. *First*, when they seek to enter the court system; *second*, when they are *in* the court system, engaging in court processes; and *third*, when they exit the court system. Some litigants will enter and exit the court system many times.

---

[50] Liebenberg, "Participatory justice in social rights adjudication" (2018) 18 *Human Rights Law Review* 623 at 628.

[51] Liebenberg, "Participatory justice in social rights adjudication" (2018) 18 *Human Rights Law Review* 623 at 628; Tan, "In pursuit of justice: The place of procedure in judicial case management" [2022] *Singapore Journal of Legal Studies* 423 at 427; Kong et al, "The humanising imperative for effective participation: Humean virtues and the limits of procedural justice" (2025) 21 *International Journal of Law in Context* 453 at 453-454

46 At each stage, judicial officers have opportunities to deliver procedural, participatory and substantive justice.

Entry

47 I will begin with the entry of a case into the pipeline. In the High Court, as in many other apex and appellate courts, the judges play a critical role in deciding which cases will be determined on their merits. The special leave process allows the Court to control entry of cases into its pipeline. This is a task we do not take lightly. We are cognisant of the very real effects of our decision. When we refuse to grant special leave, litigants lose their ability to participate in the justice system. That is why we consider each application carefully. We consider the prospects of the application; whether the appeal involves a question of law of public importance; and whether the interests of the administration of justice require consideration of the appeal. If we are to deny participation, we must ensure that decision is substantively and procedurally just.

48 However, we cannot and must not assume that this system is perfect. Lessons can be gleaned from other jurisdictions.

49 In the Netherlands, there was a separation and divorce platform offered by the Ministry of Justice and Security that used algorithms to assess information provided by a couple who were separating or divorcing and offer a possible property settlement outcome ("the Netherlands Platform"). If the proposed outcome was not accepted, the couple could request a mediation or adjudication.[52] The platform still exists but is now run privately.[53] The Netherlands Platform offered divorcing or separating couples a process – which they controlled – to resolve issues early and without going to court. For the couple, that resulted in ease of participation, lower costs, faster outcomes and less stress. That change had knock on effects not only for those litigants but others in the system. If the case settled, judicial time that would have been taken up by that

---

[52] Gordon J, "The implications of technology for the junior bar", *VicBar Junior Bar Conference* (2017) at 12, citing Legg, "The Future of Dispute Resolution: Online ADR and Online Courts", (2016) 27 *Australian Dispute Resolution Journal* 227 at 230; Civil Justice Council, *Online Dispute Resolution for Low Value Civil Claims* (February 2015) at 12.

[53] Kistemaker, "Rechtwijzer and Uitelkaar.nl. Dutch Experiences with ODR for Divorce" (2021) 59(2) *Family Court Review* 232.

case was allocated to other arguably more important cases. If the case did not settle, the issues were narrowed, which was beneficial for the judicial officer and the parties. Just as, during litigation, judicial officers will often encourage the parties to reach an agreed resolution rather than proceeding to trial, we might consider ways in which parties can be diverted from the financial and emotional cost of the court system at an earlier stage.

50 The Singaporean courts have adopted a wide range of online services for dispute resolution. One example, the Motor Accident Claims Online platform or MACO, is an online traffic accident claims simulator which indicates which party is at fault and generates an estimate of the quantum of damages that a claimant might obtain, taking into account current laws and case precedents.[54] This is used by people involved in an accident to decide if it is worth suing the other party or insurer. Unlike the Netherlands Platform, parties use MACO to decide *whether* to commence a case. Like the Netherlands Platform, parties can also use MACO to settle a potential case without resorting to legal proceedings.

51 If implemented properly, these kinds of innovations strengthen the administration of justice.

52 Our courts already publish guidance and offer support through registry staff to assist litigants to make applications, prepare cases and appear in court. But demand is increasing, and resources are stretched. The ability to provide that assistance using technology, not just AI, to assist a person's access to justice in a meaningful and useful way is substantial. If set up and used properly – involving smart investment up front by government – it could achieve what the Netherlands Platform and MACO achieved – and more. The opportunity to improve all aspects of the administration of justice is exciting.

53 Taking a different approach, the Federal Circuit and Family Court of Australia has adopted innovative approaches to respond to family violence, before cases even reach the court system. Its groundbreaking family violence against women campaign – including a powerful video featuring messages from prominent Australian men – was shown live on

---

[54] *Motor Accident Claims Online* (Web Site, 28 November 2024) <https://motoraccidents.lawnet.sg/>.

the big screen during the AFL and Rugby League final series. Harris Andrews of the Brisbane Lions is reported saying that his proudest moment at the AFL Grand Final was seeing himself saying that violence against women has to stop on the big screen at the Melbourne Cricket Ground. It is a model now being adopted in the United Kingdom.[55] The video message targets the root cause by seeking to reduce the incidence of violence and then, of course, the number of cases coming to the Court. It is powerful and puts the Court in the public eye – setting standards that impact behaviour in society generally and within the court system. The video also powerfully – and indirectly – educates and assists to explain how that court will view that behaviour.

In the pipeline

54 Once a case enters the pipeline, as judicial officers we have plenty to do. Depending on the jurisdiction and the nature of the case, this stage can take many different forms. I put to one side the myriad of case management tools that are continually being developed to seek to ensure that litigation is conducted justly, quickly and cost effectively. I want us to think outside the box, big and small.

55 Small changes can make a big difference. Magistrates MacPherson and Hawkins, in the Children's Court at Broadmeadows in Melbourne, created real change through a simple idea. The Family Drug Treatment Court program helps parents whose children have been removed from their care due to parental substance misuse or dependence and seeks to address those issues of substance misuse with the aim of achieving family reunification.[56] Participation in the program involves regular drug testing.[57] Magistrates MacPherson and Hawkins, observing distrust, fear and lack of engagement between clients and the judicial system,

---

[55] Federal Circuit and Family Court of Australia, "Media release: Video featuring prominent Australian men lending their voices to end family violence to be played at MCG on Friday night" (30 May 2025) <https://www.fcfcoa.gov.au/news-and-media-centre/media-releases/mr300525>.

[56] Children's Court of Victoria, "Family Drug Treatment Court" (2021) <https://www.childrenscourt.vic.gov.au/family-division/family-drug-treatment-court>.

[57] Children's Court of Victoria, "Drug screens and how they support Family Drug Treatment Court goals" (2021) <https://www.childrenscourt.vic.gov.au/family-division/family-drug-treatment-court/drug-screens-and-how-they-support-family-drug-treatment>.

introduced a wishing well. Clients who attended three drug tests, regardless of the test results, could choose a gift. The magistrates' simple act built trust and encouraged engagement. The magistrates stock the wishing well and fund the gifts.

56 The wishing well is a powerful reminder that justice isn't just about systems – it's about people. This is not a sweeping reform; it's a small change with a big impact. Magistrates McPherson and Hawkins created real change for participants in the Family Drug Treatment Court, by fostering trust and respect. They effected real change not only in the administration of the justice system but in the level of trust and respect from those participating in it. Instead of crossing the street to avoid the Court, the participants now voluntarily visit the Court with their families.

57 Across Australia, the development of culturally appropriate courts for Aboriginal and Torres Strait Islander people are a further paradigm of participatory justice. The Koori Courts, for example, in Victoria offer culturally appropriate sentencing for Aboriginal and Torres Strait Islander people who plead guilty. In the Koori Court, the accused participates in a sentencing conversation, in a less formal setting, with other participants including Aboriginal Elders and Respected Persons, the judicial officer and the accused's family, as well as the accused's lawyer, the prosecutor, a Koori Court officer and a corrections officer.[58] The participants discuss the offending behaviour, using plain English instead of legal jargon.[59] The Elders and Respected Persons advise the judge on cultural context. Similar sentencing processes have now been adopted in other States and Territories.[60]

---

[58] See *County Court Act 1958* (Vic), s 4G; *Magistrates' Courts Act 1989* (Vic), s 4G; "County Koori Court", *County Court of Victoria* (Web Page, 2025) <https://countycourt.vic.gov.au/learn-about-court/court-divisions/county-koori-court>; "Koori Court", *Magistrates' Court of Victoria* (Web Page, 7 April 2025) <https://www.mcv.vic.gov.au/about/koori-court>.

[59] See, eg, *County Court Act*, s 4A(5)-(6); *Magistrates' Court Act*, s 4D(4)-(5).

[60] See, eg, "Warrumbul Circle Sentencing Court", *ACT Magistrates Court* (Web Page) <https://www.courts.act.gov.au/magistrates/about-the-courts/areas-in-the-act-magistrates-court/warrumbul-circle-sentencing-court>; "Aboriginal community courts", *Courts Administration Authority South Australia* (Web Page) <https://www.courts.sa.gov.au/going-to-court/court-locations/adelaide-magistrates-court/court-intervention-programs/aboriginal-community-courts/>; Law

58 The Family Drug Treatment Court and Koori Courts (and other culturally appropriate courts) are examples of "problem solving courts", which depart from the narrow consideration of legal issues and seek to engage with the underlying causes or issues that have brought the individual before the court.[61] Culturally appropriate courts present a counter-experience to the typical sentencing process, which can be alienating and disempowering for accused. Instead, in the Koori Courts the accused is given a voice and is able to speak not only to the court but to their family and to Elders.[62] The Courts have a key participatory objective by seeking to increase ownership of the administration of the law by Aboriginal and Torres Strait Islander people.[63] They are a means by which we can address barriers to participation in the legal system.

59 Culturally appropriate courts encourage proceedings to be conducted in plain English instead of legal jargon. As judicial officers, each of us can also ensure parties can meaningfully participate in legal proceedings by communicating in a way they can understand. This might mean tailoring our use of language to the persons before us. I was recently exposed to a linguist who studied transcripts of what happened in a criminal trial, including what the judge and lawyers said, and identified whether the offenders understood what was being said. The answer was no. The linguist created a list of things the judge and lawyer might say instead to help the offender better understand what was occurring.[64] This included,

---

Society of Western Australia, "First Nations Specialist Courts" (Briefing Paper, August 2021) <https://lawsocietywa.asn.au/wp-content/uploads/2023/01/2021AUG24-First-Nations-Specialist-Courts.pdf>.

[61] Harris, "The Koori Court and the Promise of Therapeutic Jurisprudence" (2007) *Murdoch University Electronic Journal of Law* 129 at 129; Australasian Institute of Judicial Administration, "Australasian Therapeutic Jurisprudence Clearinghouse: Problem-Solving Courts" (Web Page, 2025) <https://aija.org.au/atjc-problem-solving-courts-2/>.

[62] Harris, "The Koori Court and the Promise of Therapeutic Jurisprudence" (2007) *Murdoch University Electronic Journal of Law* 129 at 130-133.

[63] See, eg, Borowski, "Indigenous Participation in Sentencing Young Offenders: Findings From an Evaluation of the Children's Koori Court of Victoria" (2010) 43(3) *Australian and New Zealand Journal of Criminology* 465 at 468-469.

[64] As an example of this kind of initiative in respect of Aboriginal witnesses, see, eg, Eades, "*I don't think it's an answer to the question:* Silencing Aboriginal witnesses in court" (2000) 29(2) *Language in Society* 161; Eades, "A case of communicative clash: Aboriginal English and the legal system" in Gibbons (ed), *Language and the Law* (1994) 204. Eades' work has been used to develop guidance for judges and lawyers on communicating with Aboriginal clients.

specifically in the context of Aboriginal witnesses, using personal or familiar ways of communicating and use of culturally appropriate language (for example, "charged up" instead of "intoxicated").[65] The Judicial Council on Diversity & Inclusion also provides examples of ways judicial officers may adopt plain English in proceedings: use active voice – "somebody stole their money" instead of "their money was stolen"; avoid negative questions – "are they the boss?" instead of "aren't they the boss?"; define unfamiliar words; indicate when you change topic; avoid metaphors.[66] This is a simple smart initiative we can all adopt as judicial officers – to communicate clearly with those before us.

60 The Federal Circuit and Family Court of Australia has adopted an internationally unique system called "Lighthouse". It confidentially gathers information from parenting cases at the point of filing, identifying high-risk cases for a specialised list at the outset and enabling referrals to support services.[67] This is an example of early intervention—prevent rather than cure. Addressing safety risks and the non-legal needs of families in high-risk cases is fundamental to participatory justice: it empowers vulnerable parties so they can meaningfully access substantive justice.

61 Technological innovations also assist us to manage cases in the pipeline. Insights can be drawn from a 2023 review by the UK Courts and Tribunals called "Artificial Intelligence: Guidance for judicial office holders".[68] This review considered the benefits and risks of judicial officers using AI in their work. The review suggested that, provided the judicial officer exercised a degree of oversight and judgment, AI could be used for tasks like summarising large bodies of text, writing presentations, and

---

[65] See Victorian Aboriginal Legal Service, *Aboriginal English in the Courts Kit* (2007), based on the work of Diana Eades.

[66] Judicial Council on Diversity & Inclusion, *Recommended National Standards for Working with Interpreters in Courts and Tribunals*, 2nd ed (2022) Annexure 3.

[67] Federal Circuit and Family Court of Australia, "Media release: Chief Justice Alstergren showcases Australian Courts' groundbreaking family violence initiatives at World Congress in the UK" (28 July 2025) <https://www.fcfcoa.gov.au/news-and-media-centre/media-releases/mr250725>.

[68] UK Courts and Tribunals, "Artificial Intelligence (AI): Guidance for judicial office holders" (2023).

composing emails and memoranda.[69] The review did not recommend using AI for legal analysis or research.[70] That rider – that the *judicial officer exercised a degree of oversight and judgment* – is important.

62 Oversight and judgment are critical in how we use AI. Many judicial officers are using it for research now. If you recall the facts of a case but not its name, AI can quickly and effectively help you locate it. Some suggest AI could improve judicial decision-making by assisting judicial officers to test arguments or counterarguments.[71] Put another way, the use of AI in our work might result in outcomes that are more substantively just. I say might. As someone put to me recently, although AI might have been able to draft the dissenting judgment in *Mabo*, it is unlikely to have been able to draft the lead judgment of Brennan J. Human involvement in the justice system remains critical – our task is a human one, and we should not forget that.

63 In preparing this article, I decided to put AI to the test. The results were instructive. As part of my research, I identified, read and digested dozens of academic articles, source materials, reports and speeches over several days. Once familiar with that material, I uploaded the materials to a generative AI tool and asked it for a summary, guided by specific prompts and questions. It generated a summary in seconds. It was clear and accurate. AI even helped title this article. AI also drafted the abstract.

64 In short, AI was a helpful and efficient tool – but only because I had already "done the work" and had thought about these issues for many years. I was sufficiently familiar with the material and, at least to some extent, understood it to be able to critically review what AI produced and to exercise judgment as to what to accept and what to reject. But AI missed important nuances. The abstract needed amendment to more

---

[69] UK Courts and Tribunals, "Artificial Intelligence (AI): Guidance for judicial office holders" (2023) at 6.

[70] UK Courts and Tribunals, "Artificial Intelligence (AI): Guidance for judicial office holders" (2023) at 6.

[71] See Browning, "The Dawn of the 'AI Judge'? Generative Artificial Intelligence and Its Impact on Appellate Courts" (2025) 25(2) *The Journal of Appellate Practice and Process* 341 at 379, quoting Re, "Artificial Authorship and Judicial Opinions" (2024) 92(6) *George Washington Law Review* 1558 at 1588.

accurately reflect the content of this article. Below is the AI-generated abstract, with my tracked changes.

> "In an era defined by rapid global transformation – technological disruption, shifting social expectations, and widening ~~access to~~intersection with legal systems – the role of the judge is evolving. No longer solely arbiters of legal correctness, judges are increasingly called upon to be stewards of justice in its fullest sense: substantive, procedural and participatory. ~~As borders blur and legal cultures converge~~In the face of rapid change, increasing scrutiny and limited resources, judicial case management becomes not just a tool of efficiency, but a vehicle of fairness, inclusion, and responsiveness. This moment invites us to reflect not only on how we manage cases, but on how we shape justice itself – attuned to the voices of those we serve and the world in which we serve them."

65 Other countries are ahead. I have already referred to the Netherlands and Singapore. Since 2019, the courts in Brazil have developed and implemented over 140 AI tools to assist in clearing their backlog of over 76 million cases.[72] The programs use machine learning or large language models, and they can perform a range of tasks: some AI models categorise, group and index case data; others rely on the categorised data to suggest appropriate procedural steps, help manage case flow and automate procedural tasks.[73] Case law organisation and decision drafting AI models help judges to understand norms and precedents. All of these programs have the capacity to increase the courts' efficiency and access to justice.[74] The rate at which cases are resolved has been steadily rising

---

[72] Nakamura, "AI is helping judges to quickly close cases, and lawyers to quickly open them", *Rest of World* (online, 25 September 2025) <https://restofworld.org/2025/brazil-ai-courts-lawsuits/>; "Justice 4.0 Program discloses research results on AI in the Brazilian Judiciary", *UNDP Brasil* (2 June 2024) <https://www.undp.org/pt/brazil/news/programa-justica-40-divulga-resultados-de-pesquisa-sobre-ia-no-judiciario-brasileiro>.

[73] Nakamura, "AI is helping judges to quickly close cases, and lawyers to quickly open them", *Rest of World* (online, 25 September 2025) <https://restofworld.org/2025/brazil-ai-courts-lawsuits/>; Suriani and Pacheco, "Transforming Justice: The Rise of AI in Brazilian Courts" (Policy Paper, Conference on Digital Government Research) 6.

[74] Suriani and Pacheco, "Transforming Justice: The Rise of AI in Brazilian Courts" (Policy Paper, Conference on Digital Government Research) 6.

since 2020.[75] The Supreme Court announced that as of June this year its backlog had dropped to its lowest level since 1992.[76] It is a stark example. It illustrates the potential application of AI to solve real issues facing the justice system. But there, importantly, the National Council of Justice plays a pivotal oversight role in mapping and coordinating the implementation of AI and establishing guidelines to ensure it is appropriately adopted.[77] It is a National Council of Justice controlled solution to address a systemic issue.

66 As continuous *learners*, there are ways that we can up-skill and develop ourselves as judicial officers in the use of AI. One might start with LinkedIn's Learning Podcasts about how to use AI. Although he does not write for a legal context specifically, I recommend the writings of Associate Professor Ethan Mollick from the University of Pennsylvania, who publishes useful, and entertaining, guides about how best to use generative AI.[78] He talks about "working with AI"[79] and has labelled AI as a form of "co-intelligence".[80] To me, this speaks to the idea that AI, while an incredibly useful tool, does not replace our work; it is something we work with.

67 As AI continues to develop, courts and judicial officers must continue to review how they are to respond. We know that AI is used by litigants – both practitioners and self-represented parties. It can improve access to justice, and participatory justice, by assisting self-represented litigants to prepare pleadings and submissions.[81] Some of the Courts have issued

---

[75] Chivumnovu, "How Brazilian courts are turning to AI to fight overload", *Techloy* (online, 29 September 2025) <https://www.techloy.com/how-brazilian-courts-are-turning-to-ai-to-fight-overload/>

[76] "Minister Barroso presents balance of the first semester and highlights reduction of the Court's collection", *Supremo Tribunal Federal* (1 August 2025) <https://noticias.stf.jus.br/postsnoticias/ministro-barroso-apresenta-balanco-do-primeiro-semestre-e-destaca-reducao-do-acervo-da-corte/>.

[77] Suriani and Pacheco, "Transforming Justice: The Rise of AI in Brazilian Courts" (2025, Policy Paper, Conference on Digital Government Research).

[78] Mollick, "Using AI right now: A quick guide" (2025) *One Useful Thing*.

[79] Mollick, "Using AI right now: A quick guide" (2025) *One Useful Thing*.

[80] Mollick, *Co-intelligence* (2024).

[81] See Toohey et al, "Meeting the Access to Civil Justice Challenge: Digital Inclusion, Algorithmic Justice, and Human-Centred Design" (2019) 19 *Macquarie Law Journal* 133 at 140-143.

guidelines for the use of AI in litigation. Some emphasise awareness of how AI tools work, their privacy and confidentiality implications and practitioners' obligations.[82] Some encourage practitioners to employ AI or machine learning tools to improve productivity and efficiency consistent with the expectation that use of common technologies is a core skill for lawyers. Some also encourage self-represented litigants and witnesses using generative AI to disclose this, to provide context for the judicial officer.[83]

68 Of course, new techniques must never compromise judicial independence or intellectual rigour. The use of technology in judicial decision-making raises difficult questions. These questions were front and centre in *State of Wisconsin v Loomis*,[84] decided by the Supreme Court of Wisconsin in 2016.

69 Eric Loomis was sentenced to six years in prison. At his sentencing, the trial court relied on risk assessment results provided by a proprietary risk assessment instrument, the "Correctional Offender Management Profiling for Alternative Sanctions", or "COMPAS". The risk assessment was based upon information gathered from Mr Loomis' criminal file and an interview with him.[85] It predicted the likelihood of Mr Loomis reoffending by comparing him to a data group of similar offenders.[86] However, because the developer of COMPAS considered the program's algorithm to be a trade secret, it did not disclose how the risk scores were determined or how the assessment factors were weighted.[87]

70 COMPAS identified Mr Loomis as "an individual who is at high risk to the community".[88] But Mr Loomis could not access, analyse or understand

---

[82] Supreme Court of Victoria, Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation (2024); County Court of Victoria, Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation (2024).

[83] Supreme Court of Victoria, Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation (2024) at [6]; County Court of Victoria, Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation (2024) at [6].

[84] 881 NW 2d 749 (Wis 2016).

[85] *Loomis* 881 NW 2d 749 at 755 [19].

[86] *Loomis* 881 NW 2d 749 at 754 [15].

[87] *Loomis* 881 NW 2d 749 at 761 [51].

[88] *Loomis* 881 NW 2d 749 at 761 [51].

the algorithm, and therefore had no basis to challenge the accuracy and scientific validity of the risk assessment.[89] Nor did the sentencing judge have access to the algorithm.

71 The Wisconsin Supreme Court did not consider that the use of COMPAS's risk assessment violated Mr Loomis's right to due process, but said its use should be circumscribed.[90] In October 2016, Mr Loomis filed a petition for a writ of certiorari in the Supreme Court of the United States, which was denied.[91]

72 COMPAS was what we might call a "black box" – the inner workings of the system were unknown or hidden.[92] Even if the developers of COMPAS had made the algorithm known, it would have been incomprehensible to a layperson.[93] This kind of secrecy does not sit well with procedural and participatory justice, let alone substantive justice.[94]

73 Algorithms can also encode existing human biases.[95] There are concerns that COMPAS disproportionately classified minority offenders as higher risk. One study suggested that black defendants were far more likely than white defendants to be incorrectly judged to be at a higher risk of

---

[89] See Butt, "Should Artificial Intelligence play a role in criminal justice?", *The Globe and Mail*, 1 June 2017.

[90] *Loomis* 881 NW 2d 749 at 753 [8], 757 [35].

[91] See Supreme Court of the United States, Order List: 582 US, 26 June 2017 at 5.

[92] Australasian Institute of Judicial Administration, *AI Decision-Making and the Courts: A guide for Judges, Tribunal Members and Court Administrators* (2023) at 17-18 [2.11]-[2.12].

[93] Toohey et al, "Meeting the Access to Civil Justice Challenge: Digital Inclusion, Algorithmic Justice, and Human-Centred Design" (2019) 19 *Macquarie Law Journal* 133 at 151.

[94] Similarly, in Australia, the use of particular analytical tools to assess the risk of further offending by a person who had been convicted of terrorism offences was the subject of a report in 2023 by the then Independent National Security Legislation Monitor, Mr Grant Donaldson. The Monitor noted that a report critical of the tool used by the Commonwealth had not been disclosed to any defendant in an application under Div 105A of the *Criminal Code* (Cth) for post-sentence orders: Independent National Security Legislation Monitor (INSLM), *Review into Division 105A (and related provisions) of the Criminal Code Act 1995 (Cth)* (2023).

[95] See, eg, Toohey et al, "Meeting the Access to Civil Justice Challenge: Digital Inclusion, Algorithmic Justice, and Human-Centred Design" (2019) 19 *Macquarie Law Journal* 133 at 147-150.

recidivism.[96] Not only might this be contrary to the principles of fairness and impartiality that underscore procedural justice, it risks undermining substantive justice in that the algorithm generates results that are not correct.

74 These innovations, and others like them, raise important questions concerning the legality of actions by public bodies minimum standards of fairness (both procedural and substantive), and a multitude of other important questions.[97] They also raise questions about the compatibility of automated decision-making with judicial independence and intellectual rigour. The rider identified by the 2023 review by the UK Courts and Tribunals – that a *judicial officer exercise a degree of oversight and judgment* when using technology, including AI – has embedded within it important questions about our role as judicial officers. At what point should there be judicial oversight and for what purpose?

75 There are many types of cases where straightforward online assistance – such as drafting a claim, identifying supporting evidence, and filing responsive materials – can streamline the entire process. These tools can offer indicative answers that parties may accept or reject, resulting in lower costs, faster resolutions, reduced stress, and greater control and participation for all involved. And all of this can happen before a case formally enters – or ever needs to enter – the traditional judicial system. In my view, judicial involvement – oversight by the judiciary – is absolutely critical. First, to identify the need that must be addressed. Then, to shape the form and guide the implementation of any system designed to meet that need. Why? Because as custodians of the judicial system, we carry the responsibility to uphold its integrity – substantively, procedurally, and through meaningful participation. That demands smart investment of our intellect, time, and resources from the very beginning

76 We should not shy away from these questions; we must grapple with them and face them early. Rather than have AI imposed on us, we should

---

[96] See *Loomis* 881 NW 2d 749 at 763 [63].

[97] Perry J and Smith,"iDecide: The Legal Implications of Automated Decision-making", speech delivered at the Public Law Conference, September 2014. See also Perry J, "iDecide: Administrative Decision-making in the Digital World", (2017) 91 *Australian Law Journal* 29 at 31. See generally Nettle J, "Technology and the Law", speech delivered at the Bar Association of Queensland Annual Conference, 27 February 2016.

encourage its use in ways to enhance the administration of justice for all its participants. Its potential is significant. The benefits to the justice system and its participants are exciting. In some jurisdictions, it has the capacity to enable advances in all aspects of the delivery of justice which could bring the delivery of substantive, procedural and participatory justice forward decades.

Exit

77 The final stage in the pipeline – the point where a case exits from the court system – can occur in many ways. A case might settle, an accused person might plead guilty and be sentenced, a case might be decided by summary judgment, or it might be decided by consent. And, of course, a dispute might make it all the way to a trial or substantive hearing and be decided on its merits, leaving the pipeline by way of the judge's final orders. Whatever the outcome, we as systems reformers have tools and techniques at our disposal to advance our objectives of substantive, procedural, and participatory justice.

78 If a case goes to judgment, it is important that the judgment be delivered as promptly as possible. The longer a case is reserved for judgment, the harder it becomes to write and, unfortunately, the longer the reasons tend to be.

79 Reasons for decision should be clear and comprehensible, so they can be read and understood by litigants. Sometimes, this means pitching the reasons at a layperson's understanding of the law. This year, the President of the Family Division of the High Court of Justice of England and Wales published a toolkit for Family Law judges on communicating to children and young people to explain the reasoning behind their decisions.[98] It ensures that children, whose lives and futures are deeply affected by a decision, have the final decision communicated to them in a way they can understand. This approach ensures immediate participation in the system – but the benefits are long-term. Over time, it can foster deeper respect, trust and confidence in the justice system itself. The ideas are adaptable more broadly.

[98] President of the Family Division, *Writing to children - A toolkit for judges* (2025).

80 The report of Coroner Simon McGregor of the Coroner's Court in Victoria about the passing of Veronica Nelson[99] should be compulsory reading for every judicial officer in this country. It speaks powerfully about the issues Aboriginal people face, as well as what happens when, in the exercise of State power, we forget that we are engaged in a human endeavour involving humans. The report is not written in a formalistic, technical legal way. It uses compassionate and empathic language and centres Ms Nelson, her experience, and her identity as a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman. It honours her and also those that suffered by her passing. We can learn, from Coroner McGregor's report, how to speak of justice, and how to recognise the people at the heart of every case.[100]

81 One final point: the way in which a case leaves our system and how the participants in it view the system reflect all that has happened earlier in the pipeline. The way it entered. The way it was managed. The way it was heard.

E Conclusion

82 I might end with a personal story. I had the privilege of joining a First Peoples, Back to Country immersive program run by the Judicial College of Victoria in 2023. It brought together judicial officers across all jurisdictions living in Victoria and New South Wales. We were based in Mildura, a city located on the Victorian side of the Murray River. There, I saw the extraordinary work of local judicial officers – and the deep, often unseen effects of our system on First Peoples. We learned that standard bail conditions in New South Wales prevent accused persons from travelling interstate. That meant someone living in Wentworth or Dareton in New South Wales – less than one kilometre across the river from Mildura – had to undertake a round trip of 600 kilometres to Broken Hill for medical care (assuming they had a car and money for petrol, or money for a bus ticket). Why not seek a bail variation to go to Mildura? Because public health appointments often came with only a few days' notice. By

---

[99] *Inquest into the passing of Victoria Nelson* (Coroners Court of Victoria, 30 January 2023, Coroner Simon McGregor).

[100] On the application of the "humanising imperative" in the law to coronial inquests, see Kong et al, "The humanising imperative for effective participation: Humean virtues and the limits of procedural justice" (2025) 21 *International Journal of Law in Context* 453 at 465-468.

the time the application to vary bail was heard, the date and time for the medical appointment had passed. The solution? Prevent, not cure. Change the bail conditions to meet the reality. The point of the story is that, without taking the time to speak with those involved, it is unlikely the issue would have come to light. Once it was known, the issue could be addressed.

83 At the Wiimpatja Healing Centre, we met a young man who reminded us what a difference a Judge can make. The Centre, about 90 minutes outside Mildura, was an Indigenous-run Centre. It offered young Indigenous men an alternative to incarceration. It helped break the cycle of drug and alcohol addiction and to rebuild connections between the young men and their families. This young man told us the reason he was there because of a Judge and the Judge was with us. Late one Friday afternoon, while on circuit in Mildura, this man came before Judge Fiona Todd of the County Court of Victoria. She remembered there was a place that might help him but couldn't recall its name. She found it on the internet, arranged for the head of the Centre to be contacted and to come to the Court that afternoon. The man needed to be drug-free to attend the Centre: he needed a drug test. The police station was next door, and the random drug and alcohol bus was sitting in the drive. The police refused to test him – he wasn't driving. The man offered to sit handcuffed in the driver's seat of a car to be tested. The police refused. Judge Todd did not let those hurdles deter her and, some time later, secured the young man a place at the Centre. But for Judge Todd's efforts, he wouldn't have gone there. And he told us so. The impact of those actions on him, his family and their view of the justice system cannot be overstated.

84 Justice is a human endeavour shaped by people, for people, within our democracy. The role of a judicial officer in the justice system is important and far-reaching. What we do and how we do it affects more than those who appear before us. As judicial officers, we are dealing with people for whom their case is a crisis of unmanageable proportions. It may not seem extraordinary to us – we might see hundreds of similar cases each year – but for them it is likely to be one of the most significant events of their lives. How they experience the legal system shapes their view of justice and the judiciary's ability to deliver it. Do they feel the result is substantively just? Was the process procedurally fair? Were they afforded

the opportunity to meaningfully participate and engage in the process? Do people trust in the system and in the legitimacy of its outcomes?

85 To ensure that the answers to those questions reflect a justice system that is responsive to modern changes and challenges, we must keep striving to make the system work as well as it possibly can. To any judicial officers reading this article: thank you for all that you do, and for your extraordinary contribution to the administration of justice in this country. I encourage each of you to find your own answers to my questions. Each of you has experiences and ideas about what might or should change – the why and the how – from your own judicial role in your own jurisdiction. No single person or jurisdiction holds a monopoly on ideas. We have so much to learn from one another – and from the world around us. That's why I want us to harness and share our collective knowledge and skills, so we can be leaders and reformers in shaping the future of our justice system. Each of us must ask: how can we – individually and collectively – make changes (big and small) to improve the judicial system we have the privilege of participating in? That is how we – as adjudicators, reformers, leaders and learners, exercising judicial oversight and judgment at all stages in the pipeline – continue to serve not just the people before us but our whole society.

86 That, I think, is our lodestar and our challenge.