

**SUPREME COURT OF VICTORIA
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"Asking why"

A simple, monosyllabic question — yet one that has the power to arrest movement, interrupt habit, and compel reflection. It is a question that forces us to look beyond the immediate task and to consider the purpose it serves. In the Commercial Court, as in much of modern legal practice, the pace is relentless. Judges manage heavy lists; counsel and solicitors navigate demanding practices and increasingly complex disputes. In that environment, the opportunity — and sometimes the inclination — to pause and reflect on the broader significance of our work can be lost. But the question *why* matters. It matters because every interlocutory skirmish, every urgent application, every carefully crafted submission forms part of a larger institutional project: the administration of justice in Australia. This lecture will consider several pressures and structural features of our system that shape the answers we might give when we ask ourselves what role our individual work truly plays. It invites us to examine not only what we do, but why we do it — and what that means for the integrity and future of our judicial system.

Introduction

I acknowledge the traditional owners of the land on which we gather — the peoples of the Eastern Kulin nation — and pay my respects to their Elders past and present. I also acknowledge and pay my respects to all Traditional Custodians and Elders and to the continuation of the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples. That acknowledgement is important. It is a reminder to us all of our history and our shared future.

I recently attended a seminar in the Library of this Court — the Supreme Court of Victoria — celebrating 50 years since an application for a *Mareva* order was first argued on Australian shores. Speaking cogently on the development of *Mareva* principles in Australia and the importance of the *Mareva* injunction to commercial litigation, Justice Craig made an observation that has stayed with me:

"Our challenge — as a commercial court and barristers of the commercial bar — is to remain alive to the fact of change and the need for adaptation in our legal response to that change — so as to ensure that our legal system remains one in which people of commerce have utmost confidence and so that they and their commercial undertakings are able to flourish."

Today, I want to develop the underlying threads of Justice Craig's observation. I want us to consider how we, as practitioners, barristers, academics and judges engaged in the practice of commercial law, approach our respective and interrelated functions. I want us to ask, "Why?"

Asking "why" is critical. The practice of modern commercial law is fast-paced and relentless. The problems with which we are faced are more elaborate than ever — involving complex transactions spanning multiple countries and implicating dozens of parties, novel corporate structures and labour markets, as well as new forms of value, such as digital assets, and new ways of working, remotely and with artificial intelligence. The world of commerce is interconnected and intertwined.

In that environment, it is all too easy to feel as if we are "going through the motions". Acting as "processors"; preparing the next advice, submission, application, judgment. But our task is not mechanical. Each of us is a custodian of an institution larger and more enduring than any one of us. Each of us contributes to the legal system of this country and, therefore, to the administration of justice more broadly. That is not just some lofty goal. Rather, as I hope to explain, commercial law and its practice are both shaped by, and play a key role in shaping, the modern world. To understand how, we must begin with a simple question: why are we doing this?

Or, Why ask "why"?

We face institutional pressures. Litigation is expected to be accessible and efficient. There is a demand for speed without compromising quality. Criticisms that those goals are not achieved can come from a myriad of sources: clients, colleagues and supervisors. Judges face pressures from practitioners, and practitioners from judges.

The legal profession also operates in an environment of public and media scrutiny and increasingly demanding expectations. Confidence in Australian courts and the Australian legal system remains high, but we cannot be complacent.¹ We live in an age of growing disenchantment with established institutions.

We also face pressures from changes in the world around us. Geopolitically the changes are profound. The commercial world is evolving rapidly. The use of artificial intelligence in commercial life is becoming commonplace, and its implications for the law, lawyers and judges are a topic of frequent discussion.² New concepts in commerce, including cryptocurrency and the gig economy, are also reshaping the environment in which we work: the law is being asked to respond and adapt. At the same time, we are in the midst of ongoing cost-of-living pressures affecting consumer confidence³ and Australians are generally pessimistic about economic performance.⁴

There are personal pressures, too. Commercial practice is demanding. When navigating the complexity of the modern commercial world, it is too easy to get "lost in the weeds". While the matters are becoming more complicated, sometimes, on a day-to-day basis, the tasks feel the same. Repetition, which commercial lawyers and judges often face, greatly impacts our experience of work. Relentless pressure and repetition can erode our sense of meaning and connection with our work. The danger is not just fatigue, but disconnection. It is losing sight of our purpose.

That is why we must ask "why".

You may be thinking: what does it mean to ask, "why?" The question "why?" can operate at two levels. At the immediate level, it asks: why is this step, argument or material

¹ Australian Law Reform Commission, *Australian Survey of Social Attitudes 2020: Preliminary Analysis* (23 July 2021) at 2; Bathurst, "Trust in the judiciary" (2021) 14(4) *The Judicial Review* 263 at 264.

² See, eg, Rushton, "Lawyers are already using AI. Will judges be next?" *ABC News* (5 October 2025) <<https://www.abc.net.au/news/2025-10-05/artificial-intelligence-law-robot-legal-judge-jury-ai/105545900>>; Bell, "Corporate responsibility and directors' duties in the era of Artificial Intelligence", Harold Ford Memorial Lecture, 21 May 2026; Niall, "Remarks of the Honourable Chief Justice Richard Niall at the Victorian Justice Leaders AI Forum, Melbourne", 26 May 2026

³ Westpac, "Consumer sentiment slips as deep pessimism continues" (Media release, 9 June 2026).

⁴ Lowy Institute, "2026 Lowy Institute Poll, Executive Summary" (22 June 2026) <<https://www.lowyinstitute.org/publications/2026-lowy-institute-poll/executive-summary>>.

necessary? At the institutional level, it asks: what is commercial law seeking to achieve? My principal concern today is with the second, although, as we will see, it should discipline the first.

Objective of commercial law and commercial courts

The symbiotic relationship between commercial law and commercial practice is axiomatic. Commercial law has developed and become more sophisticated in light of commercial developments.⁵ It is frequently traced to the early mercantile disputes, and law merchant, of medieval England.⁶ Commercial law "evolved from the needs and practices of the mercantile community", and "represents the totality of the law's response to mercantile disputes".⁷ Commercial law in the modern world facilitates commerce, by providing, as Lord Reed put it, "the structures within which commerce takes place" and "creating the expectations on which commerce is based".⁸ The relationship is reciprocal. Commercial law responds to the needs and practices of commerce and, in turn, supplies the legal architecture within which commerce can develop.

First and foremost, I cannot emphasise enough the importance of the rule of law in a functioning democracy. This is a consideration at the State, national and international level. The rule of law plays an important role in ensuring that civil society is governed by accessible and predictable laws, applied by independent and impartial courts to which the public has access.⁹ Securing the rule of law, in turn, facilitates commerce by promoting trust and stability.¹⁰ As has been observed by former Chief Justice Spigelman:

"What the law must deliver is a high level of predictability so that economic actors can proceed with confidence that their reasonable expectations will be met. It is only if individuals and corporations believe that they can transact business with a high degree of assurance that promises will be kept and debts paid, that a market economy can effectively operate. The legal profession, and its many different manifestations in roles, constitutes a legal infrastructure which is as sophisticated, and as necessary, as the physical infrastructure involved in economic activity."¹¹

Predictability does not, however, mean rigidity. As Lord Hodge recently explained, the common law's contribution to economic prosperity, rests not only on freedom of contract and certainty but also on sufficient flexibility to accommodate commercial reality¹² where parties should be able to define their own rights and remedies and organise their

⁵ Goode, *Commercial Law in the Next Millennium* (1998) at 4, 8-9.

⁶ Cf Goode, *Commercial Law in the Next Millennium* (1998) at 5.

⁷ Goode, *Commercial Law in the Next Millennium* (1998) at 3, 8.

⁸ Lord Reed, "Law and Commerce", Macfadyen Lectures, 31 March 2022 at [17] <<https://www.scottishlawreports.org.uk/publications/macfadyen-lectures/law-and-commerce>>.

⁹ Lord Reed, "Law and Commerce", Macfadyen Lectures, 31 March 2022 at [17] <<https://www.scottishlawreports.org.uk/publications/macfadyen-lectures/law-and-commerce>>.

¹⁰ Lord Reed, "Law and Commerce", Macfadyen Lectures, 31 March 2022 at [11]-[15] <<https://www.scottishlawreports.org.uk/publications/macfadyen-lectures/law-and-commerce>>. See also DiFiore, "Introductory Remarks for the host jurisdiction (New York)", Second Meeting of the Standing International Forum of Commercial Courts, 27 September 2018; Dreyfus, "Opening address", Fourth Meeting of the Standing International Forum of Commercial Courts, 20 October 2022.

¹¹ Spigelman, "Freezing Orders in International Commercial Litigation" (2010) 22 *Singapore Academy of Law Journal* 490 at 491 [5].

¹² Lord Hodge, "The Contribution of the Common Law and the Courts to Economic Prosperity", Supreme Court of Brunei Darussalam, 25 February 2025 at 3-4.

relationships in whatever way they consider best suits to their needs.¹³ As a profession, we need to understand each of those principles.

A traditional view of courts suggests they are public institutions delivering a public good. That remains true. That is the constitutional and institutional starting point. The first objective of any court must be the resolution of cases according to the rule of law, in a framework that guarantees the fundamental rights of access to justice and equality.¹⁴ Commercial courts, by application of the law to commercial disputes, ensure that the legal structures to which I have referred are enforced. Institutional quality matters economically.

It has also, at least since the High Court's decision in *Aon Risk*, been accepted that speed and efficiency are essential to a just resolution of proceedings.¹⁵ In that case, the Court observed that corporations, like persons, are subject to pressures imposed by litigation, including the diversion of resources to deal with litigation. The modern approach to case management, in both commercial and non-commercial cases, rightly pursues the objective of a just but timely and cost-effective resolution of a dispute.¹⁶

But, consistently with that primary function, modern scholarship directs attention to an additional reality or perspective. The task of resolving disputes can be seen not only as a service to the State, but "as a commercial product involving competition among suppliers".¹⁷ In other words, how a court works affects or impacts the capacity of a State to attract investment. "Independent, efficient courts known for the quality of their decisions, and staffed with skilled personnel, are an essential component of the trust-building which is essential to investments and trade."¹⁸ In international commercial law, we can speak of a global "litigation market" in which jurisdictions compete to provide trusted, expert and efficient dispute resolution forums. In that limited but important sense, dispute resolution may also be understood as a service offered to commercial users.

This conception of commercial law and commercial courts as offering a service to commercial users has assumed significance in the United Kingdom and Singapore, each a hub for international commercial law. The significance of them as a hub for international commerce is frequently attributed to the pragmatism of their approach to commercial

¹³ Goode, *Commercial Law in the Next Millennium* (1998) at 31.

¹⁴ Isidro, "International Commercial Courts in the Litigation Market", Max Planck Institute Luxembourg for Procedural Law Research Paper Series, 2019 (2).

¹⁵ *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175 at 213 [98].

¹⁶ *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd* (2013) 250 CLR 303 at 321 [51]. In Victoria, s 7 of the *Civil Procedure Act 2010* (Vic) expressly provides the "overarching purpose" in relation to civil proceedings "is to facilitate the just, efficient, timely and cost – effective resolution of the real issues in dispute". Courts are required by s 8 to give effect to that purpose. In support of that purpose, the Act imposes overarching obligations on parties, their legal representatives, insurers and funders and, in some respects, and expert witnesses. The overarching obligations include to narrow the issues in dispute (s 23), to act promptly and minimise delay (s 25) and not to take any step unless the person reasonably believes that step is necessary to facilitate the resolution or determination of the proceeding (s 19).

¹⁷ Isidro, "International Commercial Courts in the Litigation Market", Max Planck Institute Luxembourg for Procedural Law Research Paper Series, 2019 (2).

¹⁸ Colvin, "An Australian International Commercial Court – Not a Bad Idea or an Essential Element of Tomorrow's Infrastructure?", paper delivered at the Australian Bar Association's Convergence 2019 Conference, 11-12 July 2019 at 10-11.

law, as well as the efficiency of the systems for resolving commercial disputes.¹⁹ Efficient courts can boost economic growth.²⁰ Equally, operational inefficiencies in courts undermine economic growth.

Asking "why" in commercial law, and the importance of legal culture

As a matter of *substantive commercial law or doctrine*, Australian commercial law has been capable of adapting to commercial change. The use of Mareva orders, particularly in this jurisdiction, is just one example. Another might be directors' duties, which frequently need to be reconsidered in light of a changing world, including environmentally, socially and digitally,²¹ alongside Professor Rosemary Langford's work on corporate purpose.²²

But what of our approach to commercial litigation? Not just the laws to be applied, but the *method* of resolving disputes. As our disputes become more complex, what does it mean to think of commercial dispute resolution not just as a service, but as a service capable of attracting investment? If commercial courts are simultaneously institutions of justice and institutions that support commercial confidence, what follows from that dual function? And what obligations does that place on the communities that sustain them?

What follows for commercial courts? Their primary responsibility remains to determine disputes correctly and according to law. But the manner in which they do so must also be responsive to commercial reality. That requires judges to understand the commercial context, identify the real issues early, recognise the cost of delay and adopt procedures proportionate to the dispute. The objective is not expedition for its own sake. It is expert, just and timely adjudication that sustains confidence in the jurisdiction, nationally and internationally. To speak of competition between jurisdictions may be uncomfortable. But commercial parties do choose where to transact, where to litigate and which law will govern their relationships. Courts cannot ignore that reality.

Practitioners bear a corresponding responsibility. Commercial litigation is not a game of procedural attrition. Before taking any step, the practitioner should identify the client's commercial objective, the real forensic purpose of the step and its likely cost. That means narrowing rather than multiplying disputes, taking initiative rather than waiting for judicial intervention, and asking not merely whether a procedural course is available, but whether it advances the resolution of the case.

What ties these expectations together is what former Chief Justice Allsop once described as "legal culture", or "the values and expectations of those who participate in commercial dispute resolution in the jurisdiction: the legal profession, judges, arbitrators and

¹⁹ Goode, *Commercial Law in the Next Millennium* (1998) at 94; "Law and Commerce", Macfadyen Lectures, 31 March 2022 at [9], [23]-[25]

<<https://www.scottishlawreports.org.uk/publications/macfadyen-lectures/law-and-commerce>>; Lord Hodge, "The Contribution of the Common Law and the Courts to Economic Prosperity", Supreme Court of Brunei Darussalam, 25 February 2025 at 6-7.

²⁰ Bosio, "Improving the efficiency of courts can boost a country's economic growth", *World Bank* (23 January 2025) <<https://blogs.worldbank.org/en/governance/improving-the-efficiency-of-courts-can-boost-a-country-s-economy>>.

²¹ See, eg, Gordon, "Corporate Governance: Big Ideas and Debates?" (2024) 47(2) *Melbourne University Law Review* 510; Bell, "Corporate Responsibility and Directors' Duties in the Era of AI", Harold Ford Memorial Lecture, 21 May 2026.

²² See, eg, Langford, "Purpose-Based Governance: A New Paradigm" (2020) 43(3) *University of New South Wales Law Journal* 954. See also Gordon, "Corporate Governance: Big Ideas and Debates?" (2024) 47(2) *Melbourne University Law Review* 510 at 537.

commercial parties". Legal culture is "constituted and nourished, not so much by legal rules, but by practice, custom, convention and attitude; indeed, by a shared assumption as to how dispute resolution works, as to how cases should be run, about what the reach of procedural power is, and ultimately, about what is fair."

Some elements of a sound legal culture are universal: respect, collegiality, preparation, cooperation, pragmatism and resilience. Others take their character from the field. In litigation involving self-represented parties, the culture must recognise their particular position. In administrative law, the dignity of the individual in relation to the State should inform the conduct of the proceeding. In commercial law, the culture must be responsive to the purposes and realities of commerce.

Importantly, many of the features that make a commercial jurisdiction attractive – the pragmatic narrowing of issues in dispute, ability to quickly obtain listings for interlocutory application, or quick delivery of judgments – cannot be legislated. These are cultural attributes. Statutes and practice notes can regulate procedure, but no rule can compel a genuinely commercially minded, cooperative litigation culture.²³

What then distinguishes a commercially minded legal culture? Former Chief Justice Allsop identified some: skill, fairness, equality, despatch, a consciousness that commerce demands expedition.²⁴ To that I might add two further matters:

- First, a strategic lens – what is the commercial objective here? Are we concerned with a transaction gone wrong, a late payment, or a fraud on the market? Do these parties need to keep working together, or are they seeking to burn bridges?
- Second, a bird's eye view – does this case concern an entire transaction, or simply an aspect of a larger project? How much is at stake? What are the timelines? A bird's eye view also allows us to assess the impacts of delay.

A commercially minded legal culture does not mean sacrificing justice for speed. It means recognising what is needed and that unnecessary delay can itself undermine justice.

A careful listener will have noticed that the definition of legal culture does not explicitly include the academy. But it must. Plenty of judges have spoken about the importance of the academy in shaping the law and the relationship between the academy and the courts; I include myself here. The commercially minded legal culture I have outlined has, so far, been primarily concerned with resolving disputes. The academy performs a different but equally important institutional function. Freed from the immediate demands of an individual dispute, it can test the system's assumptions, undertake comparative and critical analysis, and identify emerging problems to which commercial law must respond. In doing so, it asks whether commercial law, understood as a broader practice, continues to facilitate commerce consistently with the rule of law. Professor Elise Bant's work on systems intentionality in commercial law²⁵ and its impact in decided cases is a very real and recent example. Systems intentionality has been considered by and, for some judges,

²³ See fn 17 and Supreme Court of Victoria, Practice Note SC CC 1 – The Commercial Court (19 September 2025) at [8] which requires meaningful consultation before interlocutory applications are heard.

²⁴ Allsop, "Australia – a vital commercial hub in the Asia Pacific region: the importance of and challenges for Australian commercial courts and arbitral institutions", National Commercial Law Seminar, 25 February 2015 at 16.

²⁵ See, eg, Bant, "Culpable Corporate Minds" (2012) 48 *University of Western Australia Law Review* 352 at 382; Bant, "Systems Intentionality: Theory and Practice", in Bant (ed), *The Culpable Corporate Mind* (2023) 183 at 190-195.

been instrumental in the High Court,²⁶ in this Court,²⁷ and in other Australian Courts.²⁸ It represents a shift from attributing corporate purpose and responsibility solely through the acts or states of minds of an individual towards asking what purpose or responsibility may be deduced from corporate systems, or patterns of conduct.

Asking and answering "why"

So, what happens if we ask whether traditional *processes* of modern litigation are actually serving the objectives of the commercially minded legal culture we say we value?

In 2009, the Federal Court adopted its Fast Track program for certain commercial cases in the Victorian Registry.²⁹ Its objective was ambitious: finalisation within five to eight months, with reduced cost and fewer interlocutory disputes. Traditional pleadings were replaced by concise statements identifying the dispute, issues and arguments. Discovery was limited. The trial judge actively managed the proceeding through scheduling and pre-trial conferences directed to identifying the facts and issues genuinely in dispute. Parties were expected to attempt to resolve interlocutory disagreements before approaching the Court, and most applications were determined on the papers. The Court also aimed to deliver judgment within six weeks of trial.

The initial results were striking. Average time to finalisation was just over four months,³⁰ and the model was later adopted nationally. In 2016, its expedited approach was extended across the Court's practice areas.³¹

The significance of the program for me, as a trial judge, was not merely that it accelerated existing steps. It asked whether those steps were necessary at all. Instead of deciding only when pleadings might be amended, it asked whether traditional pleadings were required. That is "why?" translated into procedural design.

The Victorian Commercial Court has incorporated a similar practice, through its "Short/Expedited Cases List" to hear and determine urgent matters and shorter trials.³² The substance of that practice note read with, and alongside, the Commercial Court Practice Note³³ is important. Stated objectives: the early identification of the substantial questions in controversy and *flexibly* adopting appropriate and timely procedures for the conduct of each proceeding. Procedures designed and implemented to ensure that, as far as practicable, the costs and work involved with conducting a commercial proceeding are

²⁶ *Productivity Partners Pty Ltd v Australian Competition and Consumer Commission* (2024) 281 CLR 388 at 399–400 [108]–[110]; 436–438 [236]–[237], [240]–[241]. See also *Australian Competition and Consumer Commission v J Hutchinson Pty Ltd* [2025] 99 ALJR 695 at [67].

²⁷ See, eg, *Totoev Pty Ltd v Melbourne Water Corporation* [2026] VSC 232 at [30]–[33].

²⁸ See, eg, *Australian Securities and Investments Commission v Union Standard International Group Pty Ltd (No 4)* [2024] FCA 1481 at [1212]–[1217]; *Epic Games v Apple Inc* (2025) 189 IPR 1; [2025] FCA 900 at [4807].

²⁹ See, eg, Federal Court of Australia, *Annual Report 2008–2009* (2009) at 12.

³⁰ See Black, "The role of the judge in attacking endemic delays: Some lessons from Fast Track" (2009) 19 *Journal of Judicial Administration* 88 at 91–92; Legg, "The Federal Court of Australia's Fast Track", UNSW CLE Seminar – Commercial Litigation, 24 August 2011 at 2–3.

³¹ Federal Court of Australia, Central Practice Note: National Court Framework and Case Management (CPN-1) (25 October 2016) at [6.3]–[6.7].

³² Supreme Court of Victoria, Notice to the Profession – Commercial Court | Short/Expedited Cases List (19 September 2025); Supreme Court of Victoria, Practice Note SC CC 1 – The Commercial Court (19 September 2025).

³³ Supreme Court of Victoria, Practice Note SC CC 1 – The Commercial Court (19 September 2025).

not disproportionate to the complexity of the issues, or the value or importance of the matters in dispute.³⁴

Each must not only be adopted, they must be enforced.³⁵ That necessarily requires judges, barristers and solicitors to work differently – before, during and after a hearing. And what does that mean practically? It means clear and consistent messaging by action: in hearing and determining trials, a Court focussing on the real issues in dispute. Setting early trial dates. Delivering judgments as quickly as possible. If there needs to be an interlocutory application heard and determined, then as the practice note says, such applications should be rare, but rare applications should be listed and determined by *ex tempore* reasons, if any. Consistency of approach across the Commercial Court is essential to create and reinforce expectations. Practitioners will, must, respond to the expectations of the Court. Their clients require of the Court and of the practitioners - lower costs, earlier resolution, greater certainty earlier, reduced distractions from the core business of their corporation.

And that expectation of consistency in approach extends to the Court of Appeal. Commercial practitioners and parties should be confident that an appeal from the Commercial Court will be heard by judges with relevant expertise and determined expeditiously. In short, the Supreme Court, as the apex of the Victorian court system, must respond to commercial disputes as it says it intends to and, no less importantly, foster the legal culture within this State.

Proportionality also requires courts to reconsider procedural requirements that have accumulated through practice rather than legislation. The harmonisation and simplification of the procedures for approving members' schemes of arrangement provides an example. The harmonisation and simplification has been a welcome development that both promotes the overarching purpose of case management and takes a pragmatic, commercially-minded approach.³⁶ In one of the first cases to adopt the simplified procedures, it was observed that criticism had been made by legal practitioners and other professionals involved in corporate control transactions about the evidentiary requirements at court hearings for schemes of arrangement, which were not legislated but had emerged as a matter of practice and procedure.³⁷ In that case, the fact that the scheme company was relatively small by comparison with many other scheme companies made the new streamlined approach particularly appropriate.³⁸ The lesson is not merely that streamlined procedure saves money. It is that inherited practice should not be treated as self-justifying. The degree of procedural and evidentiary formality should respond to the nature and scale of the particular issue.

A further example comes from England and Wales, where a new Business and Property Division of the High Court has been announced. The reform brings specialist courts dealing with high-value and complex commercial, business, property, technology, construction and intellectual property disputes into a clearer divisional structure. Its stated purposes include making it easier for court users to identify where proceedings should

³⁴ Supreme Court of Victoria, Practice Note SC CC 1 – The Commercial Court (19 September 2025) at [3.2].

³⁵ Supreme Court of Victoria, Practice Note SC CC 1 – The Commercial Court (19 September 2025) at [8].

³⁶ See, eg, Federal Court of Australia, Schemes of Arrangement Practice Note (GPN – SOA) (13 October 2023); Supreme Court of Victoria, Practice Note SC CC 9 – Members' schemes of arrangement (25 October 2023).

³⁷ *Re Vita Group Ltd* (2023) 165 ACSR 576 at 580-581 [15].

³⁸ *Re Vita* (2023) 165 ACSR 576 at 581 [16].

begin, strengthening governance, permitting more flexible judicial deployment and reinforcing the international standing of the Business and Property Courts.³⁹

The reform illustrates institutional design beginning with the needs of court users. Clarity of structure is not merely administrative. It affects access to justice, confidence in the institution and the attractiveness of the jurisdiction as a forum for dispute resolution.

The same discipline should govern technological innovation. The relevant question is not whether a technology is new or impressive. It is whether it helps us fulfil our institutional purpose more effectively. Technology can make judicial expertise and court processes more accessible. The livestreaming of Commercial Court trials gives parties a direct view of what is occurring in their case and has particular significance in class actions. Artificial intelligence has altered, and will continue to alter, the practice of law. Properly used, it may improve efficiency, lower cost and free lawyers and judges to concentrate on work requiring substantive judgment. Possible uses include reviewing submissions for clarity, identifying counterarguments, technology-assisted document review and proofreading. That is what the High Court is currently trialling, and the experience has been positive.

But technological design is not one size fits all. In Singapore, the judiciary has worked with Harvey AI to create a new AI tool to assist people filing or responding to claims in the Small Claims Tribunals. It creates clear and easy-to-read summaries of the parties' cases, helping them understand facts and evidence relied upon by either side, as well as legal and factual issues raised – so parties can articulate their arguments better. This empowers the parties and allows them to participate more meaningfully in the process. Singapore's collaboration with Harvey AI has a key access-to-justice purpose: the judiciary were interested in exploring and testing the benefits that AI could provide for self-represented persons, who face a number of challenges in navigating the justice system, as well as for the judicial officers involved, who often have to deal with unstructured, less organised information.⁴⁰ Imagine an equivalent facility for small claims in VCAT and possibly appropriate County Court proceedings? By enabling people to understand and participate meaningfully in proceedings, it could strengthen access to justice, improve participatory justice and, with it, institutional trust.

To this I would add one word of caution: we must not let the use of technology stop us or relieve us from asking the critical question – "why?" AI may increase the temptation to accept an available output without examining its purpose, assumptions or consequences. In other words, it may return us to the very condition against which I began: becoming processors rather than participants exercising judgment. That temptation must be resisted, especially in commercial law, where so much of the culture informing good practice is unwritten

Where to start?

Change will always have dissentients and doubters. The pressures in commercial law and on commercial lawyers are real, but they are not a reason to sit on our hands. We can begin with four propositions that should not be controversial.

First, the rule of law is indispensable to a functioning democracy.

³⁹ "The Lady Chief Justice and Lord Chancellor modernise the High Court through establishment of the Business and Property Division", *Courts and Tribunals Judiciary* (Media Release, 2 June 2026) <<https://www.judiciary.uk/the-lady-chief-justice-and-lord-chancellor-modernise-the-high-court-through-establishment-of-the-business-and-property-division>> .

⁴⁰ Xu, "The Use (and Abuse) of AI in Court", speech delivered at the IT Law Series 2025: Legal and Regulatory Issues with Artificial Intelligence, 30 July 2025 at [27].

Second, skilled, independent and efficient commercial courts, supported by skilled commercial practitioners, are essential both to the administration of justice and to commercial confidence.

Third, Australian commercial law has repeatedly shown that it can respond to social, economic and technological change.

Fourth, courts, practitioners and academics can cultivate a legal culture that is commercially minded without compromising the demands of justice.

Those propositions, a view to why we are here, allow us to better identify the issues and potential solutions, and why they are necessary.

Conclusion

The question “why?” is therefore both individual and systemic. For the individual judge, practitioner or academic, it connects the immediate task with the purpose the task serves. For institutions, it exposes procedures, practices and assumptions that may have ceased to serve that purpose.

Answering that question requires leadership from courts, the bar, solicitors, the academy and senior members of the profession. Legal culture is not produced by individual excellence alone. It is cultivated through shared expectations about preparation, cooperation, proportionality, expedition, judgment and fairness.

There is also a relationship between the conditions created by our institutions, their legitimacy and the well-being of those who work within them.⁴¹ By asking the right questions, we can create conditions in which commercial parties, legal institutions and the people who sustain them can thrive. That is why I have framed the argument as one of legal *culture*: it is not just about individual skill and achievement, but the necessity of cultivating a *profession* that systemically adopts a commercial mindset to commercial litigation. That is how we become known for the quality and efficacy of our dispute resolution system.

Justice Craig's challenge was to remain alive to change and to the need for adaptation, so that people of commerce may continue to have confidence in the legal system. Meeting that challenge does not simply require us to work harder to keep our heads above water. It requires us to remain conscious of what our work is for, to exercise judgment rather than merely process, and to work more intelligently.

It requires us to continue asking: why?

⁴¹ See generally Dryzin-Amit, "Beyond Individual Grit: A Multi-Level Framework for Systemic Judicial Resilience" (2026) *Journal of Judicial Administration* 16 at 34.