

**International Quality Framework in operation at the Land and Environment  
Court of New South Wales**

**Presentation by the Hon. Justice Brian J Preston**

**to the  
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**Sharing experiences and insights from using quality management**

The International Framework for Court Excellence is a quality management system developed by an International Consortium for Court Excellence including the Australasian Institute of Judicial Administration ("AIJA"), the Federal Judicial Center (USA), the National Center for State Courts ("NCSC") and the Subordinate Courts of Singapore. The Framework provides a structured methodology for assessing a court's performance against seven areas of court excellence and guidance for courts intending to improve their performance. It requires a whole of court approach to delivering court excellence rather than simply presenting a limited range of performance measures directed to limited aspects of court activity.

The Land and Environment Court of NSW is the first court in the world to implement the Framework fully and as intended by the Framework. From its experience in implementing the Framework, the Court has gained insights and learnt lessons about the process of using quality management and the benefits that can be derived.

The purpose of my presentation at this AIJA Australasian Court Administrators' Conference is to share some of these insights and lessons learnt. I will commence with a summary of the process the Court followed to implement the Framework. A much more detailed narrative of this process is contained in my paper "Implementing the International Framework for Court Excellence: The experience of the Land and Environment Court of New South Wales" presented to the Asia-Pacific Courts Conference, in Singapore on 4-6 October 2010. I will then share the insights gained from the Court's experience in implementing the Framework. I will structure my observations by addressing five questions the Court is commonly asked by other courts thinking of implementing the Framework:

- How to start implementing the Framework?
- How to undertake the process of self-assessment, analysis and development of an improvement plan?
- How to implement the improvement plan?
- How to sustain improvement? and
- What are the benefits of implementing the Framework?

## **The Court agrees to implement the Framework**

The Land and Environment Court is a specialised statutory court established as a superior court of record. It has a wide administrative, civil, criminal and appellate jurisdiction in relation to planning, building, environmental, land, natural resources mining and other matters. The Court's jurisdiction is exercised (to varying extents) by judges, commissioners and registrars. Judges have the same rank, title, status and precedence as judges of the Supreme Court of New South Wales. Commissioners are not judicial officers but are appointed because of their special knowledge, experience and qualifications in disciplines of relevance to the Court's jurisdiction. These include town, country or environmental planning, urban design or heritage, science, land valuation, architecture, engineering, surveying, building and construction, natural resources, Aboriginal land rights and law. Registrars exercise delegated judicial functions and are qualified in law.

Representatives of the Court had participated in the Court Quality Forum in Sydney in October 2008 at which the Framework was launched. The Court viewed the Framework as providing a useful methodology for the Court to employ to continue its pursuit of court excellence. Within weeks of the launch of the Framework, therefore, the Court agreed to adopt and to implement the Framework. The intention was two-fold: to assist in evaluating the utility of the newly developed Framework and to advance the Court's own planning and self-improvement processes.

Preparations to apply the Framework were settled in December 2008. The Court considered it would be beneficial to engage professional assistance in applying the Framework. The Court engaged an independent consultant, Mr Barry Walsh, who has had extensive experience in court administration, to provide professional assistance to the Court in the process of applying the Framework.

## **Assessing the Court's current performance**

The first step in applying the Framework was for the Court to assess how the Court was currently performing in each of the seven areas of court excellence described in the Framework, namely: court leadership and management; court planning and policies; court proceedings; public trust and confidence; user satisfaction; court resources (human, material and financial); and affordable and accessible court services. The Framework proposes a court undertake this task using the self-assessment questionnaire provided in Appendix A of the Framework. The Framework requires a court as a collegiate body to evaluate its performance by completion of the self-assessment questionnaire. However, the Framework envisages that this evaluation process should be participatory, with the various members of the Court including the judges, administrators and court employees all having an opportunity to participate in evaluating court performance and developing and implementing improvements.

To this end, the Court constituted a self-assessment team comprising 21 members of the Court, being 5 judges (including the Chief Judge), 8 full-time commissioners (including the Senior Commissioner), 6 acting or part-time commissioners and two registrars. This represented most of the judicial and non-judicial officers of the Court.

As envisaged in the Framework, the self-assessment team convened two meetings, the first a planning session and the second a session to settle by consensus the appropriate score for each statement in the questionnaire. The first session took place in February 2009. At this session, the Framework and the procedure for carrying out the self-assessment exercise were explained. The self-assessment questionnaire was then examined closely and the outcome statements in each of the seven areas of court excellence, the subcategories of Approach, Deployment and Results for each outcome statement and the guidelines for scoring a court's performance for each statement and subcategory were explained. Sample outcome statements were used as examples to illustrate the self-assessment process. The purpose of this first session was to ensure that the members of the Court's self-assessment team understood the Framework, the self-assessment questionnaire and the rating system with a view to ensuring validity and consistency in approach between members in completing the self-assessment questionnaire.

After the first session, each of the Court's self-assessment team members completed the self-assessment questionnaire in their own time and returned the completed questionnaires to the independent consultant. This was done to preserve the confidentiality of the individual responses and ensure court members felt uninhibited in rating, and in rating frankly, each outcome statement and subcategory in the questionnaire.

Each individual member's rating scores for each outcome statement and subcategory were combined and displayed by the consultant. For example, for the outcome statement 3.1, "Ensure proceedings maintain a balance between timeliness, efficiency and foreseeability, on the one hand, and the quality of court services and judicial decisions, on the other, so that they promote the core values of courts", the combined rating scores were as follows:

	Approach	Deployment	Results
Rating	0 1 2 3 4 5	0 1 2 3 4 5	0 1 2 3 4 5
Combined Score	0 1 3 1 14 2	0 0 4 4 11 2	0 0 4 5 10 1

At the second session, held in March 2009, the combined rating scores were discussed by the Court's self-assessment team, and, by consensus, the team selected the rating score for each statement and each subcategory which best represented the collective views of members of the self-assessment team. In most instances, this involved selecting the rating score which most members had assigned. So, in the example given for outcome statement 3.1, the rating of 4 was selected for each of the subcategories of Approach, Deployment and Results, as more members of the Court's self-assessment team had assigned this rating score than any other rating score. Sometimes, however, discretion needed to be used in selecting the most appropriate rating score. For example, where the rating scores assigned by individual members were evenly distributed across the ratings, the score

selected in such a case was that which was the better fit for the range of views of members. In all cases, the settled rating score was able to be selected by consensus.

By the conclusion of the second session, the rating score for each statement and each subcategory had been settled. The settled rating scores were then recorded in a table.

The next step in applying the ratings system was to determine a final aggregate score using the methodology in the Framework. This involves, first, determining a total rating score for each subcategory (Approach, Deployment and Results) in each of the seven areas of court excellence; secondly, applying the weight assigned in the Framework to the total rating score for that subcategory to derive a weighted score; and thirdly, aggregating the weighted scores to derive a total weighted score.

Using this methodology, the Court's total score was 209 out of a possible maximum of 435. When the weightings described in the Framework were assigned the total weighted score was 483. These figures are detailed in the table below:

Areas	Total weighted scores	Total actual scores	Maximum possible scores
1. Court Leadership & Management	49	55	135
2. Court Planning & Policies	47	14	30
3. Court Processes & Proceedings	80	24	30
4. Public Trust & Confidence	112	23	45
5. User Satisfaction	45	15	60
6. Court Resources (Human, Material Financial)	62	56	90
7. Affordable & Accessible Court Services	88	22	45
<b>Total score</b>	<b>483</b>	<b>209</b>	<b>435</b>

The Framework provides a banding table which provides an objective benchmark against which a court may measure its performance. Total weighted scores, which add up to a maximum weighted score of 1,000, are divided into six bands: Band 1: 0 points; Band 2: 1-199 points; Band 3: 200-399 points; Band 3: 400-599 points; Band 5: 600-799 points; and Band 6: 800-1,000 points.

The Court, with a total weighted score of 483, fell within Band 4, which is effectively the upper middle range. The Framework describes Band 4 as:

Approach	Deployment	Results
<p><b>Integrated</b> - A sound effective approach is in place with evidence of prevention activities. The approach is aligned with basic organisational needs identified in other categories.</p>	<p><b>Most key areas</b> – The approach is deployed in most key areas of the organisation.</p>	<p><b>Good</b> – Good performance levels and/or improvement trends in most key indicators; or there are favourable comparisons and/or benchmarks in some areas; or results are reported for most key indicators.</p>

### Identifying areas for improvement

The Framework identifies that the self-assessment process will be used to identify and prioritise areas which appear to be most in need of attention and to focus on improvement in these areas.

Although the Court convened a large self-assessment team to complete the self-assessment questionnaire, it was considered more efficient to convene a smaller, strategic planning committee to develop an improvement or action plan. The planning committee was representative of the Court membership having 2 judges (including the Chief Judge), 2 commissioners (including the Senior Commissioner), a part-time commissioner and 2 registrars. The consultant continued to assist in the planning process. The planning committee held a series of meetings between March and June 2009.

The planning committee first examined the statements and subcategories in each area where low rankings had been assigned by the Court in the self-assessment questionnaire. These suggested matters which needed improvement. A table was prepared highlighting these matters. The matters were discussed by the planning committee in its meetings.

In developing the improvement or action plan, the planning committee addressed six questions:

1. What issues raised by the self-assessment process can or should be addressed quickly and in the short term?
2. What initiatives or activities may be required in response to the result of the self-assessment?
3. What support and co-operation is most relevant or necessary in addressing any changes that may be required?
4. What resources may be needed to support those changes?

5. What timetables should apply?
6. How will the success of changes be measured or evaluated?

The first priority identified by the planning committee was for the Court to draft and adopt what the Framework refers to as a vision statement or a mission statement expressing the Court's fundamental purpose and values. After numerous drafts, the planning committee settled on a simple statement of purpose. The adopted statement of purpose is as follows:

"The Court's purpose is to safeguard and maintain:

- the rule of law
- equality of all before the law
- access to justice
- fairness, impartiality and independence in decision making
- processes that are consistently transparent, timely and certain
- accountability in its conduct and its use of public resources
- the highest standards of competency and personal integrity of its judges, commissioners and support staff.

To assist in fulfilling its purpose, the Court aims to achieve excellence in seven areas:

**Court leadership and management:** To provide organisational leadership that promotes a proactive and professional management culture, pursues innovation and is accountable and open.

**Court planning and policies:** To formulate, implement and review plans and policies that focus on fulfilling the Court's purpose and improving the quality of its performance.

**Court proceedings:** To ensure the Court's proceedings and dispute resolution services are fair, effective and efficient.

**Public trust and confidence:** To maintain and reinforce public trust and confidence in the Court and the administration of justice.

**User satisfaction:** To understand and take into account the needs and perceptions of its users relating to the Court's purpose.

**Court resources:** To manage the Court's human, material and financial resources properly, effectively and with the aim of gaining the best value.

**Affordable and accessible court services:** To provide practical and affordable access to information, court processes and services."

The statement of purpose broadly accords with the structure of the Framework, incorporating the court values and the seven areas of court excellence. This was

deliberate as it enabled the Court to use the Framework structure to guide the design of the Court's action plan.

The planning committee determined that the action plan could most effectively be communicated in the form of a table. The planning committee endeavoured to ensure that the design of the document could be used for a variety of purposes. The design includes these elements:

- **Framework structure:** The table follows the heading and numbering structure of the Framework allowing direct comparisons between the areas self assessed and the matters for future action.
- **Consistency with statement of purpose:** Although the Court's statement of purpose picks up the seven areas of court excellence described in the Framework, it also modified them in various ways intended to improve clarity of expression and to be better adapted to the Court's specific role and context. These differences have been carried into the action plan, thereby ensuring mutual consistency and assuring the necessary connection between the Court's goals and its active improvement programs.
- **Framework area outcome statements:** The table restates each of the area outcome statements that appear in the Framework so that the reader can readily relate each proposed action to the area outcome it is aimed at fulfilling. In most cases this was done without amendment. However, in some instances amendments were made to better accord with terminology used in the Australian court context.
- **Self-assessment scores:** The table prints the self-assessment score (settled by the Court) against each of the Framework outcome statements so that the reader can access the significance of each proposed action in terms of the urgency or importance that the Court attaches to it. Outcome statement 1.1 of the Framework, for example, is concerned with the need for a court to have a statement of purpose and the table indicates in parentheses that the Court gave itself a rating of 1-1-1 (a low score for that outcome) because the Court had not formally adopted a statement of purpose at that time. The timetable for steps to achieve the outcome of having a statement of purpose reveals that the Court placed a high priority on achieving this outcome early.
- **Action items:** The table lists each action that the Court intends to implement to achieve each outcome statement and, in respect of each, identifies the steps to be taken to achieve the action and outcome, the person(s) responsible for undertaking each step, the timing of the steps, and the performance indicators to demonstrate achievement. The table has a very extensive list of actions, at least one for each area outcome statement specified in the Framework. Many actions were initiatives that the Court had already commenced and was still developing. Nevertheless, the planning committee found it relatively easy to relate each of its various ongoing initiatives to the relevant area outcome statements in the Framework.

At various stages in the planning process, the planning committee consulted with the larger membership of the Court, including those persons who had been involved in the Court's self-assessment team. Comments were sought on the drafts of the statement of purpose and the drafts of the action plan. These comments were considered by the planning committee and incorporated into further iterations of the documents.

As many members of the Court as was practicable were asked to participate in developing and implementing particular steps to achieve actions and outcomes under the Framework. This accorded with the Framework's exhortation that court leadership should ensure that the process of planning for improvement provides ample opportunity for judicial officers, court employees and the court's professional partners to be consulted and involved. It also addressed one of the weaknesses identified through the self-assessment process by involving court employees in communicating and implementing the court vision, goals and outcomes and identifying challenges and solutions.

The action plan continued to be settled by the planning committee until 1 September 2009 when it was adopted.

### **Implementing action for improvement**

The Court thereafter began the process of undertaking the actions for improvement identified in the settled action plan. A comprehensive description of the actions for improvement is provided in my paper to the Asia-Pacific Courts Conference 2010. In summary, actions undertaken in 2009 included:

- adoption and publication of the Court's statement of purpose;
- establishment of the Mining Court Users Group;
- management training for Registry staff;
- performance review for Commissioners;
- collecting statistics of case timeliness;
- targeting delayed pending cases;
- improving information on the Court's website, including establishing a mining jurisdiction webpage;
- extending the Court's email service on subject categories including trees and vegetation as well as mining;
- extending the continuing professional development program, including accredited mediation training for Commissioners and Registrars;
- preparation and publication of a court newsletter with the latest legislation, decisions and changes in practice and procedure;
- upgrading the Court's computer system and IT programs for case management, listing and e-court; and
- updating audio visual equipment in selected courtrooms.

The actions undertaken in 2010 included:

- developing a comprehensive handbook for Commissioners;

- implementing a formal process for review of the performance of Commissioners including adopting of appropriate policies and undertaking appraisal sessions;
- adopting and implementing a mentoring program for newly appointed Commissioners;
- implementing achievement planning for all staff in the registry;
- improving the reliability of the Court's registration and management system, including introduction of a new computerised court information system;
- adopting numerous policies to achieve the Court's purpose and improve the quality of its performance;
- improving information on the Court's website, including establishing webpages on specialised areas of the Court's jurisdiction;
- publication of a court newsletter with the latest legislation, decisions and changes in practice and procedure; and
- expanding the coverage of the Court's performance in the Annual Review including in relation to the seven areas of court excellence.

More actions are being undertaken this year.

With this summary of how the Court has implemented the Framework in mind, I wish now to share some insights and lessons learned from the process, which might be helpful to courts contemplating implementing the Framework.

### **How to start implementing the Framework?**

Courts may have a belief in the worth of quality management yet feel inhibited to implement this management approach by using the Framework. Inhibiting factors might include perceptions of a lack of leadership or support, a lack of knowledge or experience in quality management and the time not being right to implement the Framework as well as a fear of the consequences if use of the Framework were to reveal sub-optimal court performance. The Court's experience is that these should not be used as reasons for deferring taking action to implement quality management by using the Framework.

Undoubtedly, leadership is required. The head of jurisdiction and the court's executive must develop a commitment to quality management and provide a system to support this commitment involving everyone in the court. Such a system can be provided by using the Framework. The head of jurisdiction and the court's executive do not necessarily have to implement the Framework personally, but if they are not to be actively involved, they should designate respected and influential persons within the court to implement the process.

It is not necessary for the head of jurisdiction or the leaders of the process to have prior knowledge and experience in quality management. The Framework embodies a quality management system and provides a structured methodology for the court to employ. The Framework structures and assists the court in assessing and analysing its performance and identifying areas for improvement. The Framework overcomes the inhibition of not knowing what to do.

The right time to start the journey towards quality management is the present. There will never be a better time. There will always be some limitation or obstacle,

including in the human, material and financial resources available for undertaking the task. Waiting for inspiration or a sign that the time is right is futile.

The fear that implementation of the Framework may reveal sub-optimal court performance, which may reflect poorly on management and have adverse consequences in dealings with the executive government, is short sighted and counter productive. If the court's performance is sub-optimal, it will be manifested in time; it cannot be permanently hidden. A court which embraces and implements a philosophy and management approach of continuously improving the quality of its performance is far more likely to be viewed favourably by the executive government than one which eschews quality management. Trust and confidence is engendered not only by performing well but by being transparently seen to perform well. Implementation of the Framework is a means to improve not only a court's performance but also transparency of the court's performance.

A court concerned about revealing sub-optimal performance needs to remember that there are costs of poor quality. Quality affects all aspects of a court. The most obvious consequences are when poor quality creates dissatisfied court users, professional partners and other stakeholders, leading to poor user satisfaction and low public trust and confidence. However, quality has many other costs which can be grouped into two categories: quality control costs and quality failure costs. Quality control costs are incurred with the intention of preventing quality failure costs.

Quality control costs are the costs necessary for achieving high quality. These consist of prevention costs and appraisal costs. Prevention costs are costs incurred in the process of preventing poor quality from occurring. In a court context, they include costs of developing and implementing a quality plan, such as an improvement plan under the Framework, costs of reviewing and improving court practices, procedures and services, costs of surveying court users and professional partners or otherwise obtaining feedback and information to improve court practices, procedures, processes and services, costs of continual professional development and employee training, and costs of maintaining records of information and data related to quality. Appraisal costs are costs incurred in the process of discovering aspects of poor quality. In a court context, they include costs of inspections and audits and otherwise measuring quality to ensure quality standards are being met.

Quality failure costs are the cost consequences of poor quality. These include internal failure costs and external failure costs. Internal failure costs are associated, in a court context, with discovery and rectification of poor quality before a product or service is delivered to court users. Examples of internal failures include: problems with court listings where cases are omitted from or incorrectly listed in court hearing lists or incorrect or inadequate arrangements are made for hearing venue, time, facilities, court reporting, interpreters or court officials; correcting a defective product before being sent to court users (such as transcripts, judgments, directions and orders and other court documents); remedying breaches of quality standards such as delay in delivery of reserved judgments; and down time due to failures in process (such as IT or computer outage or eCourt shutdown). External failure costs are associated, in a court context, with quality problems that occur for court users, professional partners and other stakeholders. Examples are complaints by court users and professional partners about aspects of the Court's performance, services

and facilities. These may include undiscovered and uncorrected failures, such as the types of internal failures I have described above, as well as delays in listing, hearing and delivery of reserved judgments for cases.

A court that considers quality is important will invest in prevention and appraisal costs in order to prevent internal and external failure costs. The Framework is a method by which a court can invest in quality control in order to prevent quality failure.

The Framework, therefore, provides an accessible and manageable method for courts willing to start the process of using quality management.

### **How to go through the process?**

The Framework involves three basic steps:

1. **Self-assessment:** The court assesses its current performance in each of the seven areas of court excellence.
2. **Analysis:** The court analyses the results of the self-assessment to identify the areas of the court's work which could be improved.
3. **Improvement plan:** The court develops a plan which details the areas identified for improvement, the actions proposed to be taken and the results that ought to be achieved.

#### *The self-assessment*

The Court's experience in undertaking the self-assessment was positive. The self-assessment questionnaire provided by the Framework was reasonably self-explanatory. Sometimes the language used was not as clear to all persons as it could have been, or aroused debate as to its appropriateness. However, these minor difficulties were able to be overcome by adopting a purposive approach to interpretation of the self-assessment questionnaire, informed by the relevant discussion in the text of the Framework.

It is critical in undertaking the self-assessment to follow the process fully and as intended by the Framework. The understandable human desire to be seen to be successful by achieving good results from the self-assessment process should not be allowed to affect the integrity of the self-assessment process.

A court should not select only one or some, but not all, of the seven areas of court excellence or answer some but not all of the questions for each area, or answer some but not all of the three sub categories of approach, deployment and results. The Framework provides an integrated and structured method. Each area of court excellence, question and sub category are critical components of the quality management system and cannot be removed without affecting other components and the system as a whole. Cherry-picking is not a permissible approach for using the Framework.

A court should not bias the self-assessment process, such as by selecting persons with predetermined favourable views to undertake the self-assessment process, so as to obtain the results desired. An essential feature of quality management is the involvement of the whole of an organisation as well as external stakeholders. Hence, the self-assessment process should involve as many of the court's judges, registrars, court officials and administrative staff as practicable. It would be contrary to the integrative philosophy of quality management to select only those few persons who are perceived to be knowledgeable or likely to provide favourable responses as to the performance of the court. Rigging the game is not a permissible approach to using the Framework.

A court should also ensure that self-assessment answers have an evidentiary foundation: there should be documentary or other evidence in support of each answer for an item that an approach exists, the approach has been deployed and the deployment of the approach is effective. A court should not con itself.

A court that cherrypicks, rigs the game or cons itself in using the Framework is only deluding itself about its performance and disabling itself from being able to improve its performance in the future.

A court should not be concerned with the numerical scores derived from the self-assessment. The total weighted score, and the total weighted scores for each area of court excellence, are not important as absolute numbers. Rather, the scores are important in relative terms, indicating where, at that point of time, the court's performance lies in a spectrum of improvement, from needing most improvement to least improvement. The scores also provide base data for comparisons in future years with scores derived by the court from later self-assessments, in order to evaluate progress and the efficacy of actions for improvement.

The scores derived from self-assessment from one court should not be compared to the scores of other courts; comparison is unhelpful and irrelevant.

### **The analysis and development of an improvement plan**

Having completed the self-assessment, the court will have identified areas where improvement is required. The Court's experience was that creativity was beneficial in formulating both actions for improvement in these areas and indicators for measuring and assessing progress.

Courts should challenge orthodoxy and accepted thinking about how courts should perform and how they should go about their business. Just because courts have always done something a particular way does not mean the court should continue to do it that way.

The court can examine their "products", the dispute resolution services they provide. The concept of the multi-door courthouse, a dispute resolution centre offering a variety of different dispute resolution services, recognises that courts beneficially can offer more than the one dispute resolution service of adversarial litigation. Courts can expand their dispute resolution services by offering mediation, conciliation and neutral evaluation.

The court can examine the “processes” involved in delivering their dispute resolution services in order to identify means of process improvement. Process improvement looks at the series of steps involved in a particular work activity and finds ways to decrease the number of steps, the time taken for each step, the time taken between each step, and the resources used in each step. Examples of process improvement in a court context include reducing the number of court attendances, reducing the necessity and frequency of filing documents in the registry, and increasing the availability and utilisation of eCourt and electronic filings, including for court orders.

Courts should be creative, think laterally, not only in developing ideas for improvement but also in how to implement the ideas. This may involve external stakeholders. For example, the Court identified the need to expand the dispute resolution services offered by the Court so as to include conciliation. The Court proposed a multi-pronged approach to implement conciliation successfully, including legislative amendments, training and appointment of court conciliators, amendment of court practices and procedures to encourage and facilitate conciliation, undertaking talks and seminars for legal practitioners and court users on conciliation, and seeking ongoing feedback from court users on the success of conciliation in the Court.

Another example is the Court’s promotion of the concept of the meaningful court attendance. Every attendance at the Court should be a meaningful opportunity either to dispose of a case or to make substantial progress towards its disposition. This requires the Court to convert court attendances from being procedural to being substantive events. The Court adopted policies and targets for the number and timing of court attendances for different types of matters, revised its practice notes and directions to implement these policies, measures and reports on compliance with the policies, and adapts its case management in response. The Court, legal practitioners and court users are made aware of these policies and the rationale for them. The Court has also produced a policy on case management conferences to guide the Court, legal practitioners and court users and to ensure case management conferences are meaningful events. Representatives of the Court talk at seminars of legal practitioners and court users on case management.

Courts should be creative in developing ways to measure, evaluate or assess the court’s progress in improving its performance in different areas. Courts have been too narrow in their selection of performance indicators. Primarily, courts have measured quantitative dimensions of the court’s performance. Well known examples, used by the Productivity Commission, are the backlog indicator, compliance with time standards for case processing, clearance rate and attendance indicator. However, courts can also evaluate and assess qualitative dimensions of the court’s performance. This can be done by proxy indicators as well as by qualitative narratives. For example, access to justice can be evaluated by reference to a variety of factors. These include affordability, accessibility, responsiveness to the needs of court users, and timeliness and delay. These factors can be evaluated both quantitatively and qualitatively. The Court undertakes this evaluation of the Court’s performance in providing access to justice and reports on the results in its annual review.

There has been, from time to time, criticism of measurement of various aspects of a court's performance. It has been said that distortions can arise because things that can be measured are not the only things that matter. However, this problem can be overcome by focussing first on what matters, then devising a way of measuring, evaluating or assessing those things that matter. This is what the Framework achieves. Through the Framework's process of self-assessment, analysis and preparation of an improvement plan, the court determines what matters. The court then proposes ways in which the court's progress in improving its performance in those areas that matter can be assessed. The court, therefore, does measure what matters and no distortion or perversity should result.

The court should develop a system for monitoring and report on the court's progress in improving its performance in the various areas it has identified as needing improvement. The report should be to the court's executive, the strategic planning committee, and the working groups and persons responsible for implementing the relevant actions being measured and monitored.

The measurement and monitoring data should be used to inform quality management: what is measured should be used. This includes implementing adaptive management, changing the measures adopted so as to better achieve the desired outcomes, but also, if necessary, re-evaluating the desired outcomes. There should be a double, feedback loop at play.

Consideration should be given as to whether there should be an audit of measurement and monitoring data and processes for collecting such data to ensure reliability and integrity of data and accountability of those responsible for implementing the actions.

The court should disseminate information on the court's processes and progress in improving its performance to external stakeholders, including the executive government, legal practitioners, court users and the general public. The Court does this through the Court's annual review, at various meetings of Court Users Groups, in speeches to various professional and public fora and on the Court's website. Dissemination of information on a court's performance, however strong or poor, improves transparency, accountability and public trust and confidence in the court.

### **How to implement the improvement plan?**

Quality management functions on the premise that the quality of the organisation's performance is the responsibility of everyone who is involved with the creation or consumption of the products and services offered by the organisation. Quality management requires whole of organisation involvement.

Hence, when a court is formulating improvement actions, consideration needs to be given to how everyone in the court can be given some degree of responsibility for implementing the Framework. In some cases, work groups or persons will be allocated responsibility for particular improvement actions. In other cases, the improvement actions will be woven into normal work practices and processes so that everyone bears responsibility.

By involving everyone in the court, a culture of excellence can be instilled and fostered.

Quality management also entails involvement of external stakeholders, including professional partners, court users and the executive government. Involvement can come by participation in standing or ad hoc court users groups, involving two way information sharing and feedback. Involvement can also come by consultation and participation in formulating and implementing improvement actions. The Court, for example, involved legal professionals and court users involved in claims concerning compensation for compulsory acquisition of land in the Court in the process of formulating a revised Practice Note for these claims. This included an iterative process of meetings and circulation of draft proposals for review and comment.

The court can also consider ways to expand the resources available for implementing improvement programs by involving external stakeholders. For example, legal professional partners can assist in reviewing and improving court rules of practice and procedure, practice notes and forms. Legal professional organisations can assist in disseminating information on improvement actions, such as through websites, newsletters, seminars and conferences. The executive government can, of course, also provide human, material and financial resources to implement improvement programs.

### **How to sustain improvement?**

The Framework proposes a quality management system for courts to adopt. The steps of self-assessment, analysis and preparation of an improvement plan are but the start of the process of establishing a quality management system. Thereafter, the formulated actions for improvement need to be implemented, their progress measured or assessed, monitoring data disseminated and adaptive management undertaken. This iterative and ongoing system also entails repeating the initial three steps of self-assessment, analysis and preparation of an improvement plan.

Court excellence is not a static destination but rather an ongoing journey of continuous improvement. Energy and stamina are needed to sustain the journey: it is not for the short-winded.

### **What are the benefits of implementing the Framework?**

My observations so far have already identified many of the benefits a court might derive by implementing the Framework. I will add some more.

The Framework allows a court to incorporate its current activities and then organise them into a structured methodology. The current activities can, therefore, be rationalised and put into perspective.

The Framework, by its nature and processes, causes the court to reflect on its role and function, both generally as a court but also as a particular type of court. For example, the Land and Environment Court is a specialist environmental court and the Framework caused the Court to reflect on its particular role and functions in resolving environmental disputes. Implementation of the Framework causes

everyone involved in the court to affirm core values of courts and the justice system, including upholding the rule of law.

The Framework requires a holistic approach in a number of ways. It takes a whole of court approach to evaluating and improving the court's performance. It does not just focus on limited aspects of the court's performance, evaluated by reference to limited, quantitative indicators. Rather, it encourages multiple and balanced perspectives, examining all of the facets of the court and the court's performance. The Framework encourages a wider view of the business of the court and of the dispute resolution services the court provides.

The Framework's use of quality management recognises the responsibility and need for involvement of everyone in the court. This builds a sense of shared values and vision and creates a collegiate climate. It breaks down divisions in the court (such as between judges and court administrative staff) and reduces unproductive blaming and buck passing. The shared responsibility and involvement also lifts the performance of individuals in the court; heightened performance of some can encourage others to lift their performance.

The Framework allows a court to move beyond a reactive approach of solving the crisis of the moment, putting out bushfires, to a proactive approach of dissolving potential problems before they develop. The Framework allows the court to be future-focussed and on a longer time frame. The court anticipates future change and equips itself to manage change by changing itself.

A court's implementation of the Framework and the improvements that inevitably will flow from implementation provide cogent justification for requests the court might make of the executive government for resources (human, material and financial). In times of financial crisis and shrinking government allocation of resources to courts, this is a persuasive argument in favour of implementing the Framework.

A court's implementation of the Framework, and thereby commitment to quality management, is part of good governance. It engenders public trust and confidence. It also improves comity and respect between the executive and judicial branches of government. The implementation of the Framework will also improve understanding and relationships between the courts, professional partners and court users.

## **Conclusion**

As the Framework notes, excellence is a continual journey. The Court has embarked on and has travelled part way along the path of that journey. In doing so, it has identified and addressed many areas for improvement. The Court is now a better performing court in the seven areas of court excellence than it was before. However, there is more work to be done. The Court is still implementing the action plan it formulated in response to the Court's self-assessment of its performance. It will also need to review and re-examine its performance in relation to the changing environment in which the Court operates. The Framework has been and will continue to be a valuable tool in the Court's journey to court excellence.