

Supreme Court of Queensland

Electronic Publication of Court Proceedings

ISSUES PAPER – JUNE 2015

This Issues Paper is not intended to represent the views of the Supreme Court or any member of it. Its sole purpose is to identify issues and elicit comment.

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INTRODUCTION

- [1] This paper aims to encourage discussion about the electronic communication of court proceedings. It is not confined to televising proceedings by traditional broadcast media. It includes publication of proceedings by live streaming and internet broadcasting.
- [2] The judges of the Supreme Court of Queensland appointed a committee which drafted this paper. The paper identifies guiding principles, arguments for and against change and certain practical constraints on having “cameras in the courtroom”.
- [3] Different issues arise for different kinds of proceedings (trials, proceedings with juries, sentencing and appellate hearings). The issues are many, and a document of this kind cannot hope to capture all of them. The judges hope, however, that this paper will aid the process of consultation by posing a number of questions, and inviting submissions from interested parties. Those contributions will enable a final report to be prepared which contains proposals about what the Court should decide to do.

THE COMMITTEE

The constitution of the Committee

- [4] On 24 September 2014 a meeting of the judges of the Supreme Court resolved to constitute a committee to consider the televising of court proceedings. The Committee originally comprised the Chief Justice as Chair, the President, and Justices Fraser, Atkinson, Martin and Applegarth. In late December 2014, the Chief Justice withdrew from the Committee and the President assumed the chair.
- [5] Because of the implications of the Committee’s work for the District Court, and to obtain additional perspectives, the Chief Judge of the District Court was invited to nominate two District Court judges to attend Committee meetings. Chief Judge O’Brien and Judge Rafter SC did so and contributed greatly to the Committee’s deliberations.
- [6] The Committee met on 6 and 22 February, 9 and 28 April and 18 May 2015. It benefited from the research assistance provided by the Associate to Justice Fraser, Ms Courtney Coyne, and the Associate to Justice Applegarth, Ms Rebekah Oldfield.

Scope of the Committee’s work

- [7] The Committee was originally styled “Broadcasting Court Proceedings Committee”. The term “broadcasting” might be thought to be limited to the traditional media of licensed commercial television and radio broadcasters and public broadcasters. The Committee considered it appropriate to include other forms of communication, including live-streaming and internet broadcasting. As a result, the Committee’s name was changed to the “Electronic Publication of Court Proceedings Committee”.

FUNDAMENTAL PRINCIPLES

[8] The chief object of the courts is to ensure that justice is done.¹ Associated with this aim are two important principles:

- The right to a fair trial; and
- The principle of open justice

The right to a fair trial

[9] The right to a fair trial extends to all parties to proceedings – plaintiffs and defendants in civil proceedings and the prosecution and the defendant in a criminal proceeding. It is protected by the law of contempt which governs conduct both inside and outside the courtroom. The right to a fair trial is protected by rules and practices which preserve order in the courtroom and which protect against prejudice by outside influences. Infringements of an accused’s right to a fair trial, including prejudicial publicity, may lead to the adjournment of trials and mistrials. Delays caused by those disruptions can have a devastating effect on accused persons and their families (particularly if an innocent person is held in custody pending trial), on witnesses and on victims. In extreme cases, prejudicial publicity may lead to a permanent stay of proceedings because a party is unable to obtain a fair trial.

[10] The right to a fair trial may be affected if undue pressure is placed upon parties, witnesses and other participants in a proceeding. For example, if a witness is inhibited from giving evidence or in giving evidence, the quality of justice is affected, and an injustice may be the result.

The principle of open justice

[11] The principle of open justice is one of the most fundamental aspects of the justice system in Australia. Exceptions to the principle are few and are strictly defined.²

[12] Our judicial system is based on the notion that proceedings are conducted in open court. Justice must not only be done; it must be seen to be done.³

[13] The courts have treated the right to report as an adjunct of the right to attend court.⁴ In other words, the media acts as “the eyes and ears” of the general public.⁵

¹ *Scott v Scott* [1913] AC 417 at 437.

² *J v L & A Services Pty Ltd (No 2)* [1995] 2 Qd R 10 at 44–45; *John Fairfax Publications Pty Ltd v District Court (NSW)* (2004) 61 NSWLR 344 at [17]–[20].

³ *Scott v Scott* [1913] AC 417; *Russell v Russell* (1976) 134 CLR 495 at 520.

⁴ *Herald & Weekly Times Ltd v Medical Practitioners Board of Victoria* [1999] 1 VR 267 at 279.

⁵ *Attorney-General v Guardian Newspapers (No 2)* [1990] 1 AC 109 at 183.

Maintaining public confidence in the judicial system

- [14] The principle of open justice ensures that courts are open to public scrutiny. It also enables the public to understand what happens in courts, the procedures by which justice is administered according to law and how justice is done in a particular case. By educating and informing the public about the administration of justice, public confidence in the court system is maintained. Fair and accurate reporting of proceedings helps avoid misunderstandings about what happens in courts, including misunderstandings fostered by fictional accounts of court cases and by individuals who misrepresent how the courts operate.

Privacy and the protection of witnesses

- [15] The principle of open justice means that information may not be withheld from the public merely to save a party or witness from loss of privacy, embarrassment or distress.⁶ However, this does not mean that parties and witnesses do not deserve protection. Appropriate protection of parties and witnesses is necessary to ensure a fair trial. A recent New Zealand report stated:

“It is crucial to a fair trial that both the prosecution and defence are able to call what witnesses they say are relevant to their case without the possibility of extended media coverage dissuading such witnesses”.⁷

- [16] That report, and others like it, have recognised that some witnesses facing the prospect of being filmed and their image being shown on television or in a still photograph will be discouraged from giving evidence. This concern was expressed by the Chair of the New Zealand Human Rights Review Tribunal (“NZHRRT”) who said:

“The experience of the Human Rights Review Tribunal is that most witnesses find giving evidence nerve racking and the presence of a camera can be a dangerous distraction. Dangerous in that the ability to concentrate on the questions being asked and on the accurate recollection of events can be jeopardised. In addition, the giving of evidence is for most witnesses a very personal affair. The discomfort of being photographed or filmed while giving evidence and the later publication of those images is seen as a serious invasion of their ‘privacy’. Taking these interests into account is not inconsistent with open justice.”⁸

- [17] A similar sentiment was expressed in a recent Scottish review of the policy of recording and broadcasting court proceedings.⁹ In discussing the filming of criminal proceedings at first instance, it identified the risk that witnesses might become less inclined to engage with the process or reluctant to give evidence in the knowledge that they are being filmed, or that the quality of their evidence might be adversely affected. One respondent to that review remarked that for some witnesses:

⁶ *J v L & A Services Pty Ltd (No 2)* [1995] 2 Qd R 10 at 45.

⁷ Courts of New Zealand, *Draft Report to Chief Justice on In-Court Media Coverage* (“NZ Report”), [132] <http://www.courtsofnz.govt.nz/In-Court-Media-Review>.

⁸ NZ Report, [131] quoting Rodger Haines QC, “Submission to the Consultation Paper on In Court Media Coverage”, [2].

⁹ *Report of the Review of Policy on Recording and Broadcasting of Proceedings in Court, and the Use of Live Text-Based Communications from Court* (“Scottish Report”), <http://www.scotland-judiciary.org.uk/25/1369/Report-of-the-Review-of-Policy-on-Recording-and-Broadcasting-of-Proceedings-in-Court--and-Use-of-Live-Text-Based-Communications>.

“The possibility of being filmed ... could add strain and anxiety to an already difficult situation.”¹⁰

- [18] Existing laws provide for the protection of special categories of witnesses, including children and victims of sexual offences. In rare cases, for example, blackmail cases, police informer cases, some extortion cases and some cases involving national security, exceptions are made to the principle of open justice and non-publication orders are made. These exceptions are made not so much to protect the privacy of individuals but to encourage witnesses to come forward in cases of that type.¹¹ Well-established exceptions to the principle of open justice recognise that it is in the public interest, and in the interests of the administration of justice, for witnesses not to be discouraged from giving evidence.
- [19] Leaving aside vulnerable witnesses and other witnesses who have such a high claim to the protection of their privacy so as to justify non-publication orders, a broader public interest exists in not discouraging witnesses from giving evidence, and in not adding to their anxiety when they do. As a result, reviews in other jurisdictions have recommended different practices. These include preventing the filming and photographing of witnesses entirely and according any witness the right to be protected in the form of, for example, facial and voice anonymisation, if requested.

Jurors

- [20] Trial by jury is a fundamental feature of criminal proceedings in the Supreme and District Courts. Jurors perform a vital public service. The *Jury Act 1995* (Qld) and the courts provide protection against the unnecessary disclosure of the identities of jurors. Any system for the electronic publication of court proceedings must protect jurors from unwanted and unnecessary publicity.

Citizens in the public gallery

- [21] Presently, citizens exercise their right to attend open court proceedings on the basis that their presence in court will not be filmed or photographed, and then communicated to the general public. Whilst their presence in court and in the precincts of the court is not a private matter, they have interests worthy of protection and should not be deterred from exercising their rights as citizens to observe court proceedings. The filming of citizens while seated in the public gallery, for example, may give the wrong impression that they are associated with a party in a proceeding. Media guidelines in New Zealand prohibit filming or photographing members of the public in court.

¹⁰ Ibid, [4.2.1.] quoting Victim Support Scotland, “Submission to Cameras and live text-based communication in the Scottish courts: a consultation”, [5a].

¹¹ *R v His Honour Judge Noud; ex parte MacNamara* [1991] 2 Qd R 86 at 106.

Confidential information

- [22] On occasion, highly confidential information, including trade secrets and commercially confidential information, is the subject of evidence in proceedings. Exceptions are made to the open justice system by requiring such evidence to be given in closed court or for there to be non-publication orders.

Other matters heard in closed court or the subject of non-publication orders

- [23] In exceptional circumstances courts will make non-publication orders to protect the administration of justice. Non-publication orders are rare in Queensland courts, but are sometimes made to ensure a fair trial in another pending proceeding. There are many other examples of circumstances in which it is contrary to the public interest and the administration of justice for certain evidence or the identity of a witness to be published. Any system governing the broadcasting or live-streaming of proceedings must take account of the fact that sometimes proceedings need to be closed or non-publication orders made. Without appropriate safeguards, including the monitoring of recordings and broadcasts and delays in the publication of audio-visual recordings, non-publication orders may be completely undermined.

Competing interests

- [24] Any system for the electronic publication of court proceedings must reconcile the right to a fair trial and the principle of open justice while also taking other interests into account.
- [25] Under existing laws and practices, courts are called upon to resolve the tension which exists between the right to a fair trial and the principle of open justice. The introduction of cameras into the courtroom, which then may be used to broadcast proceedings on television networks or to live stream proceedings, will increase this tension.
- [26] This introduction to some of the fundamental principles and the variety of interests which may be affected by the general publication of recordings of court proceedings, suggests the need for care in introducing new systems to communicate proceedings and the potential complexity of associated rules and guidelines.

THE RELATIONSHIP BETWEEN THE JUDICIARY AND THE MEDIA

- [27] Responsible media outlets and professional journalists play an essential role in supporting the principle of open justice and in educating the public about the court system. Because of the role of the media in publicising court proceedings, “a symbiotic relationship between the courts and the media is necessary”.¹² The working relationship between the judiciary and the media which report court cases is not always an easy one. The focus of a judge’s work is to ensure that justice is done in a particular case and the parties to a proceeding are given a fair trial according to law. The focus of the media is on providing information, and sometimes entertainment, to viewers, listeners and readers. As a recent New Zealand report observed:

¹² NZ Report, [4].

“... there remains a tension between the goal of film in improving public understanding of the courts and objectively informing the public about court cases, and the commercially driven imperatives of the media.”¹³

- [28] Queensland judges attempt to facilitate the fair and accurate reporting of proceedings. As explained below, the prohibition that relates to the recording and broadcasting of courtroom proceedings does not extend to “electronic real-time text-based communications and social media” by accredited media. The use of electronic devices in courtrooms is governed by [Practice Direction 8 of 2014](#). In some high-profile cases, the court has arranged for separate media rooms and the live-streaming of audio-visual recordings to them and to facilities in other towns at which members of the public have the opportunity to follow the proceedings.
- [29] Because judges are committed to the principle of open justice and the media has an interest in reporting proceedings, courts and the media have a shared interest in the reporting of court proceedings. However, on occasion, tension develops between courts and the media (including users of social media) if the right to a fair trial is threatened, if proceedings are unfairly or inaccurately reported, or if other conduct threatens the administration of justice.

INTERNATIONAL INSIGHTS

- [30] The International Association of Judges (IAJ) has Study Commissions that are composed of delegates from national associations and which deal with a range of matters. In 2014, a study commissioned into judicial administration and the status of the judiciary produced a questionnaire on “Media (including social media) in the Courtroom and Effect on Judicial Independence”.
- [31] The national questionnaire responses formed the basis of discussion at the IAJ Meeting held in Brazil from 9 to 13 November 2014. The delegates considered the media in three different categories:
- (a) written press (newspapers);
 - (b) broadcast media (radio and television); and
 - (c) various forms of social media (Twitter, Facebook, blogging etc.).
- [32] The delegates identified the following problems as common to all three media categories:
- (a) inadequate training of journalists;
 - (b) a lack of trust between the media and the judiciary;
 - (c) inaccurate and/or biased reporting;
 - (d) an attitude that the judiciary as an institution should speak only through their judgments and decisions;
 - (e) infringement on the privacy of parties, witnesses, jurors and protected evidence (such as trade secrets, financial data); and
 - (f) potential influence and diminution in respect for judicial proceedings.

¹³ Ibid.

- [33] In considering solutions to these problems, the delegates had regard to the considerations laid down in the Madrid Principles on the Relationship between the Media and Judicial Independence.¹⁴ It was noted that both the judiciary and the media have obligations with regard to court reporting. The judges have a responsibility to recognise and give effect to freedom of the media by applying a basic presumption in favour of full access by the media and permitting only such restrictions as are authorised by *the International Covenant on Civil and Political Rights* (“ICCPR”) and as are specified in particular laws of the respective countries. The media has an obligation to respect the rights of individuals protected by the ICCPR and to respect the independence of the judiciary.
- [34] The delegates acknowledged that many countries currently have rules and regulations prohibiting or limiting some or all forms of media in the courtroom and sometimes limiting reporting on cases that are in progress. These are often administered on a case-by-case basis with the direct involvement of the presiding judge. With these considerations in mind, the Study Commission articulated the following principles and recommendations to improve relationships with the media:
- (a) The judiciary acknowledges the important role the media plays in a democratic society in conveying information about court proceedings and court-related matters to the public.
 - (b) The judiciary could offer to be involved in informing journalists about general matters of court procedure and administration, and general issues of substantive law.
 - (c) The judiciary should use state of the art communication strategies and methods to convey accurate information regarding the role of the judiciary in society and, when allowed by law, the nature of specific judicial proceedings (for example, this could include court press officers, who may be judges not connected with a particular case, press releases that may be issued at appropriate times during proceedings or after a case is concluded, and the use of social media by the courts).
 - (d) The judiciary should offer help to establish and foster mechanisms outside the judiciary for addressing problems with the media such as sloppy or inaccurate reporting. This could include encouraging the establishment of a separate commission that works with the media or an ombudsman to help resolve such problems.

COURTS AND THEIR COMMUNICATION WITH THE PUBLIC

- [35] Proposals for “cameras in the courtroom” should be viewed in the broader context of developing practices to ensure that the public is accurately informed about the work that courts do, the justice system in general and particular proceedings which are open to the public.
- [36] Some of the matters raised by the IAJ concern broader issues about how courts convey accurate information about the role of the judiciary in society and, when allowed by law, the nature of specific judicial proceedings. Many Australian courts facilitate the provision of accurate information to the media and the general public through court communication

¹⁴ <http://daccess-ods.un.org/TMP/1672171.35429382.html>; see also amongst others, Opinion No. 7 of the Consultative Council of European Judges (CCJE); The Bangalore Principles of Judicial Conduct, ch. 28, 44, 74, 75; Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states of the Council of Europe on judges: independence, efficiency and responsibilities, Annex Ch. 19 and 40; Opinion no. 3 of the Consultative Council of European Judges (CCJE), ch. 50; Mt. Scopus Approved Revised International Standards of Judicial Independence, ch. 6.2.

officers who act on behalf of the judiciary and in accordance with guidelines for the media which are approved by the judges. For example, the Supreme Court of Victoria has a Media Policies and Practices document which facilitates dealing with the media.¹⁵ The policies and practices contained in that document are designed to facilitate full and accurate reporting of what the court does, and to further the community's understanding of the court's function and its work. The County Court of Victoria has similar guidelines for the media, which were published in March 2015.¹⁶ Some courts also have their own websites and Twitter accounts.

[37] The issue of how courts better communicate with the general public has been the subject of books by respected academics, conferences and seminars.¹⁷ A recent paper by Judge Judith Gibson entitled "Social Media and Judging" canvasses issues about how courts might use social media to communicate with court users and others. These are large issues and beyond the scope of this Issues Paper. They raise fundamental concerns about the use by courts of interactive forms of communication.

[38] Whilst this Issues Paper does not canvass at any length the broader issue of how courts communicate with the general public, it raises the issue of whether the public can be better informed about proceedings and educated about the justice system by means other than the introduction of "cameras in the courtroom" and the broadcasting of audio-visual images to the general public.

JUDICIAL CONTROL OF IN-COURT RECORDINGS

[39] Courts should control audio-visual recording of court proceedings because of its potential to imperil a party's right to a fair trial and to prejudice other important public interests, such as the protection of vulnerable witnesses. An academic commentator who has written extensively in this field, Associate Professor Stepniak, considers that retaining this control is necessary in order to minimise any potential detrimental effects of publication and to ensure that the benefits of publishing proceedings are attained.¹⁸

[40] The notion that the court should control audio-visual recording of court proceedings does not necessarily mean that courts will undertake the recording, let alone the editing, of what is recorded. To do so may impose very substantial financial and other burdens on judges and court staff. Further, it would be inappropriate, distracting and foreign to the judicial function for a judge to assume the role of a producer or editor in deciding what part of a day's recording should be included in that night's television news.

[41] Judicial control over the audio-visual recording of proceedings does mean, however, that the conduct of the media and others in recording court proceedings, and in communicating what is recorded, will be governed by guidelines and agreed practices and be subject to orders of individual judges in particular proceedings. It may be that any guidelines which are developed, as with the New Zealand guidelines, do not have legislative force, do not create rights and should not be construed to create expectations. The New Zealand guidelines

¹⁵ Supreme Court of Victoria, "Media Policies and Practices" (2014).

¹⁶ County Court Victoria, "Guidelines for the Media" (March 2015).

¹⁷ P Keyzer, J Johnston and M Pearson (eds), *The Courts and the Media: Challenges in the Era of Digital and Social Media* (Canberra: Halstead, 2012); J Johnston, *Setting the Table Doesn't Mean the Guests Will Come to Dinner: Televised Courts in Australia* (International Communication Association, 2005)

¹⁸ D Stepniak, *Audio-Visual Coverage of Courts: A Comparative Analysis* (Cambridge: Cambridge University Press, 2008) 316.

reiterate that all matters relating to in-court media coverage are at the discretion of the court.¹⁹

- [42] Placing the audio-visual recording of court proceedings under the control of the courts may be said to create an appropriate and flexible system by which to facilitate the fair, full and accurate reporting of proceedings and to advance the community’s understanding of the courts. Such a system is better able to respond to technological and other developments in the media, including social media, than legislation which may become outdated and ill-suited to contemporary needs and the interests of justice in a particular case.

DEFINITIONS AND DISTINCTIONS

- [43] A glossary of some of the terms used in this Issues Paper is contained in Appendix II. Some of the terms are drawn from [Practice Direction 8 of 2014](#). As noted in the introduction to this paper, to some minds, the word “broadcasting” connotes licensed commercial television and radio broadcasters and public broadcasters. However, it may include other forms of broadcasting such as web TV. The term “live-streaming” refers to the instantaneous transmission of court proceedings. Live, text-based communications (LTBC) include social media platforms such as Twitter and Facebook. The terms “publication” and “communication” are used in this paper in a general sense to refer to the variety of means by which court proceedings may be electronically recorded and communicated.

- [44] Some important distinctions should be made.

Audio and audio-visual

- [45] This paper is generally concerned with the recording and communication of visual and audio recordings. Many issues relate to both audio and audio-visual recordings, but there is an important distinction between the two. With lower production costs and the ease of recording through hand-held devices, the recording of court proceedings for radio broadcasting enables extensive recordings to be made and used. The recent draft report to the Chief Justice of New Zealand noted that, to the panel’s knowledge, many of the problems that arise from filming in courts do not arise when there is recording solely for the purpose of radio broadcast.

Forms of audio-visual recording

- [46] Different issues arise in connection with recording and communication of court proceedings as between:
- live-streaming;
 - news and other contemporaneous reporting; and
 - filming and photography.

¹⁹ See further, New Zealand Media Guide for Reporting the Courts and Tribunals: Edition 3.1 – [Appendix C](#).

News reporting is necessarily short and selective. Live-streaming is continuous and typically operated by the court. Whilst filming and photography inside courtrooms raise many similar issues, they are not the same.

Recording and publishing

- [47] There is an important distinction between what is recorded and what may be published. Something may be recorded, but not be able to be published because of a law or a guideline preventing its communication to the general public.
- [48] Not all that is recorded will be published. If, for example, a media organisation is permitted to record court proceedings for the purposes of a news broadcast, then inevitably the recording will be edited. Subject to guidelines, such as the former “two minute rule”²⁰ which applied in New Zealand, the duration and content of any report which is broadcast is likely to be largely beyond the court’s control. Instead, it will be subject to laws, including the law of defamation and the law of contempt. Recording and publishing material in breach of guidelines and court orders will have consequences.
- [49] Any system which permits the recording of court proceedings carries with it the risk that what is recorded may be unfairly edited. Some of the problems associated with editing are discussed below. Further, even if the court is able to control the initial editing and publication, through guidelines and the like, the risk remains that this material will subsequently be misappropriated.

Different purposes of audio-visual recording

- [50] The purpose for which a proceeding is recorded may govern rules, practices and guidelines. Recording may be for a number of purposes, including:
- live transmission (by audio streaming or continuous coverage on a dedicated web TV site);
 - broadcasting on a news or similar current affairs program;
 - documentary purposes; and
 - professional education and educating law students.

A proceeding which is recorded only for the purpose of a documentary which will be broadcast after the proceedings are concluded may not imperil a fair trial. It may be more educative than a short extract which is broadcast on an evening television show. Nonetheless, recording for the purposes of a documentary raises significant issues. The January 2015 Scottish Report noted concerns about the recording of proceedings at first instance, in particular criminal trials, even for documentary purposes. The primary concern was in relation to the potential effect on witnesses and jurors. The greatest concern was the possibility that

²⁰ The original New Zealand media guidelines required that any broadcast of material recorded in-court had to be broadcast without editorial comment and be of *at least* two minutes duration. When these guidelines were reviewed in 2003 this rule was removed. In the most recent review, the Panel’s opinion was that it ought not to be reintroduced.

witnesses, and even jurors, might be less inclined to engage with the criminal justice system if the proceedings in which they were involved were to be filmed.²¹

CURRENT POSITION IN QUEENSLAND

Visual and auditory recording and broadcasting

[51] The use of electronic devices in courtrooms is governed by [Practice Direction 8 of 2014](#). The broadcasting of image and sound recordings of Queensland court proceedings is prohibited, with exceptions, by that Practice Direction. The use of electronic devices²² in any courtroom is prohibited unless permitted by the judicial officer or the Direction. The Practice Direction goes on to specifically prohibit the use of electronic devices to “take photographs or video images” or to “record or digitally transcribe” court proceedings.

Electronic real-time text-based communications

[52] The prohibition that relates to the recording and broadcasting of courtroom proceedings does not extend to the use of “electronic real-time text-based communications and social media”, such as Twitter and Facebook, by accredited media.²³ This permission, however, is granted only to the extent that it does not interfere with or interrupt the proceedings,²⁴ and that court reporting laws are adhered to.²⁵

The application in *R v Cowan*

[53] An application was made by a number of media outlets in *R v Cowan* (the Daniel Morcombe case) requesting that the court exercise its discretion and permit the filming of Cowan’s sentencing. This application was opposed by both the prosecution and the defence on the basis that it was “unnecessary to further the interests of justice and would sensationalise an otherwise already high-profile case.” The court, constituted by Justice Atkinson, ultimately declined to grant the application, noting the fact that the principle of “open justice” was not “determinative of whether or not sentencing remarks should or should not be televised” and that, regardless of her Honour’s personal opinion, in the absence of the consent of the parties and an established practice in Queensland, it was not appropriate to televise the sentencing.²⁶

²¹ Scottish Review, [5.2.1].

²² An “electronic device” is defined as “any device capable of sending, receiving or recording data or any combination of those functions”: [Practice Direction 8 of 2014](#), [3(c)].

²³ “Accredited media” are those media personnel “who are accredited pursuant to the Supreme Court’s *Media Accreditation Policy*”: [Practice Direction 8 of 2014](#), [3(a)].

²⁴ [Practice Direction 8 of 2014](#), [8].

²⁵ *Ibid*, [9].

²⁶ *R v Cowan* [2014] QSC 41.

THE NEED FOR A REVIEW

[54] Justice Atkinson’s observations about the absence of an established practice, and developments in other jurisdictions, make this review by the judges appropriate.

[55] The electronic publication of court proceedings is one means of increasing community engagement with the justice system and educating the general public about the work of the courts. Proponents of the electronic publication of court proceedings argue that the increased use of technology promotes transparency in the justice system and public confidence in the courts. A failure on the part of the court to use the technology available to it could isolate the justice system from sections of the public, and inhibit the efficient and effective delivery of justice.

[56] The Panel which recently submitted its draft report to the Chief Justice of New Zealand commented:

“In our view the case for cameras in court has become stronger in the digital age. New Zealanders are now familiar with the concept of being filmed and recorded, in public and private places. Digital information of public interest is instantly shared in our community. We consider there is force in the proposition that the justice system runs the risk of becoming out of step with the expectations of the public, and therefore less meaningful to those who might otherwise engage with the court system, if the public cannot see the operation of the courtroom unless they go to court. We have the technology to transport members of the public into the courtroom.”²⁷

[57] The Panel stated that the most important practical reason for introducing cameras and recording in New Zealand courts “is that it takes the pressure off parties when outside the court”.²⁸ It wrote:

“If the media do not have the opportunity to record and take photographs in court, the ‘media scrum’ frenzies outside the court seen in the 1980s and early 1990s, before extended coverage, might resume. Occasionally they have resumed, and have been checked by the proposed withdrawal of in-court privileges.”²⁹

The issue of facilitating access by parties and witnesses and the problem of a “media scrum” forming in the immediate precincts of the Supreme and District Courts in Brisbane was addressed by [Practice Direction 17 of 2014](#). Its purpose is to ensure the safe and orderly entry into, movement within, and exit from the Supreme Court precincts at Brisbane by all persons and vehicles.

[58] The Panel did not recommend any fundamental change to the 2012 guidelines. It concluded that the audio-visual recording of New Zealand court proceedings facilitated a more open and accessible court system for the New Zealand public. It identified a number of issues which required attention, including an increased role for the Media and Court Committee in

²⁷ NZ Report, [76].

²⁸ Ibid, [78].

²⁹ Ibid.

monitoring compliance with existing guidelines. It proposed an ongoing investigation of fixed cameras and live-streaming.³⁰

PERCEIVED PROBLEMS

- [59] Some of the issues raised in both the NZ Report, and in its earlier Consultation Paper, and the similar reports produced by the Scottish Judicial Committee, identify concerns about the recording and publication of courtroom proceedings, particularly by television stations. Critics contend that this leads to “sound bites that concentrate on prurient or sensational material”.³¹ This is said to exacerbate the tendency to “catch attention rather than provide balanced reporting”.³² This does not help the public understand how courts work, and may, in fact, further perpetuate myths about court processes and the types of matters that are heard.³³
- [60] Critics of televising court proceedings include leaders of the legal profession in this country and abroad.
- [61] In its submission to the New Zealand Panel, the Bar Association of New Zealand suggested that many of its members considered that the effect of in-court media coverage “is to trivialise, to focus on the sensational and the best sound bites”.³⁴ This was said to be happening more frequently than at any earlier time. The Bar Association submitted that “far from seeing how a court case proceeds, what the in-court media coverage shows is selective sound bites and out of context exchanges, selected by the media deliberately for dramatic effect and ratings rather than public education or balanced presentation”.
- [62] The New Zealand Bar went on to identify the risk that in-court media coverage, instead of increasing understanding and respect for the courts, brings the justice system into disrepute, which includes the courts being wrongly criticised for permitting filmed excerpts to be replayed in the name of “open justice”.
- [63] A leading English barrister, Baroness Helena Kennedy QC, has stated:

“Television is constantly looking for new terrain to inhabit, but it seeks the salacious and the sensational, not the arcane arguments of the highest court. It wants the sight of a celebrity in the dock. It wants the image of Stuart Hall being sentenced for sexual offences.”³⁵

Her concerns were based on a distrust of the commercial imperatives of the owners of media organisations and the potential impact on victims, defendants, witnesses, jurors and other participants in court proceedings.

³⁰ Ibid, [5].

³¹ Courts of New Zealand, *In-Court Media Coverage – A Consultation Paper* (“NZ Consultation Paper”), [63], <http://www.courtsofnz.govt.nz/In-Court-Media-Review>.

³² Ibid.

³³ A Finlay, “Televised Court Proceedings: The Relationship between the Media, Punitive Public Perceptions and Populist Policy” (2010) *Flinders Journal of History and Politics* 26, 71.

³⁴ New Zealand Bar Association, “Submission to Media Review Panel”, [7].

³⁵ Helena Kennedy, “Cameras in court are a threat to justice” *The Guardian* (4 November 2013, London) <http://www.theguardian.com/commentisfree/2013/nov/03/cameras-in-court-threat-justice>.

[64] In 1995, the *New Zealand Law Journal* commented:

“TV is not merely a neutral eye ... The camera is selective ... What the viewer sees is not what he or she would see had they been there ... It is the nature of the TV medium in a technological sense, although it can be and often is, also affected by the preferences, prejudices and ideological or political views of the producer. A ‘televised trial’ is like confusing a slice of ham with a pig, without realising that one is a dead, partial and *processed* version of the living other.”³⁶

[65] A commentator in *The Washington Post* observed that the presence of video cameras in courts alters reality:

“The pen may be mightier than the sword – and a picture may be worth a thousand words – but video cameras alter reality. Their very presence changes the people and events they seek to capture. And, just to keep those clichés rolling, although seeing is believing, what we project for others to see is influenced – and reality is altered – by the fact that a camera is recording that projection. ... When lawyers and witnesses hear their own performances critiqued – and evidence is evaluated by one of the legions of former prosecutor-turned-experts – suddenly the audience is directing the play.”³⁷

[66] Another criticism of allowing broadcasters to televise selected trials is that it does not provide a true coverage of the work of the courts. The New Zealand Consultation Paper captures this point as follows:

“Most court matters are just too dull. In those that are newsworthy the coverage is often too short and too focused to give the public much of a view of the work of the courts.”³⁸

[67] Filming defendants and witnesses, particularly at critical moments of a trial, can affect the delivery of their evidence and their demeanour. The presence of cameras in courts, and the movement of camera crews leaving courts, may distract participants, including jurors, from the performance of their important duties.

[68] Controlling the conduct of the media, deciding applications by the media, monitoring compliance with guidelines and other tasks may be said to place additional burdens on judges and court staff, distract them from their duties and use valuable court and judicial resources.

RECENT EXPERIENCES

[69] The most significant recent case of the use of cameras in the courtroom is the *Pistorius* case in South Africa. Views differ about whether it was an advertisement for, or an indictment against, allowing criminal trials to be televised.

[70] In response to a pre-trial application brought by major South African media outlets, Mlambo J allowed the media to broadcast audio recordings of the full trial, and to televise parts of it, including opening arguments, the testimony of prosecution expert witnesses, police and assessors, and the evidence of other prosecution witnesses, unless they objected. Defence

³⁶ Editorial, “Televising Trials” [1995] NZLJ 101 at 102 (emphasis in original).

³⁷ K Parker, “Trial TV presents an altered reality” *The Washington Post* (9 July 2013, Washington DC).

³⁸ NZ Consultation Paper, [71].

counsel opposed filming of the trial and the judge ruled that no defence witnesses could be filmed.

- [71] This was a controversial decision. Justice Mlambo justified this ruling on the basis that it struck an appropriate balance between the competing “rights” of Pistorius and the “public”. In reaching this conclusion, Mlambo J noted that acceding to Pistorius’ objection in its entirety would “jettison the noble objectives of the principle of open justice when one takes cognizance of our development in the democratic path” and considered that in “this day and age [he could not] countenance a stance that [sought] to entrench the workings of the justice system away from the public domain.”³⁹
- [72] Whether the sought after balance was achieved is questionable. A different judge, who tried the case, Justice Masipa, remarked that the extent of the publicity and media coverage and particularly the “real-time” coverage of in-court proceedings had adversely affected the credibility of the testimony of many of the prosecution witnesses. Justice Masipa noted that almost every witness stated that they had followed the media coverage relating to Ms Steenkamp's death. In addition, a number of witnesses admitted that, upon hearing that they had been referred to in court, they had watched the relevant footage *before* giving their evidence.
- [73] Lord Thomas, the Lord Chief Justice of England and Wales, was reported in May 2014 to have ordered a full report on the impact on criminal trials of cameras in court, in the light of the *Pistorius* case. In October 2013 the Lord Chief Justice had allowed the broadcasting of cases in the Court of Appeal in London and in other centres. In a statement made before the House of Lords Constitution Committee, his Lordship advised that he had ordered a halt to any further moves to televise trials in England and Wales, in the light of the *Pistorius* case, pending a formal review.
- [74] Commissions of Inquiry in Australia, New Zealand and the United Kingdom have allowed live-streaming of proceedings or the use of a camera in a hearing room with a direct feed to a media pool. A good example is the Leveson Inquiry into the “Culture, Practices and Ethics of the Press”. The quality of recording and reporting depends on the number and quality of any fixed cameras, and the participants who a fixed or transportable camera are allowed to record.
- [75] Similar principles about openness and the need for public scrutiny of the conduct of proceedings apply to both courts and commissions of inquiry. However, some different considerations apply to the publication of their proceedings. Commissions of inquiry do not finally determine the rights and liberty of individuals. In addition, publicity of their proceedings may be necessary to inform the public about a matter of immediate, widespread public concern. Broader considerations about the public’s right to be informed about matters of legitimate public interest arise and are not outweighed by the right to a fair trial in the proceeding which is being broadcast.
- [76] The sentencing remarks of judges in New South Wales may be recorded and broadcast.⁴⁰ The recording is done by a camera which is supplied and operated by a television network for use by it and other networks. The camera simply films the judge reading from written sentencing remarks. As a result, the images are essentially the top of a judge’s wig. It is questionable whether the broadcasting of those images adds greatly to the public’s understanding of the

³⁹ *Multichoice (Proprietary) Limited and Others v National Prosecuting Authority and Another, In Re; S v Pistorius, In Re; Media 24 Limited and Others v Director of Public Prosecutions North Gauteng and Others* [2014] ZAGPPHC 37 at [22].

⁴⁰ See [80] below.

court system or what was said in a particular case. Some would argue that, despite Atkinson J's refusal to allow television cameras to record her sentencing remarks in the *Cowan* case, those remarks were fairly and fully reported by professional journalists who were able to observe the sentencing hearing in person or by a live stream and report them almost immediately.

- [77] Televising of proceedings in the Supreme and County Courts in Victoria is rare, and then only in high-profile cases. For example, the Victorian Supreme Court recently allowed the live-streaming of a civil case involving a Formula One driver. It seems that only high-profile cases are likely to attract requests for them to be recorded for broadcasting purposes, as occurred with the decision of Middleton J in the Federal Court involving the Essendon Football Club and the Australian Sports Anti-Doping Authority.⁴¹

EXPERIENCES IN OTHER JURISDICTIONS

Australia

- [78] Courts in all Australian jurisdictions have admitted television cameras into their courtrooms on an *ad hoc* basis, but in many jurisdictions, including Queensland, this has only been for ceremonial proceedings. Specific guidelines dealing with electronic media coverage have been developed and implemented in Western Australia. They allow for the recording and broadcasting of court proceedings upon application to the presiding judge. Despite making provision for this, its use has been, at best, sporadic.⁴²
- [79] The position in Victoria and New South Wales has been briefly outlined above.
- [80] Recently the New South Wales Parliament enacted the *Courts Legislation Amendment (Broadcasting Judgments) Act 2014*, which amended the *Supreme Court Act 1970 (NSW)* to allow for the recording and broadcasting of court proceedings. This enactment creates a presumption in favour of granting applications by the media to record and broadcast "judgment remarks" delivered in open court.⁴³ Despite this apparently liberal approach, the substance of what can be recorded and broadcast is very limited. The *Supreme Court Act 1970 (NSW)* defines "judgment remarks" as "in relation to a criminal trial – the delivery of the verdict, and any remarks made by the Court when sentencing the accused person, that are delivered or made in open court, and ... in relation to any other proceedings – any remarks made by the Court in open court when announcing the judgment determining the proceedings."⁴⁴
- [81] Since October 2013, the High Court of Australia has published audio-visual recordings of Full Court hearings online via an archive on the court's website. These recordings are generally published a few business days after the hearing. In addition to these recordings, the court also provides access, again via its website, to detailed case-specific information, including the submissions of the parties and transcripts of oral argument.

⁴¹ *Essendon Football Club v Chief Executive Officer of the Australian Sports Anti-Doping Authority* [2014] FCA 1019.

⁴² D Stepniak, *Audio-Visual Coverage of Courts: A Comparative Analysis* (Cambridge: Cambridge University Press, 2008) 239.

⁴³ *Supreme Court Act 1970 (NSW)*, s 128(1).

⁴⁴ *Supreme Court Act 1970 (NSW)*, s 127.

Canada

- [82] The Canadian experience with the broadcasting of court proceedings, though extensive, is mixed. Between 1993 and 1995 the Supreme Court of Canada ran a trial program allowing the recording and broadcasting of court proceedings. Since 1995, the court has permitted television coverage of all its hearings however there have been only a small number of applications from commercial stations to broadcast particular proceedings. In the main, these hearings are broadcast by the Canadian Parliamentary Affairs Channel⁴⁵ and since 2009, have been webcast live on the court’s website.⁴⁶ The court retains control over these proceedings through its published guidelines which not only specify that the court retains control over the process, but also the actual recording. This approach to broadcasting is based upon the view that it allows the “fundamental principle of great importance — the principle that the courts should be open, subject only to narrow and judicial exceptions.”⁴⁷
- [83] This preparedness to allow the recording and broadcasting of court proceedings does not extend to trials. As a general rule, both at the federal and provincial levels, trial courts do not permit their hearings to be recorded or broadcast where there are witnesses. This position can be attributed to the fear that televising proceedings does little to “foster the public confidence in the administration of justice”, impinges upon the privacy of victims and witnesses and tempts witnesses, consciously or unconsciously, to “tailor their evidence to what the TV audience expects or how they wish to be seen”.⁴⁸

New Zealand

- [84] Following a successful pilot program, New Zealand has permitted the recording and broadcasting of court proceedings since 1999. Under that system, should a media outlet wish to record proceedings in court for broadcast either on radio or television, it must apply to the court. This application is then forwarded to the parties involved and, following the receipt of submissions, the application is determined by the trial judge. Any permission is regulated by the extensive guidelines which outline both how this footage is to be recorded and how it is to be distributed. New Zealand courts do not, however, publish or provide this footage on their own website or via a public broadcaster.
- [85] The Chief Justice of New Zealand recently commissioned and has received a draft report on “In-Court Media Coverage”. The NZ Report reviews the existing guidelines and practices relating to cameras and recording in court. The draft report concludes that the presence of film recording, cameras and audio recording has “facilitate[d] a more open and accessible court system”, but also has given rise to some procedural challenges. Ultimately it was considered that the present level of coverage was to be preferred over none at all, and no fundamental changes to the 1995 reforms or the guidelines are recommended. Greater accuracy and balance in reporting was desired by both the judges and lawyers.⁴⁹

⁴⁵ A non-commercial channel, set up to provide coverage of parliamentary proceedings and committees and public hearings.

⁴⁶ B McLachlin, “The Relationship between the Courts and the News Media”, in P Keyzer, J Johnston and M Pearson (eds), *The Courts and the Media: Challenges in the Era of Digital and Social Media* (Canberra: Halstead, 2012) 24, 32.

⁴⁷ Ibid.

⁴⁸ <http://www.scc-csc.gc.ca/court-cour/judges-juges/spe-dis/bm-2012-01-31-eng.aspx>; see also D Stepniak, *Audio-Visual Coverage of Courts: A Comparative Analysis* (Cambridge: Cambridge University Press, 2008) 162.

⁴⁹ NZ Report, [5(a)]-[5(t)].

Scotland

[86] In October 2012, in response to the “development of social media, the use of instant text-based communication and the broadcasting of proceedings before the UK Supreme Court”,⁵⁰ the Lord President commissioned a review of the Scottish policy on recording and broadcasting proceedings in court and the use of LTBC from court. At that time, the broadcasting and publication of court proceedings was regulated by a practice direction, which overturned the previous absolute ban on the use of television cameras within the precincts of the court, and allowed the televising of appellate level proceedings in civil and criminal cases, subject to the approval of the presiding judge and, subject to the consent of all parties, the recording of proceedings, including at first instance, for use at a later date for educational or documentary purposes. A report on the findings of this review was published in January 2015. This report recommended:

- that the filming of civil and criminal appeals and legal debates in civil first instance proceedings should be allowed for live transmission, subsequent news broadcasting and documentary film-making;
- criminal and civil trials could only be filmed for documentary purposes, subject to restrictions where parties were particularly vulnerable; and
- filming of the delivery of sentencing remarks of the judge should be allowed, however the filming should focus on the judge.⁵¹

England and Wales

[87] The UK Supreme Court has allowed its hearings to be broadcast since 2009 via a live-streaming service through Sky News and, more recently, through the uploading of videos of its members delivering opinions to YouTube.⁵² The lower courts have not been as amenable to the use of cameras in their courtrooms, filming having been banned in all courts in England and Wales since 1925. In October 2013 this position was partially reversed and cameras are now allowed into the Court of Appeal for England and Wales.

United States of America

[88] The filming and broadcasting of court proceedings is more common in the various State courts of the United States than in many other jurisdictions, including Canada and the United Kingdom. It is also more common than in the Federal Courts of the United States. Notably, the Supreme Court of the United States continues to refuse to allow any visual recording of its proceeding. Despite this complete prohibition on visual footage, the Supreme Court publishes audio recordings of all oral arguments on its website. These recordings are generally uploaded at the end of each sitting week.

⁵⁰ Scottish Report, [1.2].

⁵¹ Ibid, [6.1]-[6.3].

⁵² Kyu Ho Youm, “Cameras in the Courtroom in the Twenty-First Century: the U.S. Supreme Court Learning From Abroad?” (2012) 6 *Brigham Young University Law Review* 1989, 1990.

[89] The case against having television cameras recording hearings of the US Supreme Court was powerfully articulated by Kennedy and Breyer JJ at a congressional hearing.⁵³ The judges were concerned about how televising proceedings might interfere with how judges interact with each other in testing arguments, allow questions and statements to be taken out of context for a “sound bite” on network television news and alter the way judges engage with counsel. Recently Kagan and Sotomayor JJ also expressed concerns that allowing cameras might lead to grandstanding that could fundamentally change the nature of the court. Justice Kagan was wary that “it might upset the dynamic of the institution” and was reported as saying:

“If you look at different experiences, when cameras come into a place, the nature of a conversation often changes.”⁵⁴

[90] Starting in September 1990, the United States Federal Judicial Conference authorised the running of a three year pilot program allowing electronic media coverage – filming, recording and broadcasting – of civil proceedings in trial and appellate courts in six federal districts. At its conclusion those carrying out this program recommended its continuation and expansion across all federal districts.⁵⁵ This recommendation however, was not followed by the Judicial Conference of the United States, justifying this position by reference to “the intimidating effect of cameras on some witnesses and jurors was cause for concern”. In 2011 a new, three year pilot program was authorised to be undertaken in fourteen districts. In this program, the cameras were to be operated by the courts, the consent of all parties was required and no filming of jurors was allowed. This program has been extended and will conclude in July 2015. A report has not yet been published.

[91] By contrast, to varying degrees every State allows cameras in their courtrooms. Forty-four allow television coverage of both trials and appellate proceedings, while the rest restrict courtroom coverage to appellate arguments.⁵⁶

ISSUES FOR CONSIDERATION

[92] As has been outlined above and extensively canvassed in the literature, numerous issues arise in relation to proposals for the electronic publication of court proceedings. This paper does not discuss every issue. Instead it aims to inform discussion about whether or not to allow the electronic publication of certain Queensland court proceedings.

[93] The issues may be grouped under two headings – those that relate to the administration of justice and those that relate more practically to the administration of the courts and their resources.

[94] Some issues apply to all proceedings in Queensland courts. Some, however, concern the effect that the recording and publication of proceedings may have on the participants in particular types of proceedings.

⁵³ CSPAN, “Justices Kennedy & Breyer on Cameras in the Supreme Court” (15 March 2013) <https://www.youtube.com/watch?v=8cRDBVxdJIY>.

⁵⁴ Associated Press, “Two Justices Once Open to Cameras in Court Now Reconsider” *The New York Times* (2 February 2015, New York) http://www.nytimes.com/aponline/2015/02/02/us/politics/ap-us-supreme-court-cameras.html?_r=0

⁵⁵ See Federal Judicial Center, *Electronic Media Coverage of Federal Proceedings: An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeal* (Washington DC: Federal Judicial Center, 1994).

⁵⁶ Kyu Ho Youm, “Cameras in the Courtroom in the Twenty-First Century: the U.S. Supreme Court Learning From Abroad?” (2012) 6 *Brigham Young University Law Review* 1989, 1994.

ADMINISTRATION OF JUSTICE

General issues

Distraction and decorum

- [95] An issue that is often raised in discussions about the presence of cameras in courtrooms is their potential impact on the conduct of proceedings. With advances in technology it is no longer the case that recording equipment necessarily creates a physical distraction. This is particularly the case where any recordings rely upon existing (internal) systems. When equipment is brought into and taken out of courts by an external party, as occurs in New Zealand, any distraction caused by its presence can be minimised by restricting the number of cameras that may be present and educating media representatives attending court.⁵⁷ However, a recent address by a senior New Zealand judge to Queensland judges remarked on the distraction caused by camera operators moving equipment.
- [96] Another concern is that the presence of cameras will adversely affect the manner in which court proceedings are conducted. One is the tenor of court proceedings. The apprehension is that the knowledge that they are being filmed will cause some counsel, some judges and some witnesses to “grandstand”. An associated issue is that the knowledge that proceedings are being recorded and may be published, may cause those involved to act in a more formal manner, potentially making proceedings more complicated and lengthy, and reducing their accessibility to the general public. This concern might be addressed to some extent by not recording those proceedings where frank discussion is necessary, such as pre-trial proceedings and “chambers” hearings.

Privacy and anonymity

- [97] Another concern often raised is that the recording and then publication of courtroom proceedings affects the privacy of the individuals involved. It is well-recognised that, save for exceptional circumstances, court proceedings must be open to the public. It has been said “the hearing of a case in public may be, and often is... painful, humiliating, or deterrent both to parties and witnesses... this is tolerated and endured, because it is felt that in public trial is to found, on the whole, the best security for the pure, impartial, and efficient administration of justice”.⁵⁸ This principle of open justice allows courts to be open to scrutiny, which would be absent if proceedings were conducted in secret. It does not dictate that the humiliation, embarrassment and distress of witnesses and parties should be increased by courts facilitating the transmission of images and recordings of evidence given in court to as wide an audience as possible.
- [98] Presently a witness who gives evidence in open court proceedings may have that fact reported, along with a summary of their evidence. The witness may return to their community with relative anonymity, and without undue pressure to justify their evidence or the manner in which it was given. Their appearance outside court may be filmed or

⁵⁷ In its recent report to the Chief Justice of New Zealand the Panel noted that the current single shared camera presently permitted in courts worked well if the operator and journalist were sensitive to courtroom etiquette and the fact that the “fair and dignified conduct of the Court processes”, and not the creation of good footage was the court’s priority. This has not always been the case and one of the recommendations of this most recent review was the need to further educate media representatives about the requirements of courtroom etiquette: see NZ Report, [181]-[184].

⁵⁸ *Scott v Scott* [1913] AC 417 at 463.

photographed, but their actual evidence is not able to be replayed. Their “performance”, as recorded in the witness box, is not critiqued by expert or inexpert commentators.

[99] Jurors should be anonymous to the general public. Court staff and corrective service officers in court also have reasonable claims to privacy.

[100] Another potential issue is the loss of relative anonymity of judicial officers. Whilst occupying a public role, the majority of judicial officers remain relatively anonymous. They can move around the community and interact with others without being publicly identified as judges. There is a public interest in judges being able to do so. Were proceedings to be live-streamed or provided to the media for broadcasting some of this anonymity would be lost.

Detraction from the institutional role of the judge

[101] Judges sitting in trials, appeals and other hearings are not simply individuals playing a part. They constitute “the court”. Individual judges are often described by others as “the court” and sometimes refer to themselves in that way. In most cases, judges wear robes and other regalia which are uniform, and which signal the judge’s institutional role. Individual judges exhibit individual styles and idiosyncrasies. However, each judge plays an institutional, not a personal, role in dispensing justice.

[102] Televising in-court proceedings may be thought to create the theatre of the individual judge playing some individualistic part, rather than being the personal embodiment of “the court”. The judge may appear to be an individual character in something akin to a reality TV show. The relative anonymity of judges would be reduced. This risk should not be overstated, since current reporting can include photographs of judges or file footage taken on ceremonial occasions. However, broadcasting of in-court recordings of a judge may accentuate the role of the judge as an individual as part of a courtroom drama. Few judges would welcome being depicted as such a character, rather than as one of many judges who constitute a court.

Distortion and sensationalism

[103] Editing, by its nature, is selective. It can, however, convey a misleading impression. The editing of recordings of court proceedings can be unfair, inaccurate and jeopardise an individual’s right to a fair trial. The NZ Report gives these examples:

“An example often given of unfair coverage relates to the context of the television coverage where a witness is filmed giving particular evidence followed immediately by film of the defendant. Such coverage implies that the defendant’s reaction is to the evidence of the witness shown immediately before. In fact, the defendant’s reaction may have been filmed in another context and is not a reaction to that particular witness’ evidence. Another example is where film has been made showing a defendant’s reaction during a judge’s sentencing remarks, but in a different context. The public are being given an incorrect and unfair impression of the witness or defendant.”⁵⁹

⁵⁹ NZ Report, [91].

[104] It has been suggested that allowing the recording and subsequent publication of in-court proceedings will sensationalise courtroom proceedings. While it is possible that an otherwise unknown case may draw media coverage and public attention if the in-court proceedings were recorded, this has not been the experience of other jurisdictions.⁶⁰ It is likely, however, that media coverage of those proceedings that are already within the public consciousness and have all the necessary “ingredients” for a “good news story” simply will be increased. There will be no enhancement of the principle of open justice by reporting proceedings which would otherwise go unreported.

Misappropriation

[105] A risk of the publication of electronic recordings of proceedings is that they will be misappropriated and used for purposes other than those intended. The potential exists for witnesses, parties and others to be vilified, or at least placed under undue pressure, by selective editing, mixing and misrepresentation about what they said or the context in which it was said. While contempt laws are likely to be an effective means of preventing accredited media from using recordings in an unauthorised manner, they are unlikely to be effective at preventing or discouraging certain individuals from misappropriating this material and republishing it via social media and file sharing sites. This risk may be diminished where the entire recording and publication process is controlled by the court, so that the relevant files are “locked” and only available via the court’s website. This, however is unlikely to prevent a motivated individual from gaining access to this content and using it for unauthorised purposes.

Horrific evidence

[106] Many court proceedings include evidence that is horrible. This includes evidence about violent crimes, including acts of sexual abuse, and images of horrifying injuries. Some restrictions on reporting control what can be published about some of these things, including the identity of certain victims. However, some of those restrictions do not prevent details of the evidence being reported to the general public, provided there is no identification. Nevertheless, many responsible media outlets refrain from publishing distressing details.

[107] Live-streaming of court proceedings and continuous telecasting of certain trials would not allow for such a filter.

[108] The problem of horrific details being unnecessarily published to the general public is not confined to coverage of trials and sentences. Many unsavoury details are necessarily canvassed at the hearing of appeals.

[109] In oral evidence given to the House of Commons Justice Committee on 27 January 2015, the Lord Chief Justice of England and Wales, Lord Thomas, answered questions about the broadcasting of some Court of Appeal cases. His Lordship noted that the media had been asked not to put the detail of certain cases on public websites. Lord Thomas observed that in the context of a hearing before the Court of Appeal, one can organise a hearing and be quite careful. It was said to be much more difficult in a Crown court. Lord Thomas observed:

⁶⁰ See for example, D Stepniak, *Audio-Visual Coverage of Courts: A Comparative Analysis* (Cambridge: Cambridge University Press, 2008) 159-160.

“We want to make certain that we have thought through the problems before we move.”

[110] A similar need for caution arises in the electronic publication of court proceedings in Queensland. Courts should not unwittingly be involved in the unnecessary publication to the general public of obscene, horrific or unnecessarily distressing evidence.

COURT-SPECIFIC ISSUES

First Instance – Criminal – Pre-Trial Proceedings

[111] The recording of pre-trial proceedings, particularly in criminal matters, raises a number of potential concerns. Significantly, the recording and publication of pre-trial proceedings may affect the willingness of participants, namely the judge and counsel, to engage in the necessary full and frank discussion. Should these proceedings be filmed it is possible that all parties will feel constrained and be unwilling to frankly discuss the pending proceeding. There is also the risk in a criminal trial of prejudicing a pool of potential jurors should evidence that is later ruled inadmissible be referred to during a broadcast. Given the nature and content of these proceedings it would be a rare occasion that it would be in the interests of the fair administration of justice that these be recorded or published.

First Instance – Criminal and Civil – Trials

[112] A number of issues concerning the recording and then electronic publication of court proceedings apply to trials. These principally relate to the effect that recording will have upon the participants – witnesses, jurors and the general public. Serious concerns have been raised about the impact that the recording of witnesses will have on the quality of their testimony and the chilling effect it may have on their willingness to report and give evidence. Also, the knowledge that their evidence is being filmed may make witnesses more nervous and hesitant and this, in turn, may affect an assessment of the witness’s credibility or reliability. Even where the witness becomes accustomed to the filming, the first impression is often important. In addition to these concerns, were the footage to be broadcast “live” there is the potential for the evidence of a witness to be viewed by and to influence another witness.

[113] The knowledge that they are being filmed and that this footage may be broadcast may have a chilling effect on the willingness of individuals to serve as jurors. It may also affect their willingness to come to an unpopular verdict, where there is a fear that their role in that decision is public knowledge. Incidentally, if cameras are not present every day in court, this may influence the jurors’ opinion of what evidence and witnesses are important.

[114] Images of victims and vulnerable witnesses, if published, could adversely affect them.

[115] Images of defendants in the dock and their emotion (or lack of emotion) may be prejudicial, especially if edited out of context.

[116] Finally, the often emotive nature of criminal proceedings, and some civil matters, and the description of crimes, their depiction in photographs and other exhibits, need to be recognised. The unedited live-streaming of such evidence and its inclusion in edited reports may affect viewers, including children and victims. Judges and lawyers who are used to

hearing such evidence can be badly affected by it. Ordinary members of the public should not be subjected to it, at least not in all of its sometimes horrific detail.

[117] A number of means exist to limit the potential adverse effects of the filming and broadcasting of trial participants. For instance, permission to film could be limited to shots of the judge and counsel, with any others caught in that footage to be blurred such that they cannot be recognised. Also, where any recording is court-controlled, the physical distraction of having additional objects and persons in the courtroom could be all but eliminated through the installation of fixed cameras or by relying on existing video-conferencing facilities. Another option is to adopt an approach similar to that taken in New South Wales and restrict filming for broadcasting on television and other news media to certain proceedings, such as sentences, and not extend it to trials.

[118] The problem is, however, that were all, or even many, of these restrictions to be adopted very few proceedings would be recorded for general publication. A very limited and unrepresentative selection of cases would be broadcast and the public would not have an accurate picture of the actual court system.

First Instance – Criminal – Sentencing

[119] One way to provide the public with broadcasting of criminal proceedings, which is generally of more interest to the public than civil proceedings, without some of the problems canvassed above, is to allow sentencing remarks to be broadcast. This is presently the approach that has been adopted in New South Wales which, as outlined above, has enacted legislation that allows sentencing remarks to be recorded. The judge is recorded and nothing else.

[120] Aside from being of questionable visual appeal, the differences in sentencing practices between Queensland and New South Wales should be noted. In New South Wales the practice is for judges to hear the relevant submissions of the parties and then adjourn to sentence the defendant on another day. This gives judges time to draft and revise their reasons. This is not the practice presently in Queensland where, as a general rule, sentences are delivered very shortly after submissions conclude. Judges do not work off “scripts”. They pause to find relevant documents and their delivery may lack the fluency of a sentence that is read from a prepared script. Televising *ex tempore* sentencing remarks may place an unnecessary burden upon judges and, in order to compensate, may prompt judges to adopt the practice presently used in New South Wales. This would delay the prompt imposition of sentences. Such a delay may not be in the interests of justice, the interests of the person being sentenced or the interests of victims.

[121] A delay in the delivery of sentencing remarks in order to arrange for them to be broadcast was a factor in the decision of Atkinson J in the *Cowan* case. To delay the sentence was not in the public interest.⁶¹

[122] Sentencing remarks necessarily contain the facts about crimes, which often include some very distressing detail. A judge who knows that his or her sentencing remarks are to be broadcast on live television or radio might be inclined to alter their content to avoid distress to viewers.

⁶¹ *R v Cowan* [2014] QSC 41 at 3-4.

Appellate – Civil and Criminal

- [123] Given the structure and content of Queensland appellate proceedings, many of the concerns noted above do not apply. The general absence of witnesses and the complete absence of juries reduces or removes a number of the major concerns with the electronic publication of court proceedings. Yet a number of issues remain. One is the risk that the publication of criminal appeals may taint a future jury pool should a retrial be ordered. Evidence that is ruled inadmissible on any retrial may be broadcast. This particular risk, however, could be contained by either preventing the live publication of these types of matters or delaying them until after judgment has been delivered. If a retrial is ordered, it may be necessary to delay any broadcast of the appeal proceeding until the retrial has been held.
- [124] An additional issue that relates to both criminal and civil appeals is the risk of miscomprehension. Submissions in these matters are largely written. Oral submissions generally speak to the written submissions and assume they have been read. The broadcasting of oral submissions and questions from judges would lack this essential context. They may be effectively meaningless to a member of the general public. If oral submissions in appeals are to be published then it will also be necessary to publish the written submissions of the parties to allow an audience to comprehend the matter.
- [125] Similar considerations apply to references to the evidence contained in sometimes voluminous appeal record books. Should these be posted on the court’s website to enable viewers to follow what the judges and counsel are reading? Posting of appeal record books on the court’s website would require skilled editing and would come at a significant cost to the public. Many appeal record books contain evidence which cannot be publicly available, for example, evidence which would reveal the identity of complainants in sexual offence cases or the identity of child witnesses, or evidence relating to informers to which s 13A of the *Penalties and Sentences Act 1992* (Qld) applies.

RESOURCE IMPLICATIONS

- [126] The resources needed to electronically record and publish court proceedings depend on the system that is used, the number of cameras (fixed or otherwise) used, the number of courtrooms in which they are installed and the costs of operating and monitoring any system.
- [127] The Committee received the following advice from the Queensland Court’s Information and Court Technology Branch. In summary:
- (a) It would be possible financially to install cameras to give a split screen/“quadview” online in one courtroom in Brisbane and, perhaps, one or two outside Brisbane.
 - (b) It would require a substantial, unbudgeted amount to install cameras capable of producing vision suitable for use on television. A number of other components are required to produce the higher quality streams necessary for broadcast use. The particular components and their configuration are not presently known, therefore, the cost is also unknown. It is safe to say, however, that it is very unlikely that the court could absorb the cost of delivering this infrastructure within its existing budget allocations.
 - (c) The court could acquire a dedicated web site to stream court proceedings. The cost of real-time streaming of one channel (such as the view streamed for Commissions of

Inquiry) is approximately \$800 per month. If multiple courts were to stream proceedings in real-time, the cost would multiply accordingly.

- (d) An option is to record proceedings instead of streaming in real-time, edit the recordings into footage that the court is comfortable with and publish that material on a dedicated Queensland Courts channel on YouTube. The actual delivering of videos via YouTube costs nothing. However, there would be a substantial cost to edit the proceedings (including editing material from multiple camera views into one), which would require a large investment in equipment and expertise.
- (e) There are physical difficulties with filming a criminal trial because of the layout of the courtrooms – such as ensuring jurors are not filmed. There are problems with reflections in the glass behind the dock. Shots have backgrounds and it can be very difficult not to catch somebody in-shot who the court would not want to be filmed.
- (f) If a trial was being streamed then someone (presumably the judge’s Associate) would have to cut the feed whenever the jury left the court or at any other time the judge required it.

[128] Quadview and similar cameras have been used in the past in proceedings in Queensland courts and in other proceedings, such as Royal Commissions. They have been used for the purpose of CCTV recordings to transmit images to other courtrooms and to media rooms. This has occurred in trials such as *Cowan*. Issues arise about the persons who should be recorded by fixed cameras. For example, fixed cameras might be directed at the judge, counsel at the Bar table and witnesses. Would a camera be directed at an accused during a trial? The fixed cameras used in the courts are low-resolution.

[129] On some occasions, such as on ceremonial occasions in the Banco Court, high-resolution cameras have been used, but they require an operator, with associated costs.

[130] The information provided to the Committee indicates that it would be possible to have low-cost cameras which produced low-quality images. Unlike appeal proceedings in the High Court of Australia where there is one fixed camera, issues arise concerning live-streaming of images in criminal courts due to their configuration and the possibility of recording and transmitting images of vulnerable witnesses, jurors, members of the public and defendants (if recording and transmitting images of defendants was considered inappropriate).

[131] The presence of a “producer” to ensure that unauthorised images are not recorded and transmitted comes at a cost. It could not be expected that a bailiff or a judge’s Associate would be able to additionally act as a producer to monitor the feed and to cut it when, for example, the jury came into view.

[132] The cost of acquiring and establishing cameras which would record high-quality images, and the editing of those recordings to allow them to be placed on a dedicated channel or YouTube site is beyond the court’s budget. In any case, there are physical difficulties with filming a criminal trial because of the layout of our courtrooms.

THE PROCESS BY WHICH ANY NEW SYSTEM IS DEVELOPED

- [133] Until the judges consult with, and receive submissions from, interested parties and prepare a final report, it seems premature to address the form of any new technology to record and communicate court proceedings.
- [134] The outcome of the process may be a recommendation for little or no change, a modest proposal allowing limited access to audio files of sentencing remarks (as exists in Victoria), the installation of fixed cameras, the introduction of a pooled camera and/or a system of live-streaming.
- [135] *The Courier-Mail* reported on 18 April 2015 that the Chief Justice had had several meetings with the CEO of Auscript, who is “pushing for audio and video streaming of proceedings to be made available to the public”. *The Courier-Mail* article also reported that Auscript was working on plans to extend the Court.FM service to lawyers and then the media and the public.
- [136] The Committee considered that the audio and video streaming of proceedings should not be under the control of a private supplier. It should be under court control.
- [137] An orderly and open process should be adopted for the development of any new system for audio and video streaming. Such a development would depend upon financial and other support from the Executive government for the courts to provide such a service.
- [138] If the court favoured the adoption of a system of audio and video streaming of proceedings to the public, and if the Executive supported such a scheme, following consideration of the matters raised in this paper and in any final report, then it would be necessary to consider whether it should be operated by the court itself (the Committee’s preferred position) or private suppliers. If a decision was made to involve private suppliers, then at that stage there would need to be a proper process by which proposals are evaluated by officers of the Department of Justice and Attorney-General, who can assess them and advise the courts and the Attorney-General about their strengths and weaknesses.

ISSUES FOR DISCUSSION: THE ADMINISTRATION OF JUSTICE

- Other inquiries have recognised the risk that the possibility of being filmed could add strain and anxiety to witnesses.⁶² It is impractical to assess the likely impact of being filmed in each individual case and in relation to each individual witness. Given this situation, should there be an absolute ban on the in-court filming and photographing of witnesses?
- If there is not a general rule against filming witnesses, should there be a general rule that permission not be granted to film or photograph first instance proceedings in cases involving vulnerable witnesses, including children?
- Should witness protection from recording be available as of right to any witness who seeks it?
- Should there be an absolute ban on the in-court filming and photographing of defendants?
- How is the inadvertent filming of jurors, for example as they leave and enter the court, to be avoided?

⁶² Some categories of witness (e.g. expert witnesses) may not be so stressed.

- Should there be a rule, as in New Zealand, that members of the public attending the trial not be filmed?
- How should any system avoid the risk that in-court media coverage, instead of increasing public understanding of the justice system and of particular proceedings, reduces it by concentrating on “sound bites” and prurient and sensational material? Should there be a two minute rule as originally applied in New Zealand or a similar rule?
- In order to aid comprehension, what, if any, written submissions should be made available to the public? What about exhibits?
- Does the filming of criminal appeals raise special issues e.g. the broadcasting of evidence that may be inadmissible at any new trial and thereby prejudice it?
- How might courts, including courts hearing criminal appeals, protect against the unnecessary broadcasting or live-streaming of the horrific details of cases, including brutal murders and sexual assaults?
- Should any system be subject, as in New Zealand, to guidelines that do not have legislative force, do not create rights and should not be construed to create expectations?
- Should any guidelines confirm that all in-court media coverage is at the discretion of the court?
- What controls can and should the court impose on the subsequent use of recorded or live-streamed material? Can it be restricted to news reporting unless prior approval is obtained, e.g. for a documentary purpose?
- How can the court prevent this material from being used out of context or to vilify a party, lawyer or other participant in the proceeding?

ISSUES FOR DISCUSSION: RESOURCE IMPLICATIONS

- What resources will be needed to implement recording, including:
 - the physical resources needed to accommodate cameras and recording;
 - the judicial and court resources to hear applications and monitor compliance with rules and orders; and
 - the Registry and other court resources needed to:
 - monitor any system; and
 - apply exclusion rules.
- Any broadcasting or live-streaming arrangement will have significant technical, physical and personnel requirements.
- Who should fund this system – the public, the media or both?

ISSUES FOR DISCUSSION: ALTERNATIVE MEANS TO INFORM AND EDUCATE THE PUBLIC

[139] One of the stated aims of the electronic publication of court proceedings is to better inform and educate the general public about the courts and the justice system in general. The question arises whether there are better methods of achieving this aim which avoid some of the risks outlined previously.

- Are there systems, such as audio and video streaming, that will fairly report proceedings and educate the public, without introducing many of the concerns raised over the selective televising of “sound bites”?
- Can the fair and balanced reporting by the media and others of court proceedings be improved by other means, such as access to written submissions and audio recordings?
- Can the education of the public about the justice system be improved by other means?
- Would recording for documentary purposes be more likely to educate the public than short extracts in news and similar broadcasts?
- Should the public resources required to install and operate cameras in the courtroom be better used to develop:
 - a web page within the court’s website where important information can be posted, such as:
 - case summaries prepared by a court communications officer in consultation with the judge
 - audio files of sentencing remarks (as occurs in Victoria)
 - transcripts of sentencing remarks
 - media guidelines of the kind used in Victoria which educate judges and the media and improve working relations between them.

ISSUES FOR DISCUSSION: GENERAL

Cost – Benefit Analysis

The expected demand

- If any new system reflected practices in some comparable jurisdictions where recording for live transmission and news broadcasting is limited to certain categories of cases, then what demand would there be from the news media and others to record such proceedings?
- If, for example, any scheme excluded the recording of witnesses, then what demand would there be from the news media and others to record such proceedings?
- If any scheme, developed to aid public education and the fair and balanced reporting of proceedings, included the kind of requirements introduced in New Zealand in 1994, including the “two minute rule”, then what demand would there be from the news media and others to record such proceedings?

- Taking the recommendations of the Scottish Report as an indicative guide,⁶³ what demand would there be to record and broadcast civil cases at first instance, civil appeals, criminal cases at first instance, and/or criminal appeals?
- What demand has there been to record and broadcast sentencing remarks in NSW? How many applications to broadcast sentences have been made and how many have been granted in NSW? Is effective use made of the images that are recorded? What is its effect?
- What demand would there be to record and broadcast sentencing remarks in Queensland?
- What demand would there be to audio-stream or televise most criminal and civil appeals?

What cost would be involved in creating and maintaining a system for recording and broadcasting court proceedings in Queensland?

- Would the public or the media (and if so which media) or both fund the establishment and ongoing cost of any new system for cameras in courtrooms?
- What costs are likely to be involved?

Does the expected demand justify those costs?

Risks and Rewards

- Based on the experiences in other jurisdictions and current practices there, is the recording and publication of in-court proceedings in Queensland likely to:
 - significantly improve the fairness and accuracy of the reporting of court proceedings?
 - significantly improve education of the public about the court system?
 - focus instead on atypical cases and give a distorted picture of the court system?
 - focus on the sensational and the “best sound bites” at the expense of the full, fair and accurate reporting of proceedings?
 - give rise to some of the perceived problems discussed in this Issues Paper and thereby unduly risk the right to a fair trial?
- Can the risk posed to the right to a fair trial and other public and private interests be reduced to an acceptable level by rules, directions and guidelines?
- If so, by whom and how is compliance with those rules to be monitored and policed?
- Are the expected rewards of recording and publishing in-court proceedings worth the risks?

⁶³ Paragraphs 6.1 – 6.3 of the Scottish Report are set out as Appendix I to this paper for ease of reference.

CONSULTATION PROCESS

[140] This Issues Paper is being made publicly available and sent to parties with a particular interest in the issues, including professional organisations, the Director of Public Prosecutions, Legal Aid Queensland, victims of crime groups and media organisations.

[141] Submissions are invited, on the basis that unless confidentiality is sought, the submissions are public documents and may be referred to in a Final Report.

[142] After receiving submissions from interested parties, the Committee will prepare a report for consideration at a meeting of the judges of the Supreme Court.

HOW TO MAKE A SUBMISSION

You are invited to make comments and submissions on the issues and questions in this Issues Paper.

Written comments and submissions should be sent to:

Email: electronicpublication@courts.qld.gov.au

Post: Electronic Publication of Court Proceedings Committee
c/- Chambers of the President of the Court of Appeal
Supreme Court of Queensland
PO Box 15167
CITY EAST Qld 4002

Closing date: submissions should be received by 10 August 2015.

It would be helpful if comments and submissions addressed specific issues or questions in the Issues Paper.

CONFIDENTIALITY AND PRIVACY

The judges may refer to or quote from submissions in a Final Report. Further, a Final Report may include an appendix listing the names of those who have made submissions.

Unless there is a clear indication from you that you wish your submission, or part of it, to remain confidential, submissions may be subject to release under the provisions of the *Right to Information Act 2009* (Qld). Any information you provide in a submission will be used only for the purpose of the Committee's work and the preparation of a Final Report. It will not be disclosed to others without your consent.

Please indicate clearly if one or more of the following apply:

- you do not want your submission, in whole or part, to be referred to in a Final Report;
- you do not want to be identified by name if your submission is referred to in a Final Report;
- you do not want your name to be included in an appendix in a Final Report.

APPENDIX I: A summary of the recommendations of the Scottish Report

6.1 Appeals and Legal Debates

6.1.2 Filming of civil and criminal appeals, and legal debates in civil first instance proceedings, such as judicial review or procedure roll hearings, should be allowed for live transmission, subsequent news broadcasting and documentary film-making, subject to clear and comprehensive guidelines.

6.2 First Instance Criminal

6.2.1 The court should allow criminal trials to be filmed for documentary purposes in certain circumstances, subject to the safeguards referred to above. Cases involving children, sexual offences and vulnerable witnesses should not be filmed.

6.2.2 Filming for live transmission should not be allowed.

6.3 First Instance Civil

6.3.1 Filming for documentary purposes only should be allowed, but should exclude certain groups such as family cases and those involving asylum seekers.

6.3.2 Filming for live transmission or for subsequent news broadcast of civil proceedings which involve witnesses should not be allowed.

APPENDIX II: GLOSSARY

DEFINITIONS

Accredited media means media personnel who are accredited pursuant to the Supreme Court’s *Media Accreditation Policy*.⁶⁴

Court proceeding means a hearing in a courtroom that takes place before a judge or a Deputy Registrar.

Courtroom means any room in which a hearing is taking place before a judge or Deputy Registrar.⁶⁵

Documentaries are educational videos produced by internal or external providers for delayed broadcast. Documentaries are one way in which court proceedings may be electronically broadcast while permitting thoughtful editing of the footage to ensure that the best interests of the administration of justice are served.

Electronic device means any device capable of sending, receiving, or recording data or any combination of those functions and includes smartphones, cellular phones, computers, laptops, tablets, notebooks, personal digital assistants, or other similar devices.⁶⁶

Licensed broadcasting means the live or delayed broadcasting of court proceedings by accredited media. This broadcasting may include the transmission of audio, audio-visual or text-based communications.

Live, text-based communications (LTBC) means the live transmission of predominantly text-based communications, for example, through social media platforms such as Twitter and Facebook. LTBC are permitted under Supreme Court of Queensland Practice Direction 8 of 2014. Live transcription services would also fall within this category of electronic communication, with different considerations arising depending upon whether the service was employed by the courts, parties or accredited media.

Live-streaming refers to the instantaneous transmission of court proceedings. The recording may be captured by the official court reporting service or privately by accredited media. Some Queensland courts are already equipped to provide live-streaming and have done so to other court houses or to “overflow” courts in high-profile proceedings.

⁶⁴ [Practice Direction 8 of 2014](#), [3(a)].

⁶⁵ [Practice Direction 8 of 2014](#), [3(b)].

⁶⁶ [Practice Direction 8 of 2014](#), [3(c)].