
Council of Chief Justices Electronic Appeals Project —the Consultant's Overview

Joanne Sherman, Queensland Law Foundation Technology Services Pty Ltd
jsherman@themis.com.au
Allison Stanfield, Auscript Pty Ltd
astanfield@auscript.com.au

Background

The Council of Chief Justices ("CCJ") agreed in October 1995 that work should be undertaken to investigate the use of Electronic Appeal Books within courts. A Working Party was established in January 1996 with Mr Warwick Soden, Federal Court Registrar, as Convenor. An IT Sub-Committee¹ was also formed to provide guidance and operational support. Pursuant to a recommendation contained within the Working Party's Interim Report, a consultant was engaged in April 1997 to conduct further investigation of the use of Electronic Appeal Books. The consultant appointed was Jo Sherman of Queensland Law Foundation Technology Services Pty Ltd (QLFTS).

In May 1998, the CCJ endorsed the recommendations which were made as part of the Final Report² prepared by QLFTS.

The consultant's goal was to investigate the feasibility of Electronic Appeal Books and to propose a framework to support future implementation. A prototype or proof of concept Electronic Appeal Book was developed using a "web browser" as its interface. The prototype can be viewed at the CCJ website: <http://www.ccj.org>.

The Electronic Appeal Book initiative is not a paper replacement program. Rather, it is designed to support the concept of "paper on demand", to reduce the often huge volume of paper which comprises traditional hard copy appeal books.

The general theme arising from the project is that source documents (eg judgments and transcript) should be produced in a way which is consistent. It is not intended that this

would involve prescriptive standards (such as font, line spacing etc), but rather general standards which would facilitate the capture of certain information common to source documents (eg judge name, hearing date, parties names etc). One solution is for documents to be "tagged" in such a way that a computer can pick up these "tags" automatically to render the production of Electronic Appeal Books easier.

The Recommendations

The recommendations contained within the final report are set out below, together with brief explanatory notes:

Recommendation 1: Each court establish its own electronic judgments database, accessible to the judges within that court.

Although this recommendation seems obvious, some courts do not actually keep electronic versions of their own judgments for internal use. Such a database can be used to assist the judiciary to make consistent decisions, to operate as a quality control mechanism and to provide an effective research facility.

Recommendation 2: Courts make arrangements with the relevant transcript preparation agencies for transcript to be stored electronically for either an indefinite period or at least for five years. It is important to cover those situations where leave may be given to lodge an appeal out of time.

Again, some transcription agencies do not keep transcripts in electronic format, or for a sufficient period of time, which means that transcript is rekeyed in some instances. If Electronic Appeal Books are to be

used, it is essential that source information is retained in electronic format for at least five years.

Recommendation 3: Courts embrace paragraph numbering for their judgments. This is essential to enable quick reference to the relevant location of the trial judgment when it is being referred to in electronic form during an appeal.

Electronic documents often lose the format that appears on the printed copy of the original document. The original page numbering may be lost, for example, when a document is viewed electronically, when a document is converted from one electronic format to another or where documents are printed at different locations.

Paragraph numbers are vital to assist in searching the electronic version for a particular reference and paragraph numbers should be continuous throughout the judgment where there is more than one set of reasons handed down in a particular case ie paragraph numbers should not be allocated separately for each judge's decision. Ideally, paragraph numbers should be applied by the court as an integral part of the judgment preparation process (immediately prior to delivery), rather than by external agencies.

Macros or simple programs can be written to allocate paragraph numbers. A judgment macro has already been developed in the High Court to automatically insert paragraph numbers, and the Federal Court has also adopted this approach.

Recommendation 4: Courts adopt medium neutral citations for their judgments.

Council of Chief Justices Electronic Appeals Project

At present citations are based on page references in (hard copy) published reports and this presents difficulties in an electronic environment where there is no hard copy equivalent. A medium neutral citation is a citation that can be used regardless of the medium in which the document is contained ie in hard copy or in electronic format and is publisher independent. In its first judgment delivered in 1998, the High Court utilised both medium neutral citations and paragraph numbering (<http://www.hcourt.gov.au>). An example of a medium neutral citation used by the High Court is:

Smith v Jones (1998) HCA 2

Where “*Smith v Jones*” is the short title; “(1998)” is the year in which the judgment is delivered; “HCA” is the Court in which the judgment is delivered (in this case, the High Court of Australia) and “2” is the number of the judgment delivered during that year (ie this is the second judgment to be delivered in the High Court during 1998).

Recommendation 5: Courts develop consistent protocols, rules or practices concerning electronic appeals and that any draft rules concerning appeals be provided to the Council of Chief Justices’ Judges Sub-Committee on Appellate Practice & Procedure for any comment, particularly with regard to rules that deal with the electronic aspects of appeals.

It is important, that where possible, courts implement consistent rules and practice directions with respect to the production of Electronic Appeal Books.

Recommendation 6: There should be consistency in the preparation and production of the electronic version of judgments and quality control mechanisms should be established by each court.

If judgments are stored in a consistent electronic format, this means that they can be accessed for later use in an Electronic Appeal Book, as well as for use by judges for research purposes. If judgments are available in a

consistent and high quality electronic form, the compilation of Electronic Appeal Books will be streamlined, and therefore, more cost effective, because manual intervention can be minimised.

The use of standard judgment “templates” and/or “stylesheets” would assist courts in achieving consistency in judgment preparation and production. “Tagging” and/or implementing “styles” for certain information within judgments means that such information can be used to collate an Electronic Appeal Book and to electronically navigate the end product.

The establishment of quality control procedures within each jurisdiction will mean that judgments will be produced and disseminated in a manner and format that is reasonably consistent. The use of a consistent electronic format will also provide an efficient approach to the “population” of the judgments database.

Recommendation 7: The electronic version of court transcripts should be prepared and produced in a consistent format.

Transcript, in its electronic form, is one of the key elements for an Electronic Appeal Book. For the use of electronic transcript to be streamlined, the electronic version of the transcript must be produced in a consistent manner within each jurisdiction.

The electronic version of transcript must also be capable of being easily read by most software tools that might be associated with an Electronic Appeal Book. One approach is to ensure that certain elements of the transcript are “marked up”, or “tagged”. This can facilitate electronic navigation of the transcript. An important example is the page number which should match that of the official (paper) version and should be continuous throughout the whole of the case (ie not start at 1 for each new day).

Recommendation 8: Rules of court should allow the use of electronic material in appeal cases.

It is important to ensure that Courts are in a position to hear appeals using electronic material.

Recommendation 9: Practice Directions, or similar, should be prepared for each jurisdiction which cover the arrangements for the submission of electronic material on an appeal.

The legal industry will require guidance in the preparation of Electronic Appeal Books for each jurisdiction and some courts have taken steps to prepare such guidelines.

In particular, courts should set guidelines on the format in which electronic documents will be accepted and from where such documents may be sourced (eg from the court, from publishers, from transcript providers, from the Internet etc).

Recommendation 10: The use of an Electronic Appeal Book or electronic material should be considered in suitable cases. A guide for those agencies considering the use of Electronic Appeal Books or partial Electronic Appeal Books should be prepared.

There are many situations where electronic material could be used now to good effect in an appeal.

These “partial” Electronic Appeal Book situations might encompass electronic versions of any of the following:

- transcript of the trial
- trial judgment or sentencing remarks
- transcript during the appeal hearing
- submissions
- citations (authorities).

Appropriate electronic media could be used to prepare, distribute and use the electronic material eg: disc; CD-ROM; electronic communication (Internet email).

Council of Chief Justices Electronic Appeals Project

In the courtroom, such partial Electronic Appeal Books could be used in a manner that is appropriate to the circumstances, for example :

- on individual computers (generally laptop PCs)
- in a "view only" mode with the associate operating a computer to identify the relevant references which are then displayed on "dumb" monitors in the courtroom for judges and legal representatives
- through use of a dedicated courtroom network ie intranet.

The preparation of a guide for Electronic Appeal Books or partial Electronic Appeal Books along with some analysis of the options would be beneficial to any courts considering using Electronic Appeal Books for the first time.

Recommendation 11: Courts should consider piloting Electronic Appeal Books using the prototype as a model where appropriate.

A prototype Electronic Appeal Book, representing a simple but effective model using modern technology, has been developed for the Council of Chief Justices and is available to provide a "proof of concept". The prototype and future direction of Electronic Appeal Books will evolve over time. Ideally, the prototype could be used as a framework or an example for full "production" solutions.

Recommendation 12: The Working Party should continue to provide advice to the Council of Chief Justices, with the assistance of appropriate Judges and nominated personnel from the Courts.

There is a need to co-ordinate the electronic appeals initiative on an ongoing basis. It would seem appropriate that the Working Party continue in this role to seeking assistance from specialist court IT personnel, appointed by the individual courts. Further areas to be covered by the Working Party in the future should include analysis of IT

industry trends relating to:

- Security and authenticity of electronic material
- Storage and archiving of electronic material (standards and guidelines already exist in this area, eg Australian Standards and Australian Archives Guidelines for the Storage of electronic material)
- Electronic delivery and communication options (Internet, Intranet Extranet technologies).

Recommendation 13: Courts should consider the introduction of electronic filing to facilitate the movement of electronic appeal material.

As courts move towards the more extensive use of electronic material, the need for electronic filing will assume greater importance. courts should therefore develop strategies to enable electronic material to be filed in their registries. This will particularly facilitate the compilation of Electronic Appeal Books.

Internet technologies will have significant potential in this area.

Where to from here?

The Council of Chief Justices has now endorsed these recommendations so it will become increasingly important for courts to consider their implementation in line with their strategic directions and within budgetary constraints. In particular, it will be important for courts to:

- Pilot the use of Electronic Appeal Books or Partial Electronic Appeal Books in particular cases, taking guidance from the prototype
- Consider the implementation of an appropriate and consistent regulatory framework (practice directions, guidelines and the like)
- Work towards the implementation of electronic consistency for judgments and transcript.

It will also be important for the profession to support this judicial initiative by:

- Embracing the use of technology to support the litigation process where there is a clear cost benefit
- Thinking laterally about new costing models (eg. loss of photocopy revenue, new electronic delivery vehicles)
- Ensuring that they are *technology prepared* in terms of in-house software and hardware environment and external communication facilities.

1 of which Allison Stanfield was a member, together with Bruce Finlay of the Federal Court and Tony de la Fosse of the High Court, Ian Rohde of the South Australian Courts Administration Authority and Bruce Howe of the Court of Appeal (NSW)

2 The Final Report can be downloaded from the CCJ website at <http://www.ccj.org>