

Paperless trials

by David Robertson

A revolution is quietly underway in the nondescript Windeyer Chambers building on Macquarie Street. There, the Land and Environment Court of New South Wales is running a pilot program to conduct 'paperless trials' in certain document-intensive proceedings.

So far the court has conducted six paperless trials, all compensation claims for the compulsory acquisition of land in the court's Class 3 jurisdiction. A further eight paperless trials are set down for hearing this year, again all Class 3 compensation claims.

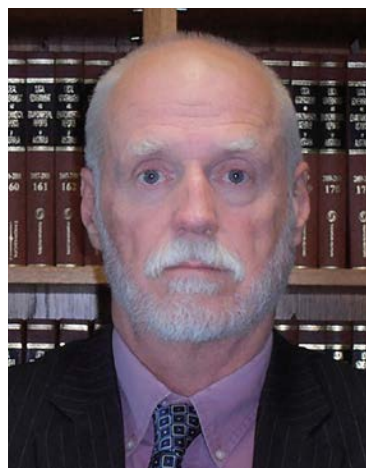
The paperless trial pilot program has been implemented without much formality or technological infrastructure. There is not yet any practice note or practice direction for the conduct of paperless trials. Nor have any courtrooms been transformed into 'e-courtrooms' with rows of computer monitors like some courtrooms in the Federal Court used for large class actions. All that has been required to conduct paperless trials in the Land and Environment Court is a projector, a laptop computer, a few laser pointers, and the willingness of judges, practitioners and parties to participate in the process.

Justice Tim Moore has been responsible for overseeing the paperless trial pilot program in the court. He explains the procedure as follows:

- At the first or second directions hearing, the Class 3 list judge notifies the parties that, in the judge's view, the proceeding may benefit from being run as a paperless trial. Proceedings identified as suitable to be run as a paperless trial are those likely to run for five or more hearing days, with multiple expert witnesses and a large volume of documents. The judge invites the parties to consider whether to run the proceeding as a paperless trial and to notify the court accordingly. If the practitioners are unfamiliar with the procedures for a paperless trial, the list judge invites the parties' counsel to a conference to explain the procedures and to conduct a courtroom demonstration.
- If the parties elect to conduct a paperless



trial, the list judge makes a set of standard directions for the preparation of the matter for trial. The most important of these directions is for the preparation of an electronic court book and tender bundle. The electronic court book and tender bundle must contain all pleadings, affidavits and expert reports, documentary evidence, and the parties' written submissions, all in searchable PDF format. The electronic court book



Justice Tim Moore

and tender bundle must be delivered to the court and by the parties on a USB stick about two weeks prior to the commencement of the hearing.

- At the hearing, the case is run using electronic documents rather than paper documents. The USB with the electronic

court book and tender bundle is tendered and becomes 'Exhibit A'. In the courtroom, the judge's tipstaff operates a laptop that projects the documents in Exhibit A onto a screen or the wall of the courtroom (only some courtrooms have screens). The judge and counsel direct the tipstaff to the relevant documents in the electronic court book or tender bundle, which are projected onto the screen or wall in the courtroom and can be seen by all in court (judge, practitioners, witnesses and parties). Plans, expert reports, legislative provisions and extracts from cases are projected in court as and when required. When two documents, plans or air photos are being dealt with, for comparative purposes, both can be shown using a split screen. Counsels' submissions and the witnesses' evidence, including cross-examination, proceed by reference to the electronic documents projected in court, rather than by reference to documents in lever-arch folders, paper copies of plans, etc. The judge and counsel each have a different coloured laser pointer which can be used when necessary to identify a particular part of a plan, expert report, case extract, etc that is being projected on the screen. The tipstaff's computer is connected to the court's network so that the NSW Legislation; Caselaw and other relevant external websites can also be accessed and relevant material displayed.

- Paper documents can still be tendered in court during the trial if required – for example, a document shown to a witness in cross-examination which is not in the electronic tender bundle. However, if that occurs, the document must also be provided to the court and the parties in electronic form (either on a USB or by e-mail), so that the document can be added to Exhibit A.
- Counsel and solicitors usually bring their own laptop or tablet computer to the hearing to access the documents in the electronic court book and tender bundle during the hearing. However, practitioners

may bring into court a paper copy of the court book and tender bundle if they wish to have access to the paper documents in court. The electronic court book and tender bundle must be tabbed and paginated like a paper court book and tender bundle, in which case paper versions of the court book and tender bundle can be easily produced if necessary.

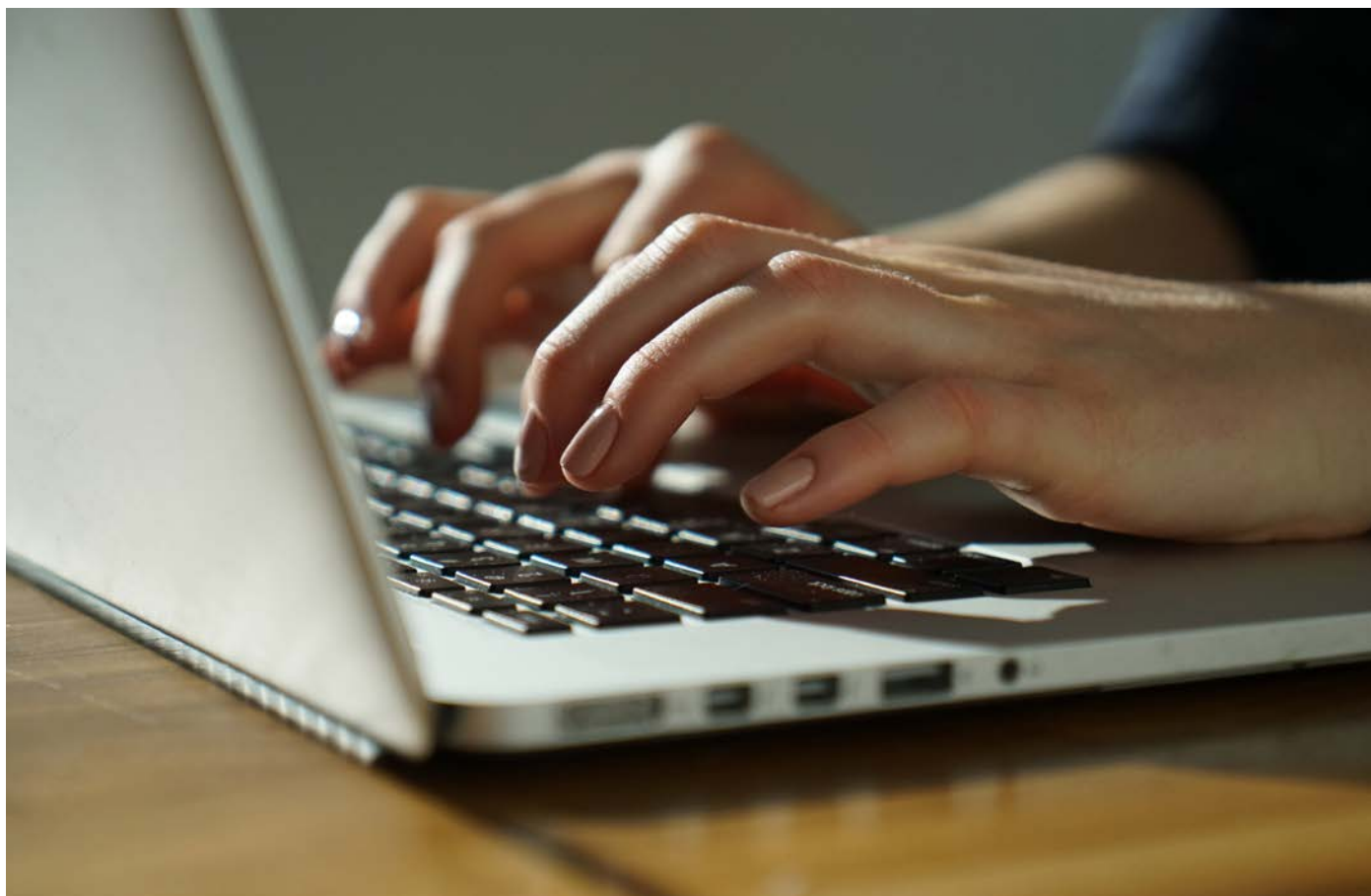
Having now presided over two paperless trials, Justice Moore is enthusiastic about the benefits to the court, practitioners and the parties. 'The project was originally proposed by the Australian Legal Sector Alliance as an environmental initiative to save paper. While there has certainly been much paper

proceedings, whereas with a traditional paper trial, usually the only persons who can follow proceedings are those with their own copy of the court book and tender bundle, which is usually only the judge and the practitioners.'

Practitioners are also generally positive about paperless trials. Ian Hemmings SC has appeared in three paperless trials so far and is presently in the middle of a 10-week paperless trial. Hemmings SC has fully embraced the paperless concept; he does not take a single piece of paper to court. Instead, he takes a 27-inch tablet computer to conduct hearings, which is so large that it has its own stand/cradle and doubles as his lectern in court. He has found the process so beneficial that he intends to conduct all future trials as paperless, whether

get used to preparing for a hearing without paper documents. I think we work visually with paper, so we recall documents from their location in our brief and our bundles of documents prepared for cross-examination and submissions. Working with electronic documents is different, but with time I have developed my own system of organising the material in electronic form which I now find easier and more effective than paper.'

Given the positive feedback from judges, practitioners and parties, the Land and Environment Court intends to continue conducting paperless trials in compensation claims in its Class 3 jurisdiction, and is considering expanding the paperless trial pilot to some other proceedings, such as lengthy, docu-



saved, probably 50,000 or 60,000 pages per case, there have also been a number of other benefits. Cases proceed more efficiently in the courtroom. There are significant time savings having a document projected on the courtroom wall rather than having to direct the court and witnesses to a particular document in a lever-arch folder. There are significant costs savings to parties. We estimate that parties have saved approximately \$1 million in photocopying costs for the trials run so far. Perhaps most interestingly, I have found that paperless trials promote and enhance the principle of open justice. With the relevant documents, legislation and case law projected onto the courtroom wall, all persons in court, including the parties, can follow the

or not the court and other parties do so as well. 'For me, the main benefit is portability. In a paperless trial, I have my brief with me wherever I go – court, chambers or home. I can access it on my computer, tablet and phone. I use a program to mark up the electronic court book and tender bundle to prepare for the hearing, so I have the marked-up documents in court for cross-examination and submissions as I would if I prepared for hearing with a paper brief. All the documents in the electronic court book and tender bundle are searchable, which makes it much easier to find relevant passages that I am looking for out of thousands of documents, which is useful both in court and in preparing written submissions.' Are there any downsides of paperless? 'It took me a while to

ment-intensive judicial review proceedings in the court's Class 4 jurisdiction and merits appeal proceedings in the court's Class 1 jurisdiction. The court will also soon publish a practice note which sets out the procedures for preparing and conducting a paperless trial.

Furthermore, in light of this positive feedback, and the simple and inexpensive way in which paperless trials have been introduced in the Land and Environment Court, there seems to be no reason why paperless trials cannot be introduced in other courts in the State, at least on a trial basis. Lengthy, document-intensive commercial matters in the Supreme Court and District Court appear to be ideal proceedings to go paperless.