


TRIBUNAL ACCESSIBILITY

Meeting Community Expectations



Applying the Framework for Tribunal Excellence & Measuring Performance

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Introduction

As the text in the conference flyer suggests, this session explores the relevance of the Australia and New Zealand Tribunal Excellence Framework to modern-day tribunals. The features of the Framework are well documented within the 2nd Edition published by COAT in June 2017 and I believe that most, if not all, tribunals have considered the Framework to some extent.

Consequently, I don't believe it will be necessary to spend time describing the Framework or its component parts. Instead, my presentation will examine issues that tribunals will experience as they endeavour to apply the Framework.

It will involve delegates in a conversation around the need to work on improving their tribunal while they continue to operate in their day-to-day business. It will engage delegates in better understanding that the Framework is not a panacea for a tribunal's ills and that instead it is simply a management model, but a really good one. And, I hope to challenge delegates to consider how they might interpret the Framework within the context of modern-day tribunals. By the end of the session I am hoping that delegates will:

- Have an enhanced understanding of the value that the Framework can bring to the performance of tribunals;
- Better appreciate the holistic nature of the Framework and why it offers better value than many other management frameworks;
- Recognise that effective use of the Framework can serve as a major contributor towards forming the desired culture within a tribunal; and
- Understand the critical importance of performance management, measurement and reporting for tribunals.

I particularly want to explore the value of the Framework beyond any initial perception that it is just a tool for identifying possible improvement projects resulting from a self-assessment process.

Before I delve into some of the key issues involved with applying the Framework I feel I must clarify one critical matter that will govern how, or even if, the Framework is adopted by a tribunal. As with any strategic decision within an organisation, the extent to which a tribunal's most senior leaders choose to put their weight behind the Framework will be relative to the scale of benefits derived from its use.

If tribunal leaders choose to apply the Framework as their chosen way of managing, monitoring and improving the performance of their tribunal, their ability to meet community expectations will be significantly enhanced.

If, on the other hand, tribunal leaders choose to apply the Framework as a tool for undertaking a tribunal self-assessment every year or two, the Framework is likely to be marginalised and perceived as something that is outside the realms of routine business. Matters associated with the Framework, including the outcomes of an assessment, may not be regarded as business-critical; and improvement efforts are more likely to be overtaken by urgent, but less important, operational matters.

A visible and consistent commitment by tribunal leaders is a pre-requisite to gaining the true value from applying a management and improvement model such as the Framework.

Delivering Important Public Value

In better appreciating the holistic nature of the Framework and why it offers better value than many other management frameworks, I'd like to discuss the concept of 'important public value'. Delivering important public value is probably the most significant outcome for all tribunals, regardless of their jurisdiction or environment. The important public value that each tribunal is tasked with delivering will be enshrined in its legislation, but will usually relate in one way or another to *'the quick, cheap and relatively informal resolution of disputes'*.

For a tribunal to sustain delivery of its important public value all of its operational capabilities must be second to none. To achieve such an outcome tribunal leaders will no doubt need the assistance

of management tools. Many exist. A quick search of the Internet will reveal any number management frameworks, such as:

- Knowledge Management Framework
- Project Management Framework
- Performance Management Framework
- The Balanced Scorecard
- Customer Service Framework
- The Stakeholder Model
- Risk Assessment Framework
- Information Management Framework
- Competency Framework
- Governance Framework
- Compliance Framework
- Leadership and Management Framework

While each and every one of these tools has something to offer tribunal leaders, they each delve into quite specific areas of management responsibility. Acting on area-specific frameworks without considering the broader organisational perspective is likely to yield marginal improvement at best.

By way of example, implementing a customer service framework in a tribunal that lacks a clear leadership focus and strategy is unlikely to succeed. Or, implementing a compliance framework in a tribunal that has not considered its governance arrangements may struggle to be effective.

This is where the holistic nature of the Tribunal Excellence Framework has something to offer tribunals that these area-specific frameworks generally do not. It recommends a tribunal examine (or assess) all of its management practices at the same time. Then, based on this balanced view of its operations, a tribunal is in a much better position to prioritise its improvement efforts. In some cases this approach gives rise to the Framework being described as a '*foundation*' management model because it establishes the Framework as the main, or primary, management model that binds all frameworks and models into one clear management approach. It reinforces that the use of area-specific models or frameworks is seen as contributing to the tribunal's strategy of adopting the Framework in order to be more successful in delivering important public value that meets the expectations of its community. This innovative approach elevates the importance of the Framework within a tribunal to simply being '*the way we do things around here*' rather than it just being a resource for assessing improvement opportunities.

Within this context as a foundation management model, one of the most significant outcomes the Framework can offer a tribunal is to help it transition from being 'tribunal-centric' to being 'service-centric', resulting in better service delivery for the tribunal's community. Simple as it sounds, this transition can require a fundamental shift in the way judges, members and staff think about their roles and their tribunal. It will be instrumental in creating and maintaining a culture of innovation and excellence that encourages all employees to continuously look at ways to modernise and reform service delivery.

By way of a typical example, most tribunals would say that they are already very service-centric; that they put the needs of the client foremost in their thinking and planning. And, there is no doubt that most tribunals are implementing significant service improvements; such as the examples being presented by QCAT, VCAT and AAT as part of this session. Now consider how the vast majority of tribunals monitor and report their performance. The standard measures are lodgements, finalisations and cases pending; all of which are tribunal-centric measures that report the busyness of a tribunal and have little relevance to service quality. Effective implementation of the Framework as a tribunal's primary management model would highlight this kind of anomaly and prompt leaders to bring about further change to their custom and practice.

It would not be possible to have a conversation about the important public value offered by tribunals without mentioning independence. Within the Framework independence of a tribunal is regarded as perhaps the most important of all values. Furthermore, it is included as one of the eight areas of tribunal excellence. The Framework suggests that tribunals have to fight hard to look and be independent from their host departments. This clearly highlights independence as one of

the most critical aspects of important public value that tribunals must consider in meeting community expectations.

Citizens are entitled to expect decision-making within a tribunal that is independent of the government of the day. However, effectively maintaining that independence, and being seen to maintain that independence, requires the consideration of aspects beyond the decision-making part of the process. Citizens are also entitled to be confident that there will be sufficient members assigned to hearings; that hearings will be scheduled, controlled and managed in a way so that they can be heard expeditiously; that there will be appropriate facilities available where members can make decisions; and that there will be administrative services capable of supporting the decision-making process. And, these are the aspects of a tribunal's operations where applying the Framework can assist.

There is also somewhat of a reverse angle to independence that needs to be considered. If a tribunal wishes to be as independent from its host department as possible, it must be able to demonstrate that it can competently manage its own affairs. The Framework also considers this aspect of independence when it indicates:

“Those that use the tribunal or the community at large would expect excellence and the Minister responsible for the ultimate delivery of a forum for dispute resolution would generally demand it.”

If a tribunal can show that it has a clear management approach that binds all of its operations together in the pursuit of 'excellent' important public value, the government of the day is far less likely to interfere in that tribunal's affairs.

Providing clear guidance with regard to the delivery of important public value is a compelling reason for a tribunal to adopt the Framework.

Tribunal Values and Culture

In recognising that effective use of the Framework can serve as a major contributor towards forming the desired culture within a tribunal, I would like to begin this topic by referring to Patrick M. Lencioni, founder and president of the Table Group from Emeryville, California who wrote an article for the Harvard Business Review in July 2002 titled “Make Your Values Mean Something”.

He opened his article by suggesting we take a look at this list of corporate values:

Communication

We have an obligation to communicate. Here, we take the time to talk with one another and to listen. We believe that information is meant to move and that information moves people.

Respect

We treat others as we would like to be treated ourselves. We do not tolerate abusive or disrespectful treatment.

Integrity

We work with customers and prospects openly, honestly and sincerely. When we say we will do something, we will do it; when we say we cannot or will not do something, then we won't do it.

Excellence

We are satisfied with nothing less than the very best in everything we do. We will continue to raise the bar for everyone. The great fun here will be for all of us to discover just how good we can really be.

They sound pretty good, don't they? Strong, concise, meaningful. Maybe they even resemble your own organisation's values, the ones you spent so much time writing, debating, and revising. If so, you should be nervous. These are the corporate values of Enron, as stated in the company's 2000 annual report. And as events have shown, they were not meaningful; they were meaningless. Enron, the world's largest energy trading company, went from being the 7th largest company in the

US to being bankrupt because of fraudulent and scandalous behaviours of its leaders. Although an extreme case, Enron is hardly the only organisation with a hollow set of values.

The Australia and New Zealand Tribunal Excellence Framework suggests that the 'fundamentals' of tribunal excellence are the Core Tribunal Values and the Eight Areas of Tribunal Excellence. The Framework lists ten core tribunal values, indicating: COAT considers there are core values that tribunals should uphold and apply in carrying out their function of dispute resolution.

Following many years of implementing excellence frameworks in a number of organisations I have come to learn that many of those organisations disregard the significance of values and tend to treat them as window-dressing in their pursuit of excellence. I think this occurs in many cases because leaders don't quite know what to do with values or how to make them real and relevant. And, I'm not sure that some leaders actually believe organisational values have anything to offer them and their organisation.

By way of example, having indicated that core tribunal values are a fundamental of tribunal excellence, the Framework does not make one reference to values in any of the 95 questions listed in its proposed self-assessment questionnaire. Of interest, the Courts Excellence Framework only makes two references to values in the 45 questions of its questionnaire.

This brings me to one of the weightiest, and possibly controversial, implications associated with adoption of the Framework. If your tribunal is not willing to accept the discomfort real values can cause, don't bother going to the trouble of formulating a values statement. You'll be better off without one. But, if you have the fortitude to see the effort through, adopting meaningful corporate values as part of your implementation of the Framework can have a profound effect on the formation of your preferred tribunal culture.

It might be worth giving consideration to the following four basic imperatives necessary for the successful creation and implementation of values in your tribunal.

Tribunal leaders must understand the different types of values. Too often, leaders mistake other kinds of values for core values. The resulting hodgepodge bewilders employees and makes management seem out of touch. Therefore, it is worth taking the time to understand the different types of values that might be appropriate for a tribunal; for example:

- Core values are the deeply ingrained principles that guide all of a tribunal's actions; they serve as its cultural cornerstones. They are inherent and sacrosanct; they can never be compromised, either for convenience or short-term gain.
- Aspirational values are those that a tribunal needs to succeed in the future but currently lacks. A tribunal may need to develop a new value to support a new strategy, for example, or to meet the requirements of a changing environment.
- Social values simply reflect the minimum behavioural and social standards required of any tribunal employee. They tend not to vary much across tribunals, given that all tribunals work in the same justice environment, which means that, by definition, they never really help distinguish a tribunal from its peers.
- Accidental values arise spontaneously without being cultivated by leadership and take hold over time. They usually reflect the common interests or personalities of the tribunal's employees. Accidental values can be good for a tribunal, but they can also be negative forces. Leaders always need to distinguish core values from merely accidental ones, as confusion here can be disastrous.

Tribunal leaders must be aggressively authentic. Tribunals need to be wary of viewing a values initiative in the same way they view other initiative launches: a onetime event measured by the initial attention it receives, not the authenticity of its content. This can undermine the credibility of a tribunal's leaders. Even leaders who take values initiatives seriously can sabotage them by adopting blandly nice ideals that fail to differentiate their tribunal from its peers. For a values statement to be authentic, it doesn't have to read like it belongs on a Hallmark card. Aggressively adhering to core values can also help a tribunal make strategic decisions.

Tribunal leaders must own the values process. The best values efforts are usually driven by small teams that would include the Heads of the Jurisdiction and CEO, and maybe a handful of key employees. However, in many instances the first thing leaders do after they decide to embark on a

values initiative is to hand it off to the HR department, which progresses the initiative through a series of inclusive, feel-good activities to engage employees and build consensus. That's precisely the wrong approach. Values initiatives have nothing to do with building consensus. They're about imposing a set of fundamental, strategically sound beliefs on a broad group of people. Most leaders understand the danger of consensus-driven decision-making when it comes to strategy, finance, and other business issues, yet they seem oblivious to the problem when it comes to developing values.

Tribunal leaders must weave the core values into everything. If they're going to really take hold in a tribunal, the core values need to be integrated into every employee-related process; including hiring methods, performance management systems, criteria for promotions and rewards, and even dismissal policies. From the first interview to the last day of work, employees should be constantly reminded that core values form the basis for every decision the tribunal makes.

Given all the hard work that goes into developing and implementing a solid values system, some tribunals might possibly prefer not to bother. And indeed they shouldn't, because poorly implemented values can poison a tribunal's culture. Make no mistake: living by stated corporate values is difficult. After all, it's much harder to be clear and unapologetic for what you stand for than to cave in to politically correct pressures. But, if you are willing to devote your time and energy to creating an authentic values statement, there's a good chance that the resulting values will help your tribunal on its journey towards real excellence that better meets its community expectations.

Providing clear guidance with regard to core values is a compelling reason for a tribunal to adopt the Framework.

Measuring and Managing Performance

In understanding the critical importance of performance management, measurement and reporting for tribunals, I'd like to take a look at the performance measurement and management aspect of the Framework within the context of modern-day tribunals. The State Courts in the US use the High Performance Court Framework which is centred on a fundamental premise that: *'courts that are in fact well run and are perceived to be well run are far more likely to be well funded; even in periods of tight budgets. The rest will most likely be told to do more with less'*.

Building on this premise, the financial challenge tribunals face today demands creative thinking. The tribunals that will flourish are those willing to implement changes they may not even have considered in the past. And, there is little doubt that creative thinking benefits from the availability of meaningful performance information.

Performance management might be defined as the process of monitoring, analysing and using performance data on a regular basis to improve the quality of services that support the delivery of justice in tribunals. Effective performance management will help tribunals identify problems early in their formation and facilitate getting the information to tribunal leaders before the problems fester, spread or boil over. Successful performance management is a dynamic process that helps tribunal leaders to think critically and creatively as well as to explore alternative ways to solve problems.

The Framework does not draw performance measurement or management out as a separate topic. However, multiple references are made throughout the Framework to the importance of performance measurement, management and reporting.

In Area 2-Tribunal Leadership and Effective Management, the Framework suggests that excellent tribunals will review their performance and will publish those results, including current performance levels, relative to targets and/or benchmarks.

In Area 6-Accountability, it suggests that reporting the tribunal's performance against established benchmarks is a mark of an excellent and accountable tribunal.

In Area 7-Efficiency, it suggests that a tribunal will need to determine performance measures and benchmarks which might include timeliness; a system of monitoring delayed cases and backlogs; and whether hearings start on time.

In Area 8-Client Needs and Satisfaction, it indicates that user satisfaction should be regularly measured.

By way of an example that embraces performance measurement, management and reporting, the Supreme Court of Victoria is recognised as a leader in the way it routinely publishes key performance outcomes on its website. The following performance measures are presented on the website and outcomes are updated every three months.

- Outcome Measures
- Clearance Rate, including benchmark of 100%
 - Case Backlog, including 12 month benchmark of <20% & 24 month benchmark of <5%
 - On-Time Case Processing, including 12 month benchmark of 75% & 24 month benchmark of 90%
 - Court File Integrity, including benchmark of 90%
- Output Measures
- Cases Initiated
 - Cases Finalised
 - Cases Pending

It is important to note that all of the Supreme Court's outcome measures include a benchmark which the court aspires to reach or exceed. Without these benchmarks or targets the court would be uncertain whether its performance outcome is acceptable and where further improvement is required. It is equally important to note that the court publishes its performance against all of the above measures at the whole of court level; as well as the Court of Appeal-Civil, Court of Appeal-Criminal, Commercial Court, Common Law Division, Criminal Trial Division and Probate.

From the performance management perspective, the Supreme Court has created a Performance Management Policy and established the Performance Management Committee as the court's leading body for monitoring and analysing performance data and as an advisory body to the judicial Court Business Group on matters associated with performance measures. Membership of the Performance Management Committee includes senior administrators and Judicial Registrars representing each of the key reporting areas.

It is interesting to note that, generally speaking, tribunals across Australia are not being particularly accountable to their communities with regard to publishing their performance outcomes against established benchmarks, as the Framework suggests should be occurring. The majority of tribunal websites make little reference to performance measures. Performance reporting is generally limited to a yearly activity through the publishing of annual reports. Furthermore, the majority of performance measures reported in annual reports are of an 'output' nature; such as cases lodged, cases finalised and cases pending. Output measures only inform how busy a tribunal is, not how well it is performing. Usually the only outcome measures reported are that of time to finalisation and case clearance rate. And, performance benchmarks or targets are seldom defined.

In meeting the expectations of their community and their obligation to providing access to hearings, tribunals should be using practical, service-centric performance measures; such as on-time hearing processing, hearing date certainty, tribunal user satisfaction and hearing backlogs.

Providing clear guidance with regard to performance measurement, management and reporting is a compelling reason for a tribunal to adopt the Framework.

Conclusion

There are multiple, compelling reasons for a tribunal to apply the Framework. This paper has addressed a few of the more challenging reasons.

At the end of the day, the simple reality is that no tribunal is sustainable unless it pursues its operations in some structured way that produces consistent and reliable outcomes. It follows that tribunal leaders will need to establish a management approach that gives them, and their tribunal, the best chance of delivering important public value that meets their community's expectations.

Some aspects of management practice also suggest that frequent changes in management approaches adversely impacts on the consistency and reliability of outcomes; and the efficiency of operations. Therefore, once tribunal leaders have selected a suitable management approach they should stick with it until they have reaped all of its rewards; or until the maturity of their tribunal has outgrown it.