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New South Wales Law Reform Commission

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RE: Open Justice Consultation Paper

Dear Commissioners:

Thank you for circulating your December 2020 Consultation Paper, 'Court and tribunal information: access, disclosure and publication'.

I write from the perspective of a legal researcher and as a researcher who is concerned about the reproducibility of legal scholarship. In particular, I am a lecturer at the School of Law at the University of Sydney and I am the President of AIMOS, one of the leading organizations advancing research about research (meta-research) and open science. I note, however, that I do not speak for either of these institutions.

My main response to your paper is that expensive and un-shareable court transcripts, decisions, and other documents greatly impede the reproducibility of legal research and the ability of legal researchers to help improve the justice system.

As you may know, the reproducibility of science (including social science) has been called into question recently. For example, a survey of researchers found that over 90% reported there was a reproducibility 'crisis' (Baker, 2016; See also Munafò et al, 2017).

One key component of reproducibility is the ability to understand and verify the sources that researchers use to support their claims (Force11, 2014). This is enabled when sources are clearly cited and those sources are accessible (e.g., on a publicly available database).

Court transcripts and decisions are an important source of data in legal research. They illuminate how the law operates and, in many circumstances, what the law *is*. However, when they are cited, they are often impossible to verify and reuse.

For instance, when a researcher does obtain (at considerable cost) a transcript and cite it (often as, 'on file with author'), that data citation is not verifiable or reusable by others. In other words, we cannot verify that document says what the author purports (as we would with citations to legal decisions on Austlii). And, if it raises an interesting point, we often cannot obtain that transcript to analyse and use in our own research. While it might seem

that the author can be contacted to share it, research finds that authors rarely reply to these emails (Vines et al, 2014).

These problems are surmountable. We now have the technology to post such data in a way that is publicly available and stored for a long or indefinite period (see <http://osf.io>). However, the cost of court documents and copyright restrictions are impeding these advances.

Thank you for your consideration. I would be happy to discuss this further.

Sincerely,



Dr. Jason Chin

References

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