Address to the Mayoral Reception on 30 October 2018 for the sittings of the Supreme Court at Dubbo

Mayor, Ben, thank you for your welcome and your very gracious remarks.

Let me introduce my Associate, Ms Carol Lloyd, Tipstaff, Mr Billy Bruffey, and our talented court reporters, Ms Angela James and Ms Kaylene Scotson-Tairua. Together we represent the Supreme Court in its current sittings here in Dubbo.

I would like to say something about the Court generally and also more specifically about it sitting in Dubbo.

The Court is almost 200 years old. It was founded by the Third Charter of Justice of 13 October 1823 which took effect on 17 May 1824. This followed a level of dissatisfaction with the system of justice under military rule in the Colony of New South Wales, one attribute of which was that there was no trial by jury. Criminal trials were conducted by a Deputy Judge-Advocate who sat with six military officers, or, in civil cases, with two upstanding citizens of the community.

The Supreme Court that exists today is essentially the same as that which was established back then, and trial by jury has since become entrenched in our criminal justice system.

The Supreme Court comprises two appellate courts, the Court of Appeal for civil matters and the Court of Criminal Appeal for criminal matters. I am a judge of one of the two trial divisions, the Common Law Division (as opposed to the Equity Division). My division deals with interesting criminal cases and uninteresting civil cases. The Equity Division deals with a broad range of generally uninteresting matters.

A court was first designated for Dubbo in 1846 when a Court of Petty Sessions (now known as the Local Court) was formally proclaimed to sit here. A wooden Court House was built. I have no information as to whether it was equipped any better or worse than the present Court House.

The Supreme Court sitting in Dubbo came about as a result of a proclamation by the Governor in 1874. Sir William Montagu Manning, who was also the Chancellor of the University of Sydney, held the first sittings in 1875.

It did not take long for the death penalty to be imposed. Poor Mr Thomas Newman was the recipient of the first such sentence in 1877 and others were to follow.

The present Court House has its origins in a construction of the late 1880s. It was augmented by the addition of two further court rooms in 1978.

In its early days of sitting in Dubbo the Supreme Court presided over a wide variety of cases. In 1880, in a case reported as *The Queen v Reynolds* (1880) 1 LR (NSW) 129, the Court was faced with a question of whether the crime of bestiality could be committed with a turkey, the relevant legislation having been recently amended to refer to an "animal" rather than a "beast". Sir William Manning J considered the issue of such importance that he sent the question to be resolved by three judges in Sydney and it was held by the then Chief Justice that the conviction of the offender was sound. The other two judges agreed, one of them being Sir William Manning who, unsurprisingly, upheld his own decision at the trial.

In 1892, in *Regina v Fraser and Jacobs* (1892) 13 LR (NSW) 150, the Chief Justice and two other judges were called upon to consider a question of bail in respect of two men who had been charged with robbery. They had been charged in Dubbo and released on bail pending their trial. It was alleged that they had thrown an old man to the ground and robbed him of all of the money he had in his possession, some £23 ($46). Fraser was a stonemason who lived with his brother who was "well known and an old resident of Dubbo". Jacobs was a drover and had also been working as a butcher who had the support of his employer and lived with his parents in Dubbo.

Justice Windeyer was the judge who presided at the men's trial. The jury were unable to agree upon a unanimous verdict and so the matter had to be put over to a later date for a retrial. His Honour decided to revoke the men's bail and that gave rise to the further application for bail being taken up with the judges in Sydney. Two of the three judges presiding agreed with the decision of the trial judge that bail should be refused. One of those two judges was Justice Windeyer himself. He thought the Crown case was a strong one and obviously thought the men should have been found guilty. He had some disparaging remarks to make about the way the jury selection process had been carried out (at 155):

> "In this case, it appeared to me that the evidence clearly established the guilt of the prisoners, and that the difference of opinion amongst the jury was only brought about by the exercise of the right of challenge. The right of challenge was in this case resorted to in order to weed out persons of known respectability in Dubbo, who were not likely to sympathise with crime. The evidence in this case was of the strongest kind against the prisoners, and the difference of opinion amongst the jury was a disgrace to the system of trial by jury."

Such criticism would not be tenable, let alone countenanced, in this day and age.

An example of the Court's entertainment of commercial cases was provided in *The Dubbo Refrigerating and Boiling Down Co Ltd v Madden* (1893) 14 LR (NSW) 474.

The Court rejected an appeal by a company in respect of a man who had applied for shares in a company with the slightly quaint name of *Dubbo Meat Chilling Co Ltd* but which was the subject of a move to change to the much quainter name of *The Dubbo Refrigerating, Preserving and Boiling Down Company* before the shares were allocated.

Finally, a divorce case highlighted the importance of cases being heard and determined in the local community rather than in distant Sydney. In *Du Moulin v Du Moulin* (1897) 18 LR (NSW) 1, there was an application by a wife for a divorce from her husband. The couple had been married in Dubbo and had always lived here. The husband was a doctor and it was argued that it would be a serious matter for him and his patients if he had to attend the trial in Sydney. All of his 10 or so witnesses lived in Dubbo and all the matters that were to be the subject of evidence occurred in Dubbo.

The Chief Justice of the time, Sir Frederick Darley, considered there were a number of matters to be taken into account: convenience to the parties; delay; expense; and where the bulk of the witnesses came from. These matters prevailed in favour of the case being heard in Dubbo. It was, in effect, a vindication of local justice. These types of considerations (and others) continue to prevail today.

My understanding of our Court's policy is that criminal cases will continue to be heard in the regions in which the cases arise. This reflects some fundamental aspects of the rule of law which underpins our society. Trial by a jury of one's peers is one aspect. Open justice whereby people and the media can come along and see in person what is going on in courts dealing with cases that concern their community is another aspect. There is also a deep respect for the families and friends of those involved in, or subject to, the criminal justice system being able to closely follow the proceedings. Such things are far less effective if the court is sitting in a far flung place such as Sydney.

Before concluding, may I say that although the Court is here for a short time, we do not leave you empty handed. We leave behind in the broader region Mr Billy Bruffey, my Tipstaff, who is soon to take up a position as a solicitor with the Aboriginal Legal Service at Bourke. I congratulate him on his appointment and wish him well in his career.

Mayor, thank you once again for hosting this occasion in honour of the Court. We are humbled by your doing so and by the attendance of you all.