

**IN THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT**

**BATHURST CJ
AND THE JUDGES OF THE
SUPREME COURT**

Thursday 8 February 2018

**FAREWELL CEREMONY FOR
THE HONOURABLE JUSTICE PETER McCLELLAN AM
UPON THE OCCASION OF HIS RETIREMENT AS A JUDGE
OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **BATHURST CJ:** We are here this morning to mark the retirement of the Honourable Justice Peter McClellan from the Court of Appeal of the Supreme Court of New South Wales. Today, we wish to show our gratitude for the enormous contribution you have made over your time as a judge of both the Common Law and Equity Divisions, the Chief Judge of the Land and Environment Court and at Common Law, a judge of the Court of Appeal and as Chair of the Royal Commission.

- 2 You were sworn in to this court seventeen years and nine days ago. On that occasion you noted your awareness that you would be soon asked to decide cases in areas you had not extensively practised, and that you were conscious of the challenges you faced in that regard. As it has turned out, there was no need for such humility. Although you came from a successful Land and Environment Court practice at the bar, you cannot be so easily pigeon-holed. Even while at the bar you ran matters in varied areas, including complex commercial cases, and you in fact ran the Commercial List while a member of the Equity Division, with great success – although perhaps not with quite the brutal efficiency of your good friend and golfing companion Justice Hammerschlag. We'll get on to the golfing addiction a bit later ...

- 3 Following that you moved down the road, as Chief Judge of the Land and Environment Court, and there you made important contributions to the development of planning and environment law in this State. You spent two years at that Court before being sworn in as Chief Judge of the Common Law Division.
- 4 Your time in charge of the division coincided with a period of great change. A number of judges retired, and many new judges came on in their stead. Those who were appointed during your time have commented on the care you showed them, making a point to assist them with the transition. All the common law judges could always count on you to be empathetic and supportive when they had a personal or family matter arise.
- 5 The common law division is probably the busiest and most diverse area of the Court, dealing with matters of administrative law, possession, defamation, and of course crime. You conducted a number of trials, and took on many Court of Criminal Appeal cases, including the challenging Wood conviction appeal, and the question of a permanent stay in Gilham.
- 6 Now, at this point I might note that this list of expertise reads somewhat like the entire curriculum of a law degree. Most of us narrowed our practice as we moved further along in years, but you seem to have expanded it in every possible direction. But this makes sense to those who know you because – as one of your former floor members has described it – you are a lawyer of such quality you could take any brief that was put in front of you. In addition to this natural ability in such a wide variety of matters, you are extremely efficient, with a strong work ethic. Not only did you take on a number of challenging and high profile criminal cases, at one point you dedicated your entire January holiday to finishing a judgment before the law term resumed, somewhat to the horror of your fellow judges who thought they would be soon forced to emulate you.
- 7 It is because of these twin attributes – extraordinary ability and work ethic – that there was no better person to Chair the Royal Commission into

Institutional Responses to Child Sexual Abuse. Your conduct of that Commission has been widely and justly praised. You showed compassion to survivors, working hard to gain their trust and listening to their stories with patience and kindness. Your meticulous interrogation of the facts has shone a light on failures and the work you have done will, with a good measure of hard work into the future, ensure such individual and institutional tragedies are not repeated.

8 To take on the Royal Commission could not be without its personal tolls. In particular, you took on this job at the very end of your career, a career which itself could not have been without challenges and burdens. Again, however, it makes sense to those who know you, because you have always had a heightened sense of public duty. You performed an enormous act of public service, and for that there are many people around this country who are truly grateful.

9 Now, a farewell speech cannot merely be all respect and gratitude. In conducting my due diligence for this speech, I of course approached old colleagues and staff, trying my hardest to dig up some idiosyncratic behaviour or habits to expose. Unfortunately as it turns out, all of your former and current staff are unfailingly loyal.

10 They instead informed me that they have too been beneficiaries of your immense sense of service, in offering your time and expertise to mentor them. They have praised your willingness to discuss cases with them, bring them into matters, how you valued their opinions and assistance and made time for their questions and queries. They noted that after they had left chambers, you maintained a keen interest in how their careers were going, always offering a listening ear and advice should they need it.

11 Now of course all of these responses were far too nice for my purposes. So, I pressed them for some piece of gossip – what was he like when you did something wrong – hoping, of course, for a good story. Instead, the memories they had were that you were unfailingly patient, reserved and gentle in your

criticism. You never let your staff feel they had made a mistake, instead saying more obliquely – “maybe we should take another look at that”, or “maybe we could revisit that”.

12 It became obvious I would have to turn elsewhere – thankfully you have some good friends – perhaps not so good after this address – who are still on the bench. The common theme was clear – you are entirely obsessed with golf. I managed to wrestle out one story in which your characteristic patience and reserved nature was broken.

13 I was told that you are frequently involved in golf competitions – foursomes – in which two players take turns in playing the one ball. Of course this can be a lot of fun, but also somewhat stressful, particularly when one player is far better than the other – and the less skilled player puts the better one in what might be described as some awkward, if not impossible, situations. Now as we have heard, there is very little that you do which you don’t do well – and golf is no exception. Your judicial golfing partner recalls one such game where he hooked a shot straight into the forest, and finally managed to break your patience – of course the only outward sign was some inaudible muttering.

14 Another of your judicial golfing partners commented that although everyone knew you were golf obsessed, you generally aimed to maintain a healthy separation between your work and personal life, and your golf and personal life. At the first you are quite successful. The latter you find more difficult. It is rumoured that you frequently practice putting on the lounge room carpet – one day on the way to the golf course, your partner, Justice Jagot, who we are delighted to have join us on the bench today, had to call and inform you that you had left your putter on the lounge room floor.

15 Now Justice Jagot is not a golfer herself, but seems to tolerate your obsession – and in fact travelled with you to the US Masters, which you described as the “trip of a lifetime”. It is reported, however, that her Honour has had a significant impact on your golf attire, you having become in recent years “hyper fashion conscious” on the green. Colour coordinated clothing has not,

unfortunately, improved your golf – or the real problem perhaps, your golfing partners.

- 16 Now of course, much like you are not to be pigeon-holed in your legal life, so too in your personal – apart from being a star golf enthusiast and player, you share some of your brother Mike’s talents for music. It’s rumoured that you have delighted guests at parties with performances. I did think to arrange a backing band and put you on the spot here today, but that might have stretched judicial collegiality a thread too far.
- 17 Aside from these extra-curricular talents it is important to recognise the significant contribution you have made to the common law of this country through your judgments. I intend to focus on those in the criminal sphere, firstly because your insight in this area is all the more remarkable as it was not your primary area of practice, and secondly because you contributed to and wrote a number of judgments that are continually cited in appellate courts. A few rate special mention – De La Rosa, in 2010, which set out guiding principles of sentencing for drug importation offences, and the relevance of an offender’s mental health at sentence. As every judge knows, sentencing is one of the most difficult, and inevitably controversial, tasks of a judicial officer. Your views, informed as they are by a wealth of knowledge and strong practical sense, have been of particular benefit to the legal profession – reflected in the fact it has been cited over 800 times in just 7 years. You similarly articulated principles relevant to the sentencing of young people in *KT v The Queen*, which has helped judges since find the difficult balance between lenience and mercy for youth and deterring anti-social behaviour. It is a decision that characterising your unwavering commitment to both equality and the rule of law. The final I will mention is *Belghar*, which clarified the principles to be applied on an application for a trial by judge alone, which I and many others have had reason to rely upon in the succeeding years.
- 18 Your extensive expertise in criminal law is reflected not only in your judgments but in your many speeches and publications concerning, amongst other topics, juries, sentencing and white collar crime. You had a prodigious output

of papers during your time at the bench which certainly puts me and probably most others here to shame.

19 Now, you have been telling everyone so far that you don't plan to work again. Those who know you best say it's just not possible. Your work ethic will compel you back into some form of public service once again, and we will be the richer for it.

20 So, on behalf of all the judges of this Court, the staff who worked with you at the Royal Commission over the past 5 years and the public whom you have so diligently served nearly your entire life, I would like to thank you, sincerely, for your exceptional service to administration of justice in this State. We wish you all the very best for your retirement and look forward to the contributions you will inevitably continue to make to public life over the years to come.

21 **MR TIM GAME SC, SENIOR VICE PRESIDENT BAR ASSOCIATION OF NEW SOUTH WALES:** Your Honour, it is my privilege and honour to appear on behalf of the New South Wales Bar Association to acknowledge your outstanding career and to farewell you. Personally it's also a great pleasure to do so, having appeared before you many times in quite difficult litigation often, and having had a strong professional relationship, including more recently in your work as the Commissioner in relation to institutional responses to child abuse.

22 All of that, I feel I should say that I have the greatest respect for your Honour. A speech like this, or an occasion like this, does have the risk of sounding like an obituary or a pre-obituary but you seem to have plenty of life in you still and I find it hard to believe that you are not going to continue to engage in activities related to the curial process, if I can put it that way.

23 Chief Justice has said much about your professional career. I am only going to say a few things.

- 24 You were admitted to practice in 1974. In 1975 you went to the bar, encouraged as I understand it by the Honourable Murray Wilcox, who I understand is here today. I think he says that one of the things he looks back on in his own life is very proudly that he encouraged you into that career.
- 25 You went on the sixth floor, which is a floor that has provided the last two Chief Justices of this Court and it is a terrific floor of barristers, but just an example of the strength of your practice, as a junior, within a year, you were appearing unled in the High Court in a case called *Twist v Randwick Counsel*, which is quite a significant public law case about natural justice and appeal rights.
- 26 On my calculations you were probably 28 at the time you were unled and somebody had a lot of confidence in you and that was an extraordinary thing to be doing at that young age and taking it in your stride and doing it entirely successfully.
- 27 You took silk in 1985; that is 10 years. Today that would be regarded as excessively precocious. I expect it was excessively precocious back then, but today I think people would be wondering what extraordinary skills you must have had to get silk at such a young age.
- 28 As a silk your practice was a really strong practice. You were admired as a person who made terrific decisions out of Court. You were admired strongly as a barrister who conducted Court proceedings with skill and an eye to the issue or the critical issues, and you are - I never saw you cross-examining, although you cross-examined me quite recently; somehow or another you managed to get me in the witness box, I don't know how that came about - but the irony did not escape me I have to tell you.
- 29 You were a very strong barrister to say to the least and a silk who made good decisions, strong decisions, out of Court, very busy advice practice as well. One of your principal areas of practice was planning, Land and Environment Court and one of the people who mentored, and had as your junior often, was

Brian Preston, who is now Chief Judge of the Land and Environment Court and I think he is - I'm not sure if he's here today - but that was a very strong professional relationship that you had.

30 In fact I think cultivating and teaching people how to be barristers and how to be judges has been a large - it is a strong part of your career of which you should be proud.

31 I have here at the bar table today, Gail Furness, who was also your senior counsel assisting in the Royal Commission. That again is a strong professional relationship that you have had over the years. I don't know whether you would have been able to the Royal Commission without her, but the combination of you as leading commissioner and her as senior counsel assisting was a particularly strong and insightful decision to have the two of you doing it and that working relationship being a kind of terribly important one.

32 You have also had a lot of involvement in ongoing legal education and that is a critical part of the work of a judge is to educate those who are coming after them, because we don't have anything else except for that which we pass on to those who come after us.

33 Most important, when you were sworn in this Court you said of the Maralinga Royal Commission that it was the brief of a lifetime, counsel assisting. I think you would probably say that your experience, and I think all of us would say, that your experience as the chair of the Royal Commission may have been the appointment of your lifetime and of a lot of other people's as well.

34 The work of that Commission has been extraordinary. Speaking as, shall I say, a sceptical barrister I suppose I would say, I myself and a lot of others wondered what the Royal Commission would achieve that we didn't already know about institutional responses to child abuse. We learnt otherwise.

- 35 It has been a cathartic experience for the whole community. The depth of the suffering and the nature of the responses, or non-responses, and the misery and hardship and wrongs done, this is a very important exercise in righting those wrongs.
- 36 As I understand it people have travelled around the country to be in Court today. One of those people I understand is called Leonie Sheedy who is from the Care Leavers Australasian(as said) Network, an organisation which advocates people who were raised in orphanages, child homes and foster care. She said amongst other things that your Honour listened to survivors with empathy and compassion. I understand there was something like 7,000 - it's hard to believe - 8,000 such meetings which is extraordinary and it speaks of your Honour's both energy, devotion, toughness, ability to manage such situations and a huge amount of compassion.
- 37 I understand that there is actually a group of people who call themselves Clannies, who are your followers; you can hear they are here today. That's direct evidence. Justice Heywood would call it autochthonous evidence, you can make observations. I also understand, although it's hard to believe this is true, that when you finished with the Commission they gave you a very large set of plastic ears, because that was the sign that they had realised that you had listened to them. So that's a wonderful thing.
- 38 So it's a ground-breaking - it's more than ground-breaking; it's cathartic, it's enormous, it's complex and the response had been - well one can only say outstanding, I don't know what other words to use.
- 39 I don't know what you're going to do in your retirement but I understand that it does involve things like golf, playing the guitar. I understand plays Simon and Garfunkel songs, that's a very bad indicator of when you were a teenager. I personal wouldn't go for Simon and Garfunkel, say that you should skip that.
- 40 I understand that you - I'm sorry to be trivial - but I understand you follow the Melbourne Demons, which for those who don't know, it's an AFL team. Being

a Southern State person myself I can only say I think it's good you're following the right code, but the wrong team.

41 That's about all I want to say, so I wish your Honour the very best in the future and I have no doubt that this is a beginning, not an ending.

42 **MR DOUG HUMPHREYS PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court. As I was coming in this morning to this Court, there was a group of people standing outside, dressed in blue t-shirts. I thought, oh, there's a demo on; an exercise in democracy. But then I was struck again because the placards said, "Thank you Justice McClellan".

43 I think that says it all, and to be honest, anything that I am likely to say now is probably likely to be dreadfully inadequate. However, I come before the Court on behalf of the solicitors of New South Wales to farewell your Honour in a multitude of roles that you have performed over the years, and indeed it is an extraordinary curriculum vitae.

44 I also want to acknowledge the contribution to the broader administration of justice that you have performed in a ground breaking Royal Commission into Institutional Responses to Child Sexual Abuse, and you also did such wonderful things as chair of the Sydney Water enquiry, and you were also an Assistant Commissioner of the Independent Commission Against Corruption. It is fair to say that your Honour has risen to every challenge, demonstrating an adroit approach to judicial service.

45 Your ability to excel and built expertise across a broad range of practice areas has been visible from your time at the bar. Indeed, one fellow judicial officer, who is perhaps readily identifiable by his accent - and he wanted that specifically said - claims to be the only individual in New South Wales to have been briefed, led by, appeared before and sat with your Honour. That is not a bad feat. He remembers being impressed with your Honour's adept success in a receivership case in the Federal Court. The case was, on paper,

challenging and very much a departure from your bread and butter matters. However, as we have heard, your Honour thrived.

- 46 Those counsel who have appeared as your junior remember you were much admired by your clients, particularly those who regularly briefed you in environmental cases. They prized your ability to concentrate single-mindedly on the issue at hand, never averse to locking yourself away in a room with fellow counsel and instructing solicitors, to drill down and get to the real issues of the case, even if that meant an ongoing coffee roster to turn out and keep your mind focused. Your Honour has brought the same dedication and clarity to your conduct in courtrooms.
- 47 Can I say, when I was working at Legal Aid, although your Honour did not come from a criminal law background, when you were appearing in the criminal cases your Honour was always regarded as being a good draw; the trial would be run efficiently, the trial would be run very fairly, and there would be very little aspect or capacity for appeal, because there simply would not be the points there, and that is a remarkable testament to your Honour's ability.
- 48 Those who have appeared before you speak of the very orderly style of courtroom management. Your Honour has always been courteous and attentive to all points of view, and again, you have always been able to turn around and focus on what were the critical issues, and the scatter gun approach has certainly never been a part of your Honour's judicial or indeed advocacy style. Some of the cases have been highlighted already. The Gordon Wood appeal, the Jeffrey Gilham appeal and the appeal of Phuong Ngo relating to the murder of John Newman MP.
- 49 One judicial officer who worked closely with you during your time in the Common Law Division attests to your Honour that you have always led by example. Your prodigious hard work, but at the same time, your ability to be conscious of the individual needs of other judges in the division has marked

you singularly for being someone who was well regarded. You always took a consultative approach into the management of the division.

50 I alluded to earlier, and I need to go back to the Royal Commission into Institutional Responses to Child Sexual Abuse. It has been a landmark Royal Commission on a long road to justice for the victims, in what it has found and what it has done for survivors. Your Honour said in his opening remarks as Chair that the Commission's fundamental task was to bear witness to the abuse and suffering of the victims; this you have done in full measure. The recommendations of the Commission, which your Honour chaired, will be an invaluable guide in the years ahead. Some of them are very difficult and will no doubt spark intense public debate because they challenge some of the very fundamental institutions that we have relied upon over the years, but challenged they must be and a way through will be found, because if we do not, the potential dangers and the things we have seen in the past may well be repeated.

51 Your patience during that Royal Commission, particularly when dealing with witnesses when their memories or emotions meant that the answers had to be delayed, was clear. On many occasions you explained in very clear language, why it was necessary for them to actually recount what to them was so painful and so difficult. But you did, and they were able to turn around and bear witness to what had happened, and we as a community are better off for it, and they as individuals are much better off for it by simply being able to bear witness to what happened.

52 I would like to quote from a recent article by Anne Manne in *The Monthly* in which she writes of your Honour's kindness and empathy.

"McClellan came to a children's home and a foster care abuse group meeting. It was held in a garage. He sat down, he asked everybody to call him Peter. He then listened attentively all afternoon to the survivors. They were impressed. One particular survivor became more hopeful. She gave him a cushion she had found in an op shop, emblazoned with the logo of his beloved Melbourne Football Club. At one of the hearings that she later attended, she realised that McClellan was sitting on it. He took it to every hearing."

53 One prominent counsel who appeared before your Honour has her own memories of your engagement with victims. She writes,

“The Commission’s first private session was held at a hotel room in Parramatta. He and I were there to listen to the first account. We had no idea what to expect. There was a Federal police officer present. We heard from a man in his 70s who brought with him a small much-used plastic bag. He told us that in it were a few bits of paper and trinkets. They were all he had from his early life before he was placed in an institution. She described it as very moving.”

54 Your Honour’s pursuits outside the law have already been gone into, including golf. I know that you play the guitar and recently played together with your teacher at your birthday, performing Paul Simon’s *The Boxer* with your brother. Your family life has been of great comfort to you and you are blessed with children and grandchildren. And it is said that your wife, Justice Jagot, has met your Honour as your equal in every way.

55 Ultimately, it is this State, the people of this State and the people of Australia, who have benefited from your Honour’s long legal career, the wisdom that you have shown, and the decisions and judgments that you have made. The philosopher, Raimond Gator, has written of the need for wrongdoers to be drawn to a serious and lucid responsiveness of moral significance. This is from Anne Manne. She said:

“McClellan repeatedly did this by presenting the perpetrator or protector with their actions in simple, stark terms”.

56 We honour you today, Justice McClellan, for the work you have done and for the substantial and ongoing impact that your Honour has had on so many institutions of this State, but also on the impact that you have had on individuals, and for that we thank you. I wish you the very best for your retirement, which I have no doubt will be very productive, mixed with the odd round of golf. May it please the Court.

57 **MCCLELLAN J:** Chief Justice, Mr Game, Mr Humphreys, colleagues and friends, I greatly appreciate your kind and generous words. In my speech on the occasion of my swearing in as a Supreme Court Judge, I said that when I

was at the law school I could never have imagined the life that was before me. I had no appreciation of the opportunities which the law would give to me to participate in many fascinating events and to play a part in some major issues in other people's lives.

58 At the time of my swearing in, I expected that my life as a judge would be markedly different to that of a barrister. I expected to be confined to the resolution of disputes as a trial judge in the division of the Court to which I would be assigned. I assumed I would generally sit, as others had done, in the same courtroom for the rest of my professional life.

59 As it had happened and as you have heard, the reality has been significantly different. When Jim Spigelman asked me whether I would accept an appointment as a judge, he also asked me whether I would prefer to sit in Equity or Common Law. My instinctive response was Equity but Jim as has always been the case, was well ahead of me. Politely, but firmly, he said, I think you should sit in Common Law and so it was. Although I read with John Brownie, who was then the leading Common Law junior, the nature of my practice at the Bar had meant that it was quite some time since I had appeared in a significant common law trial. I had much to learn.

60 I had only been a judge for a couple of weeks when the list judge who was then David Kirby came to me with the papers for what he said was an interesting civil trial. He was right. It was to become known as the passive smoking case. The issue was the cause of the throat cancer contracted by an employee of a licensed club on the south coast. The plaintiff claimed that it had been caused by her exposure to other people's cigarette smoke while working in the bar at the club. My initial thought was that I had been given the task of deciding a complex but interesting scientific question. When I opened the papers, I found that it would not be my decision at all. The matter had been listed before a jury. Although, as I have said, I read with John Brownie where jury trials were a daily, sometimes twice daily occurrence, it was years since I had been involved in a civil jury trial. I wondered whether this was the

Common Law Division's way of saying welcome to our world. Survival of the fittest perhaps.

- 61 After burning a great deal of midnight oil and with the help of my first researcher, Andrew Fisher, we managed the trial to a verdict. The jury found for the plaintiff. I suspect the defendant's case was not helped by its experts who had previously been paid large sums of money by tobacco companies to say smoking was not related to cancer. That decision was significantly responsible for changing the rules about smoking in common places, not only in Australia but in other parts of the world.
- 62 Notwithstanding Jim Spigelman's encouragement to sit in Common Law, he only allowed me to stay there for 12 months before he asked me to become an equity judge. I was given responsibility for the commercial list following the retirement of the great advocate and judge, Bob Hunter. It proved to be a period of interesting and intense endeavour. The commercial list presents enormous challenges for its list judge, both because of the volume of work and the complexity of the issues. The work of the judges in that list has and continues to enjoy the highest of reputations.
- 63 During my time in the commercial list, I was also the admiralty judge. It was not a busy list. I decided one case in 18 months. It concerned a man who had opportunistically laid claim to salvage of a BHP oil rig that was in distress. He stood to benefit by a \$100 million if he won the case. He lost.
- 64 Jim Spigelman played no part in my next move. Eighteen months after becoming an equity judge, I accepted appointment as Chief Judge of the Land and Environment Court of New South Wales. I had conducted many cases in that Court as a barrister. By 2003 and given the nature of its jurisdiction, this was not surprising. Some of its decisions had attracted strident criticism. In particular, its planning decisions were said to be inconsistent. Many were disputed by local authorities. The need to modify some of its practices and procedures were readily apparent.

- 65 I was Chief Judge for two years. During that time we made a number of significant changes to the Court's procedures. Through the development of defined and clearly articulated planning principles and the publication of all its planning decisions on the net, we enhanced public confidence in its decisions. I understand that the planning principles that were developed both during my time with the Court and after I had left, continue to guide all councils and other bodies with the responsibility for determining development applications.
- 66 The Court made a number of other changes, one of the most significant being the introduction and universal use of concurrent evidence with expert witnesses. The development of the principles by which that process was conducted in the Land and Environment Court has enabled concurrent evidence to be taken up and used in other jurisdictions both in Australia and overseas. It won't surprise most of this audience that we also used it during the course of the Royal Commission.
- 67 I am grateful for the commitment of the judges and commissioners of the Land and Environment Court to the process of change. I am particularly grateful for the contribution of the then Chief Commissioner John Roseth. He is not only an immensely gifted planner but is blessed with the capacity to distil the essence of an issue and develop succinct but comprehensive principles appropriate for its resolution.
- 68 I was Chief Judge in the Land and Environment Court for only two years before Jim Spigelman again intervened in my professional life. This time he asked me to accept appointment as Chief Judge at Common Law. It was a task I had never contemplated being asked to undertake and I had some hesitation before accepting the appointment. Not the least my hesitation was borne of the fact that I would follow one of the greatest common law judges, James Wood as Chief Judge. I was particularly concerned that I may not have spent enough time as a common law judge compared with many of the other great common lawyers who were then the senior judges of the division. Jim Spigelman in his usual manner was quick to dispel my reservations.

- 69 The next eight years turned out to be some of the most rewarding of my professional life. Although I was unsure about whether I was the right person for the task, I received nothing but the loyalty and support of all the common law judges of the Court. They have my deepest thanks. The workload of the division is continually onerous. The criminal trial load interesting but taxing.
- 70 The work in the Court of Criminal Appeal where I came to spend the majority of my time provides a continuous and varying list of complex legal issues. Sentencing presents different challenges. The work of the Court of Criminal Appeal plays a fundamental role in establishing sentencing standards throughout the State. Few people outside of the Court appreciate how difficult the task of sentencing individual offenders can be. Public discussion of sentences is important but judges must sentence having regard to all of the relevant facts and in accordance with the relevant statutory and common law principles.
- 71 At the same time that I was appointed Chief Judge at Common Law, Jim Spigelman (he appears again) albeit without leaving room for a negative response, asked if I would go to Manila to attend an international conference of judges. Jim thought, rightly, that the meeting may resolve to form an ongoing international judicial development organisation. My instructions were that if the meeting resolved to create an ongoing organisation, I was to put myself forward for its committee. As it happened, the Australian Pacific Judicial Reform Forum (APJRF) was formed following that meeting and Ernie Schmatt of the Judicial Commission and I, together with Ken Hayne who was then a member of the High Court, became members of the initial governing body. Ken Hayne was the Chair.
- 72 Over the following years, Ernie Schmatt and I travelled together to many international gatherings where contemporary problems and practices for judging and the management of Courts were considered and discussed. We visited cities throughout the Asia Pacific region and made many friends. I have lost count of the number of journeys we have made together overseas. Our involvement with the judiciary of other countries both enabled ideas to be

exchanged but also ensured that the work which Ernie Schmatt and the Judicial Commission was undertaking, was made known in other countries. Ernie has done a remarkable job in leading the Judicial Commission which has become the model for similar bodies both in Australia and overseas. His work with the Commission was rightly recognised in this year's Honours List.

- 73 The highlight of our work with APJRF was a conference hosted by the Chief Justice of China, which included a dinner at the Great Hall of the People. The Chief Justice was an engaging individual, although not a lawyer. What I did not realise at the outset was the necessity for the Chair of the conference to participate in a regular round of individual toasts. I had the role of Chair in the absence of Ken Hayne, who was unwell. That part of the evening was a particular challenge, even for someone who at that stage was a part-time winemaker.
- 74 The role of the Chief Judge at Common Law is without doubt one of the most interesting judicial roles in Australia. Apart from the administrative burdens, the Chief Judge can sit in trials, both civil and criminal, as well as the Court of Appeal and the Court of Criminal Appeal. The Chief Judge is provided with a fascinating variety of problems across significant areas of the law.
- 75 It is a great discipline to one day be sitting as a trial judge and the next day sitting on an appeal where it is being argued that a trial judge has gone wrong. There is no doubt the task of a trial judge in a busy Court imposes significant burdens. There will always be decisions which others do not agree with. Although the appeal process must correct error it must also ensure that trial judges are supported and encouraged.
- 76 At the end of 2013, I was approached by the Commonwealth government to Chair the Royal Commission. With the support of the Chief Justice, Tom Bathurst, I accepted that role which was initially to take three years. This was always unlikely and we required five years to finish the task.

- 77 The Royal Commission brought significantly different challenges to those which I had previously confronted as a judge. People who have been sexually abused as children very often suffer great harm. If that injury occurs in an environment where they have already been deprived of family, and the emotional and social opportunities that brings, the damage can be magnified.
- 78 A child abused in an orphanage suffers both the loss of family and the destructive influence of the loss of their innocence. People who have been sexually abused as children are generally unable to talk to others about their experience for many years. Many never do. The Royal Commission was constituted to enable all who had been abused in an institutional context to speak to a person who had been given authority by government to hear and acknowledge their story. Through the Commission's process, if required, the survivor as they are known could be directed to the professional health and survivor support organisations which are available in the community.
- 79 The Commissioners, there were five apart from me, spoke with more than 8,000, each of whom had a story from their childhood to tell. They were often telling their personal story for the first time. Many had not been able to tell their spouse. Many still cannot take that step. The Commission process enabled them to relieve the life-long burden they had been carrying. It has been empowering for many. Survivors speak of the process allowing them to tell and to own their story and take back control of their lives.
- 80 The other Commissioners and I experienced the courage, resilience, and strength of many people who have suffered the most terrible wrong. The Royal Commission was also charged with considering issues relating to redress and how institutions should be structured and managed to improve the safety of children in the future. This required us to look at a great many institutions, both in public hearings and through our research and consultation work. It included an examination of the Civil and Criminal justice systems as they relate to the sexual abuse of children.

81 Although challenging, and at times confronting, the task I was given to Chair the Commission was without question the most significant of my professional life. There have already been many changes in institutions with responsibility for children and many are undertaking significant reviews of their structures and management practices. I expect that in coming years a great many of the recommendations which the Commissioners have made will lead to further changes. The prosecuting authorities and Courts will be kept busy. I referred more than 1,500 cases to the police.

82 It will be apparent from what I have said that Jim Spigelman has played a significant role in my life as a judge. Apart from the tasks he asked me to undertake, working with him on the Supreme Court was a challenging, stimulating, and intellectually rewarding experience. He is one of our great Australian judges.

83 Although I have known Chief Justice Bathurst for too many years to count, my time with him on the Court was relatively brief and we were able to sit together on only few occasions. However, I am sure that my colleagues have enjoyed both working with him and under his leadership.

84 For any Court to function effectively its Registry and those who lead it must be of the highest quality. During my time as Chief Judge at Common Law I was supported by the registrars of the Common Law case management process, the Court of Criminal Appeal and Court of Appeal, each of whom performed their tasks efficiently, often burdened by significant caseloads. Notwithstanding the pressures under which they operate, each of them responded to the challenges. I could not have asked for greater loyalty and dedication from each of them.

85 In each of my role as a judge I have had the benefit of the assistance of two researchers. There are too many to individually name. As many as are available have gathered each year at Christmas time. Although I was impressed by each of them when they worked with me, it is a real joy to see how they are developing their own professional lives. I am sure that the

opportunity to work with a judge for 12 months is of immense benefit to law graduates, but it also ensures that the judge with whom they work is kept up-to-date and has the benefit of a bright and energetic intellect.

86 When I was first appointed to the Common Law Division, Angela Flockhart, who had been working for my predecessor, Peter Newman, accepted the role as my associate. I soon realised that her knowledge of procedure, particularly criminal trials, was probably greater than mine. Although civil work was not her preference - she would rather a murder trial - she willingly accepted the associates role in the varied positions I have held. When I became Chief Judge at Common Law Angela carried the burden and frustration of guiding the associates through the introduction of the JusticeLink system. I owe her a great debt for her assistance over the years. She has my warmest thanks.

87 Many, but not all of my family, including grandchildren, are here today. I thank each of them for their patience and forbearance throughout my professional life. I express my gratitude to Catherine for her support in my early professional years. I know they all join with me in thanking Jayne - known in the family as Jayno - who has so immensely enriched all our lives and whose love, strength and wisdom have allowed me to meet the particular challenges of the last five years.

88 The ceremony today is part of the tradition by which the institution of the Supreme Court marks the end of the working life of a judge of appeal or Chief Judge of a division. Respect for tradition is important for the Court, and fundamental to the Common Law. Nevertheless, our legal history is testament to the capacity of the Common Law to evolve. Without stability the Common Law would lack legitimacy, but without the capacity to evolve the legitimacy would itself be lost.

89 I thank each of you for taking the time, and some of you have travelled a great distance, to come to this ceremony this morning. Thank you.
