

THE HON T F BATHURST AC
CHIEF JUSTICE OF NEW SOUTH WALES
FAREWELL CEREMONY FOR THE HONOURABLE JUSTICE LUCY MCCALLUM
FRIDAY 25 FEBRUARY 2022*

- 1 I would like to begin today by acknowledging the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their Elders, past, present and emerging.

- 2 We gather here this morning to farewell the Honourable Justice Lucy McCallum who leaves her position as a Judge of Appeal of the Supreme Court of New South Wales to commence as Chief Justice of the Australian Capital Territory. I am delighted that we can hold this ceremony. It allows us as members of the Court and the legal profession, friends and family, as well as the wider community, the opportunity to show our gratitude for your outstanding contribution to the administration of justice in this state.

- 3 This occasion is bittersweet. Although it is with great sadness and regret that we today bid you farewell from the Court upon which you have sat for 14 years, we are glad to know that it is only as a consequence of your appointment as Chief Justice of the ACT that we have to say goodbye. In an ideal world, we would have you carry out both roles. If there were ever a person capable of pulling this off, I have no doubt it would be you with your boundless energy, which has rightfully earned you the nickname, 'energiser bunny'.

- 4 Admitted to practice in 1986, called to the bar in 1991, elevated to silk in 2005, and appointed a Judge of the Common Law Division in 2008, you joined the bench at a remarkably young age. As Justice Simpson put it, you have had a very long non-parole period. I don't know whether the Supreme Court of the ACT counts as day release. The skill set required to achieve silk

*I express my thanks to my Research Director, Ms Monique Pankhurst, for her assistance in the preparation of this address.

at such a young age and be appointed to the bench a mere three years later, is reflective not only of your hard work and devotion, but also your intellectual rigour and intelligence. In January 2019 you were elevated to the Court of Appeal, from where we bid you farewell today. The bench and those who have come before you have benefitted greatly from the depth of expertise and life experience you brought during your 14 years as a judge of this Court. You have enhanced the equality, diversity and confidence in this state's judiciary, and I have no doubt you will do the same in the ACT as you serve out the remainder of your non-parole period.

5 As a judge, you are always fair and unfailingly courteous. You give everyone in your courtroom the deepest and unwavering respect, even in the most trying of circumstances. On this point, Justice Simpson recalls your fortitude during the *Feldman*¹ litigation, which involved a cacophony of curve balls, including troubling subject matter, complex legal issues, and a seemingly never-ending string of defences. I imagine your practising of handstands and chin ups in chambers greatly assisted you during these and other trying times. Not to mention the 200-odd dollars' worth of Haigh's chocolates you religiously sent your tippies to purchase and share with the entire floor.

6 Your fellow judges attest to your habit of meticulous preparation for hearings. You maintain that brevity is a virtue, but not a shortcut, living by the fact that it can only be achieved by devoting lots of time to preparation. There is no better example of this than your management of the defamation list. You did this with unmatched efficiency. On any given day you could sit on as many as 40 or 50 matters, delivering judgments ex temp at a truly remarkable pace. Your contribution to the Court during your time as the defamation list judge is

¹ *Feldman v Australian Broadcasting Corporation* [2016] NSWSC 757; *Feldman v Executive Council of Australian Jewry Inc* [2016] NSWSC 1669; *Feldman v IAC/InterActiveCorp* [2016] NSWSC 1302; *Feldman v GNM Australia Ltd* [2016] NSWSC 920; *Feldman v GNM Australia Pty Limited (No 2)* [2016] NSWSC 1188; *Feldman v Nationwide News Pty Ltd* [2016] NSWSC 1890; *Feldman v Polaris Media Pty Ltd* [2016] NSWSC 1889; *Feldman v Spinak* [2016] NSWSC 1083; *Feldman v IAC* [2017] NSWSC 112; *Feldman v The Daily Beast Company LLC* [2017] NSWSC 831; *Feldman v The Daily Beast Company LLC (No 2)* [2017] NSWSC 1651; *Feldman v Nationwide News Pty Ltd* [2018] NSWSC 607; *Feldman v Polaris Media Pty Ltd as trustee of The Polaris Media Trust trading as The Australian Jewish News (No 2)* [2018] NSWSC 1035; *Feldman v Polaris Media Pty Ltd as trustee of The Polaris Media Trust trading as The Australian Jewish News (No 3)* [2018] NSWSC 1201; *Feldman v Polaris Media Pty Ltd as Trustee of the Polaris Media Trust trading as the Australian Jewish News (No 4)* [2018] NSWSC 1639.

quantifiably staggering.

- 7 You are also known and admired through your beautifully written and thoughtful judgments. As Justice Natalie Adams put it, you have a remarkable ability to balance the need for a consideration of the relevant legal principles with your deep understanding of the human condition. On this note I recall your recent judgment in *Lacey (a pseudonym) v Attorney General for New South Wales*,² wherein you wrote with great sensitivity and insight on Aboriginal cultural protocols of women's business with respect to the hearing of sensitive evidence. I also note your poignant judgments in *Vitality Works Australia Pty Ltd v Yelda (No 2)*³ and *Styles v Clayton Utz (No 3)*.⁴
- 8 You are a self-confessed bleeding heart. Be it a friend in need, a poorly animal or even a grieving stranger, you are always willing to help. Off the back of the *Gittany* trial,⁵ you acquired two dedicated court watchers. It was not uncommon for you to see the pair in the public gallery, often recognising them by items of clothing they wore time and again. One such item was a bright yellow scarf. Then one day you noticed that one of the court watchers was missing and that the remaining court watcher was wearing his partner's yellow scarf. Before long you received a letter from the remaining court watcher thanking you for your work on behalf his partner whom he noted, sadly, had recently died. You were deeply moved by his letter and you wanted him to know this. You proceeded to knit the surviving court watcher a multicoloured scarf in memory of his partner. You then invited him to a function at which you presented him with the scarf to express *your* thanks for *their* support.
- 9 What makes a judge worthy of respect and admiration has a lot to do with how they spend their time away from the bench. This is particularly true of you. Any member of the public who asserts, as they do from time to time, that judges are out of touch with the community, has not encountered you. Your contribution to the community is outstanding. I note, in particular, your time

² (2021) 104 NSWLR 333, 345-358.

³ (2021) 307 IR 443, 475-476.

⁴ (2011) 255 FLR 364.

⁵ *R v Gittany (No 4)* [2013] NSWSC 1737; *R v Gittany (No 5)* [2014] NSWSC 49.

as Chair of the Ngarā Yura Committee, of which you were incredibly proud. You worked tirelessly in this position to better educate judicial officers on matters relating to Aboriginal customs, cultures, traditions and society. In this vein, I would be remiss in failing to mention how you regularly spent your Friday mornings in Redfern, typically alongside the present Governor-General David Hurley and countless distinguished others, boxing with Aboriginal youth and sometimes inmates as part of the Clean Slate Without Prejudice program.

- 10 Your selflessness and generosity with your time extends to your devotion to mentoring young lawyers. I am told your value as a mentor derives in large part from the genuine enjoyment you get in seeing the younger generation realise their potential. Be it organising a chat over coffee with a tippy that has approached you out of the blue, or making time in your day to rehearse with your past associate during the duration of her bar course, you never say no to an opportunity to help. The fact that almost all your tippies over the years have kept in regular contact with you, and vice versa, is a clear indication of the impression you have made in their lives. That, and your seemingly endless list of hobbies making you a most interesting person to be well acquainted with.
- 11 You are, of course, an exceptional role model for female lawyers. One of your past tippies described learning from you the importance of having comradery amongst women in the profession, that being an essential source of support and sanity. Another valued seeing your passion for the law alongside your passions beyond the law. As you have made your way to the pinnacle of this profession, you have remained true to yourself. You are incredibly down-to-earth, empathetic, and beholden to your capacity to care, as a mother and friend, of course, but also in your role as a judge. Your discipline in balancing the different aspects of your life is deeply commendable and a vital example not only to female lawyers, but to the entire profession.
- 12 No doubt, your exceptional sense of humour has something to do with you being such a sought-after mentor. In 2020 you were the New South Wales Young Lawyers Patron, which saw you heading up the judging panel for the

Golden Gavel, a comedic speaking competition for young lawyers. Of course, you took the task of delivering feedback seriously using what you dead pan as 'the exciting new format of prerecord'. The product was unlike anything I have ever seen produced by a judge. Amongst the constructive criticism and compliments on competitors' submissions, you gave titbits of wisdom, including a tip that young parents sing and dance to the Iggy Pop song, 'I'm Bored', to deflect a whinging child. You insist it will 'send them right away'. If you are yet to do so, I encourage you to watch the video, I assure you it will be the most amusing seven minutes of your day.

- 13 All the while, you managed to be the most physically active person at the Court. You were a keen runner of marathons – after all these years working with you, I am still at a loss as to why. I believe you have completed five marathons, totalling about 211km, the thought of which frankly makes me feel physically unwell. You have a passion for horse riding, or perhaps that is what you tell people to justify your rescuing of many a horse in need. I know that if I were to list off all the sports you have partaken in, I would miss at least five, one of which you likely only started this morning, so I will not attempt to do so.
- 14 Perhaps the best part about these stories is that they are not the least bit surprising to those who know you. You are an open book, always for the sake of bringing people together, and for that we are all the richer. You are incredibly capable, remarkably compassionate, and possess all the qualities of a great leader. For these reasons and more, you will make a great Chief Justice. The ACT is very fortunate.
- 15 This Court and the profession in this state will be much the poorer for your absence. Of course, we will miss you greatly. The blow of your departure is, however, softened by knowing that you will excel in your new role as Chief Justice of the ACT. We truly wish you all the best.