

SUPREME COURT OF NEW SOUTH WALES

ANNUAL CORPORATE LAW CONFERENCE

What is the Future of the Australian Business Corporation?

2019 Conference

Tuesday, 29 October 2019 at 2.20pm

Banco Court, Supreme Court of New South Wales,
Level 13, Queen's Square, Sydney

JUSTICE BELL: Thank you, Dr Austin. It is my very great
2 pleasure to introduce as a speaker at this conference and
3 to welcome to New South Wales and to the Supreme Court,
4 Justice James Edelman who has been Justice of the High
5 Court of Australia since January 2017, prior to that, a
6 member of the Federal Court and, prior to that, a Judge of
7 the Supreme Court of Western Australian.

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9 I might have the unique, I am not sure, pleasure of
10 having appeared in front of him in all three of his
11 judicial capacities. I have not yet appeared in front of
12 him in my judicial capacity, but he assures me he is
13 looking forward to it.

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15 He, of course, hails from Western Australian and then
16 moved to Queensland, two states which have produced
17 significant Australian corporations and been a boom for the
18 Bar and corporate lawyers in the challenges directors of
19 those companies have produced over the years.

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21 He was before, of course, taking up his position on
22 the court not only at the Bar in the UK, but Professor of
23 the Law of Obligations at Oxford University.

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25 He is going to address the conference on the future of
26 the Australian business corporation, a legal perspective.

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28 Please welcome Justice Edelman.

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30 [JUSTICE EDELMAN presented his paper (see separate attachment)].

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32 JUSTICE BELL: I would very much like to thank
33 Justice Edelman for his paper, which I thought complemented
34 very well indeed Professor Mayer's opening paper.

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36 One is dealing here both at the high level and the
37 detailed level of legal analysis and legal doctrine with
38 potential tectonic shifts to the corporations law Professor
39 Austin taught me 30 years ago. It is extremely
40 interesting.

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42 One of the very difficult questions which occurs to me
43 is what will drive and who will drive, if anyone, a move
44 towards more tightly defined corporate purposes. As
45 Justice Edelman said at the very conclusion of his paper,
46 it all really depends on the level of abstraction. The
47 more abstract, the less change one expects one would see.

1 So the question is who will drive the level and detail of
2 abstraction. It may be powerful investor blocks or social
3 investors like the foundations to which Professor Mayer
4 referred, or, at the other end of the spectrum, it could be
5 government and through legislative direction, but that then
6 runs into the problem that corporations are found across
7 the board.

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9 There are many valuable purposes which can be served
10 and one might doubt whether it is the role of government to
11 nominate and specify particular purposes. So an
12 interesting question is accepting the theory and accepting
13 how the legal doctrine as we have seen it develop will be
14 implemented.

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16 Anyhow, the first two sessions have been stand-outs,
17 in my opinion. They were very provocative, very
18 interesting indeed, and I look forward to the next two
19 sessions.

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21 Thank you very much. Thank you, Justice Edelman.

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23 DR AUSTIN: Ladies and gentlemen, we will adjourn now for
24 afternoon tea. I can't resist taking up the president's
25 theme by saying that the two papers we have heard
26 complement one another, and I suggest at least in this way:
27 if Professor Mayer's proposals were adopted, there would, in about
30 five years' time, be an important case or two in the High
31 Court of Australia in which the court's task would be to
32 determine exactly what the purpose of the given corporation
33 is. I think Justice Edelman has already written part of
34 the judgment.