

REMARKS ON THE OCCASION OF THE SITTING OF THE COURT OF APPEAL IN WAGGA WAGGA

Wagga Wagga Court House

The Hon A S Bell, Chief Justice of New South Wales

9 November 2022

I acknowledge the traditional custodians of the land, the Wiradjuri people, and pay my respects to Elders past, present and emerging and extend my respect to all First Nations Peoples in Wagga Wagga and the region.

I am joined on the Bench today by my colleagues Justice Tony Meagher and Justice Anna Mitchelmore, both members of the New South Wales Court of Appeal. Acting Judge of Appeal, Justice John Griffiths, born in Grong Grong and a former Dux of Wagga High School, thinks he should have been on the Bench. I have told him “Next time”! Acting District Court judge Stephen Norrish has also reminded me of his Wagga origins.

We are also joined on the Bench for this short ceremonial sitting by his Honour, Judge Gordon Lerve, who is the resident judge of the District Court of New South Wales based in Wagga Wagga and are grateful for his accommodating the Court of Appeal today in what is usually his courtroom. We are also very pleased to have sitting with us on the Bench their Honours, Magistrates Chris Halburd and Rebecca Hosking.

I also acknowledge those who have addressed the Court this morning, namely Deputy Mayor Jenny McKinnon, Mr Nicholas Broadbent, Public Defender, representing the NSW Bar Association, Ms Joanne Van der Plaat, President of the Law Society of New South Wales and Ms Linda Hansen, Deputy President of the South West Slopes Law Society.

Your kind words of welcome are most appreciated. I should also acknowledge that Ms van der Plaat, who hails from Cooma and who has made a special effort to be here today, has been a tireless advocate for regional law societies during her outstanding and energetic tenure as President of the Law Society.

The Court is acutely conscious that many in this region are currently bearing the brunt of flooding, and our thoughts are with them.

My researches have not extended to determining whether this is the first occasion on which the Court of Appeal or its predecessor, the Full Court of the Supreme Court of New South Wales, has sat in Wagga Wagga although many Supreme Court trials have been conducted in the famous Court House next door, including one by me as recently as last year: see *Eldridge v Wagga Wagga City Council* [2021] NSWSC 312.

From my previous experience sitting in Wagga, I am aware of the strength, professionalism and courtesy of lawyers in this city and the region.

It is a matter of pure coincidence, but historically significant nevertheless, that this year marks the 175th anniversary since the first sittings of the Court of Petty Sessions in Wagga Wagga. It is also the 175th anniversary of the construction of Wagga's first Court house in 1847.

Wagga's fourth courthouse, the famous Federation-era courthouse designed by Walter Vernon and constructed by Charles Hardy in 1902, with its square clock tower, belltower, decorative iron work and cedar joinery, is still in regular use today. We are sitting in the modern extension to that building which was opened by Attorney General Mark Speakman SC in March 2017. In November 2020, the Attorney paid tribute to members of the Breust family who, for almost six decades, had been climbing the city's courthouse tower each week without fail to wind the clock, a task which I understand is now performed by members of the Wagga Historic Engine Club.

The Court of Appeal has sat regionally in recent years in a number of different venues including Orange and Newcastle. It was certainly my intention, when President of the Court of Appeal, that it would sit more often in regional centres in appropriate cases, that is to say where the subject matter of the case had a strong local element or connection. That aspiration was interrupted by COVID but I know that the current President of the Court of Appeal, the Hon. Justice Julie Ward, shares my sentiment

that the Court of Appeal should from time to time sit in regional areas. Hence, our presence here today.

The question of the appropriate venue for the hearing of matters is often the subject of contention. The *Sydney Morning Herald* on the 6th of October 1888 reported a decision of Justice Foster of the Supreme Court given the previous day in the matter of *Barnett v Anderson* on an application for a change of venue in an action for breach of promise of marriage. The report recorded that:

“Mr. C.B. Stephen appeared for *the defendant*, and applied for a change of venue from Sydney to Wagga Wagga, on the ground that he was not likely to obtain a fair trial in Sydney, owing to an article having appeared in an evening newspaper in regard to the case; and that it would be more convenient and less expensive that the witnesses should attend at Wagga Wagga. Mr. Pring appeared for the plaintiff to oppose, and read an affidavit setting out *that the plaintiff* was not likely to obtain a fair trial at Wagga Wagga, owing to the defendant being a solicitor practising at Wagga Wagga, and therefore likely to be on friendly terms with residents who might be on the jury.”

The judge said that he saw no reason to change the venue, but at the same time he thought that plaintiff was blameworthy if she caused the article complained of to be inserted. He ordered costs to be costs in the cause.

I am happy to say that, in the appeal we will hear this morning, no one has questioned the choice of venue, still less the integrity of the tribunal!

Once again, I thank you all so much for the courtesy and warmth of your welcome. It is much appreciated by members of the Court. We look forward to future sittings in Wagga.

The Court will now briefly adjourn before the appeal is called for hearing.