

THE HON T F BATHURST AC
CHIEF JUSTICE OF NEW SOUTH WALES
FAREWELL CEREMONY
MONDAY 28 FEBRUARY 2022

1. Your Excellency Governor David Hurley, Governor-General of Australia and Mrs Linda Hurley; Your Excellency Governor Margaret Beazley, Governor of New South Wales and Mr Dennis Wilson; Chief Justices, fellow judges, distinguished guests, ladies and gentlemen. I would like to begin 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. I extend that respect to Aboriginal and Torres Strait Islander peoples here today. Our First Nations have suffered many injustices over the past two centuries. The courts, the legal profession and all those involved in the administration of justice must continue to work with our Aboriginal and Torres Strait Islander communities to ensure they are properly recognised and treated under the rule of law. I would like to thank Yvonne Weldon for agreeing to give the Welcome to Country today. It provides us with an opportunity to reflect upon both the relationship Aboriginal and Torres Strait Islander peoples have had with this land for over 65,000 years and the manifest injustices to which they have been subjected over the past 250 of those years.
2. President Bell, Attorney, Ms Warner, thank you for your extremely generous and quite undeserved remarks.
3. The purpose of this ceremony is not merely to see that I am really going and to shower me with totally unjustified praise. Rather, it is publicly to note the close of another chapter in the Court's history and let me thank those who have contributed to the running of the Court over the last ten and a half years and who have made those years the most stimulating and enjoyable of my career. In that vein, I would like to thank all those here today. You not only do me honour but you do the Court honour.
4. It is not possible to thank everyone individually who has provided me with such support. However, to those I do not mention, it's not because of a lack of appreciation but lack of time. You don't want to be listening to me at 4.00pm this afternoon.

5. I am going to part with tradition and thank Robyn and my daughters Emma and Sophie at the outset. Their support, particularly Robyn's, has been amazing and the advice they gave me when they thought necessary was always, or almost always, right. I will be forever grateful. One of the consolations of leaving office is that I will be able to see more of them. I do hope they feel the same.
6. When I was appointed in 2011, I was, to say the least, ill-equipped to carry out the role of Chief Justice. In the preceding few years, I had been practising in a relatively narrow field. I had never had to really deal with criminal law and procedure and only had a very general knowledge about the internal workings of the Court. I recall sitting on the Court of Criminal Appeal in the second week after my appointment and wondering what counsel were referring to when they talked at length about rule 4. I came quickly to realise the importance of rule 4 of the Criminal Appeal Rules. Notwithstanding such self-evident deficiencies, I was warmly welcomed by all the judges of the Court, who were ready to assist me at any time. Their welcome and assistance reflects the truly collegiate nature of the Court, something which I think is one of its greatest attributes.
7. The President of the Court of Appeal at the time of my appointment was Chief Justice Allsop of the Federal Court, who I am delighted to see here today. He was always willing to advise and assist me on matters of administration as well as substantive or procedural law. I am deeply grateful for that assistance. The Honourable Peter McClellan was the Chief Judge at Common Law. He was at the Court with me for a relatively brief time but in that period, he gave me great help and support.
8. The Chief Judge in Equity was the Honourable Patricia Bergin. She and I go back for many years before I came to the Court. She possesses not only great legal ability but immense common sense and empathy for other people. She was always on hand to assist me and from time to time dare I say, steer me on the correct course.
9. Chief Justice Allsop was succeeded by Her Excellency the present Governor of New South Wales, who was in turn succeeded by the President from whom you have just heard. Their intellectual capacity and collegiality significantly contributed to the outstanding reputation possessed by the Court of Appeal. It was a joy to work with each of them. I would also like to take this opportunity to congratulate the President on his appointment as Chief Justice. Having worked closely with him for three years, I have absolutely no doubt he will do a magnificent job.

10. I have also had extensive assistance from the subsequent Chief Judges of the Common Law and Equity Divisions of the Court. I don't need to tell those present here today of the outstanding contribution they have each made both intellectually and in their contribution to the smooth operation of the Court. Whatever success I have achieved is largely due to their work. Justice Ward has, of course, been appointed President of the Court of Appeal. Her breadth of experience at both trial and appellate level and the leadership qualities she has demonstrated as Chief Judge in Equity will make her an outstanding President.
11. The divisional structure of the Court plays a significant role in the Court's smooth functioning. However, it is important to remember that the Divisions are not separate entities, but part of the Court as a whole. To this end I have had weekly meetings with the Heads of Division, where issues confronting the Court were discussed. Interaction is also enhanced by all the judges who participate in the various committees of the Court. The work they do on these committees is a substantial burden in addition to their already heavy workload. I thank them for it.
12. In addition, there has been recently an increasing cross-fertilisation amongst Divisions. Appellate judges have been sitting in trials, both civil and criminal, whilst trial judges have been sitting on appeals on a regular basis. I regard this as important. Not only does it enlarge the breadth of judges' experience, but it leads to a greater appreciation of the different challenges faced at both appellate and trial level.
13. This occasion cannot pass with expressing my thanks for the work done by the judicial, registry and library staff at the Court. Without their skill and dedication, the Court would not function. Notwithstanding the pressure they have been under, particularly in the last two years, they have been unfailingly cheerful, calm and efficient.
14. During my time at the Court I have had two Executive Directors, Linda Murphy and Chris D'Aeth. They are both outstanding administrators who have kept the Court on an even keel notwithstanding the myriad of challenges they have faced. I would also like to acknowledge the work done by the Prothonotary, Rebel Kenna.
15. Throughout my time as Chief Justice, Victoria Bradshaw has been my Associate and Christine Leondis my Executive Assistant. They have each given me unswerving support and loyalty. Indeed, I understand that in the eyes of some people Victoria was the de facto Chief Justice. I can assure you that it was only partly true. I also thank my

driver, Sean Doherty, who has shown exemplary patience and discretion whilst putting up with me over the past 11 years.

16. One of the joys of this job has been the tipstaves who have worked for me. Without exception they have been highly intelligent, capable and enthusiastic. Most importantly they are fun to be around. I am so pleased that those of them who are in Australia are here today.
17. In my swearing-in speech I emphasised the importance of the relationship between the Court and the legal profession, both barristers and solicitors. The support of both branches of the profession has exceed my expectations and I think it is a testament to its current strength. Further, I could always count on the support of the Presidents of the Bar Association and the Law Society and their respective Chief Executive Officers. I thank them for it.
18. Another matter that is critical to the smooth operation of a court is a co-operative and respectful relationship between the Court and the Executive. I have been fortunate to have such a relationship with the Attorney General, his predecessors and the heads of the Department of Justice during my period in office. This was particularly important during the first two years of the pandemic, where the Court not only received significant technological upgrades, but also the prompt introduction of legislation and regulations which enabled us to function during this difficult time.
19. It would be easy to focus on the pandemic, but I don't propose to do so. However, I must say how proud I am of the manner in which the Court, both judges and staff, and the profession, both barristers and solicitors, responded to the challenges and embraced the technological solutions thrust on them. Their approach led to virtually no interruption in the disposal of civil matters and the resumption of jury trials at the earliest stage possible. This also demonstrated the usefulness of technological solutions in reducing costs and expense in litigation. These solutions will produce long term benefits to the Court, the profession and the public generally.
20. The Court has sought to maintain the international focus so much encouraged by my predecessor. In recent years it has lessened to some extent due in large measure to the pandemic. Nevertheless, it has continued. Only last week the Biannual Judicial Seminar on Commercial Litigation was hosted virtually by the Supreme Court of Singapore. Further, over the past eight years, Justice Ward and I have been responsible for the Judicial Section of LAWASIA which has brought members of the Court into

contact with the judiciary and profession of other countries in the region. It is important the Court maintains an outward looking focus and learns from the experience of other Courts.

21. Of equal importance, of course, is the relationship between the Court and other superior courts in the country. The work of the Council of Chief Justices promotes consistency in the operation of those courts and in their decision-making, something of critical importance in a federation. It also provides an opportunity for those courts to learn from each other's practices and procedures. On that note I am delighted to see that in addition to Chief Justice Allsop, the Chief Justice of Victoria, Chief Justice Ferguson, the Chief Justice of the Federal Circuit and Family Court, Chief Justice Alstergren and the Chief Justice of the Australian Capital Territory, Chief Justice Murrell are here today.
22. It would be presumptuous of me to outline the challenges that will be faced by my successor. However, there are two ongoing issues which still need to be confronted. The first is the need to increase diversity in the Court, not only gender but cultural diversity. With the number of lawyers from which judges are drawn becoming increasingly gender and culturally diverse, it is tempting to think diversity will occur over time without any focus on the issue. However, I do not think there is room for complacency. The increase in diversity in this Court has not kept up with the increasing diversity in the profession. Those involved in the selection and appointment of judges should have regard to this issue so that, to the extent possible, the lack of diversity is remedied.
23. The other matter which I think is of critical importance is that the Court must be seen to be a safe and secure environment for all those who work in it, regardless of their position, gender, sexual orientation, or any other matter. It is not enough to have a policy in place in respect to these matters. The policy must be understood, accepted as appropriate and acted on when necessary.
24. The two matters to which I have referred are critical if the Court is to retain the trust of the community, a matter vital to the maintenance to the rule of law.
25. I chose this time to retire, not because I had lost my enthusiasm for the position, but rather as the Court was moving to its 200th Anniversary, I believed it was time it be refreshed. Having regard to the calibre of my successor and the other judges of the Court, I am confident it was the right decision. My predecessor, James Spigelman, who

I am pleased to see here today, left the Court in wonderful shape. I only hope my successor reaches the same conclusion about the state of the Court as he finds it.

26. The Court will now adjourn.
