

**CEREMONY UPON THE OCCASION OF
THE SWEARING IN OF THE HON. JUSTICE ANDREW BELL
AS CHIEF JUSTICE OF NEW SOUTH WALES**

Banco Court

7 March 2022

1. Your Excellency and Mr Wilson, Attorney, Ms van der Plaat, Ms Reid, distinguished guests, members of the profession, ladies and gentlemen.

2. The Gadigal People of the Eora Nation have cared for and been custodians of the land on which we meet for thousands of years. I pay my respects to their elders, past, present and emerging. I extend those respects to all Aboriginal and Torres Strait Islander people and thank Ms Teela Reid for delivering a powerful acknowledgement to country. Ms Reid was recently a tipstaff in this Court, is a practising lawyer and has recently taken up an important position as the first Indigenous Practitioner in residence at Sydney University Law School. I acknowledge her important contribution to this occasion and also express my support for the “Uluru Statement from the Heart”. It is an eloquent, accurate and powerful statement, which looks forward to “a fuller expression of Australia’s nationhood” with great dignity. In the spirit of the Uluru Statement, I acknowledge the regrettable reality that this nation’s laws and legal system have so often in the past delivered the opposite of justice to our indigenous people.

3. One lawyer who for many years prior to his appointment to the Bench was at the forefront of seeking to address injustices to Aboriginal people was the Honourable Justice John Basten, the senior judge of appeal and one of the finest jurists in the Court's history. I was delighted to be able to present my Commission to him today. I must at the same time confess a degree of relief that his Honour apparently found no reviewable error in the Commission ... although perhaps he had some doubts about the justiciability of the issue! I thank Justice Basten for his kind words of welcome on behalf of the Court and his almost two decades of service on the Court of Appeal.
4. I also thank the Attorney for his generous remarks and for the confidence he has placed in me with this appointment. The Attorney's participation in and contribution to sittings of institutional significance such as this are greatly appreciated by the Court and, I am sure, by the entire profession throughout which he is widely respected.
5. I thank you, Ms van der Plaat, for your generous remarks and congratulate you on your ascension to the role of President of the Law Society.
6. Both the Law Society and the Bar Association play critical roles in the regulation and continuing education of the legal profession in this State. More than that, though, through their diverse activities, they seek to ensure that legal practitioners feel part of the profession in the proper and full sense of that word. It is a far more

diverse profession than when I commenced practice, and so much the better for that.

7. The practice of the law is quite deliberately to be contrasted with the conduct of a business. That does not mean that it cannot be vital and dynamic - it should be - but it does mean that the day to day work of lawyers is underwritten by the strong ethical requirements upon which their admission is conditioned, reflecting their status as officers of the Court.
8. I acknowledge the presence today of former Chief Justices Gleeson, Spigelman and Bathurst, the latter looking remarkably relaxed. Together these three significant figures form part of a long history of Chief Justices of New South Wales who have dedicated themselves to the service of the administration of justice in and of the State. I dedicate myself to the same honourable goal. My predecessors set a very high standard for the role of Chief Justice. That was entirely appropriate and I am deeply honoured to have been entrusted with the large responsibility of maintaining that standard.
9. I do hope that, in the discharge of the office, I will exceed the assessment of a high school teacher of mine who wrote on one of my school reports: "Results quite good but the obvious tends to elude him".
10. Before moving on, I must acknowledge another Chief Justice and a man for whom I have the deepest admiration and affection. That is, of course, Sir Anthony Mason whose 97th birthday I look forward to celebrating next month. His presence here today means so

much to me, as indeed does the presence of all of you who do me and the Court great honour by your attendance.

11. Everyone in this Court room can count him or herself fortunate, and I am sure would join with me in expressing profound sympathy and sorrow for the thousands of our fellow citizens who have sustained devastating loss on account of the terrible floods in northern New South Wales and Queensland. Our thoughts and hearts are with them, as they are with the people of the Ukraine who are confronting a different but still terrible tragedy.
12. Today I assume the stewardship of a highly respected institution which, thanks to Tom Bathurst's leadership of which I spoke a week ago, is in very good shape indeed. It is constituted by a fine cohort of dedicated judges, assisted by an equally dedicated band of Associates, tipstaves, registrars, librarians and court and registry staff and reporters. I thank them for the often unheralded work they all do in supporting the Court and the administration of justice in New South Wales. I look forward to continuing to work with them all.
13. My values as a lawyer and judge are, I hope, well known. I place great store on legal excellence and intellectual honesty, hard work, decency and integrity, civility in the practice of the profession and in the conduct of hearings, and collegiality within the Court and in the wider profession. It has always been both my view and my experience that institutions and organisations work best and thrive if their environment is mutually supportive, co-operative and congenial. This is scarcely "rocket science" but it is sometimes lost sight of. Judges of this and other courts and the magistracy work

under enormous pressure and it is important that they derive satisfaction from and are not overborne by their work. It is also important that their industry and contributions are valued and acknowledged.

14. To be appointed a judge is a high calling and the judges and magistrates of this State should be proud of the work they do. It is difficult work and, as Paddy Bergin recently observed, judging is not for the faint-hearted; it is for the strong-hearted. It takes strength to make difficult decisions; it takes strength to deal with the subject matter of many cases, particularly in the criminal sphere; and it takes strength to deal with the sheer volume of work before the Courts. But this strength must be tempered by a lived understanding of human nature, compassion, respect and empathy, an informed appreciation of systemic social problems, and an innate sense of fairness both in terms of substantive outcome and the procedure by reference to which that substantive outcome is achieved.

15. The significance of the work of the Supreme Court of New South Wales extends far beyond the resolution of the several thousand cases it deals with each year. As important as the quelling of controversy in any given case is to the parties involved, every decision given reinforces and publicly affirms the fact that we have, in this State, a system of justice that is administered fairly and impartially, in open court, by judges who are independent of the executive government, and who are of the highest integrity and calibre. It is a system of justice in which the citizens of New South

Wales may have confidence and without which the rule of law on which our democracy rests would be an empty letter.

16. In just over two years' time, the Court will mark its bicentenary. That milestone will be celebrated, as it should be, not simply for its own sake but because of what it says about our society and its enduring values, the preservation and enhancement of which are central to the Court's broader role of which I have spoken. This message is important.
17. I do not want to see a society where, for example, despite the clear and unanimous rulings of a series of superior courts, a significant percentage of the population does not accept the outcome and integrity of a democratic electoral process. Where is respect for the judiciary and the recognition or understanding of the importance of its role and independence in this?
18. Nor do I want to see a society in which a political leader says, as a former United States President is reported to have said, that he expected his judicial nominees to the "do the right thing" by his or her appointor. That frankly medieval notion is anathema to and corrosive of a fundamental tenet of a modern democracy.
19. These examples supply powerful reasons why public education as to the role of the courts, the importance of judicial independence and respect for the rule of law in our civic society is essential. The celebration of the Court's bicentenary will be important in this regard.

20. For the immediate future, my strong hope is that 2022 is the year which sees the reversal of the unintended but insidious de-personalisation of the legal profession brought about as a result of Covid. That is not to criticise the legitimate and responsible public health measures that were imposed, the legality of some of which were upheld in this Court. But it is to observe that, whilst the remote practice of law may be possible, it is far from desirable.

21. The administration of justice is best served in open court for reasons which are profoundly important. More than that, though, the absence of practitioners from chambers and solicitors' offices will sap them of vitality and will stunt the personal growth and professional development of young lawyers in particular. An essential part of being a good lawyer is understanding people and human nature, how others react to different situations, perform under pressure and interact with each other. So much of this is lost in a professional practice or hearings reduced to scheduled zoom or MS teams meetings. What hope, moreover, is there for achieving work/life balance in the profession when work takes over the living room or bedroom at home and further blurs an important distinction?

22. It is incumbent on senior members of the profession to take the lead in the return to professional life as we knew it more than two years ago. Just as there is nothing quite so demoralising as walking down a strip of shops to find half of them empty, chambers and solicitors' offices which are half full will rapidly lose their soul and personality. That would be a very bad thing. It must not happen.

23. I do not mean by this to suggest that there are not real opportunities and benefits presented by the technology with which we have all become familiar with and the concomitant advantages of workplace flexibility and significant cost savings. Both of those considerations are very important. Moreover, as we have seen, the use of technology to broadcast the workings of the Court to large audiences, as happened for example in relation to the Queensland Floods litigation and the challenge to the Covid-19 Regulations, significantly enhances the public's access to and understanding of the workings of the courts.
24. Contrary to the opinion of my colleague, the Chief Judge at Common Law, I ascribe the popularity of the live streaming of these cases not to his charisma, magnetic though it may be (for a Taswegian), but to the genuine public interest in the subject matter of the cases and in the legal process. On the other hand, there is perhaps something in the Chief Judge's point that the numbers dropped right off when both cases went to the Court of Appeal.
25. On the subject of the Court of Appeal which I have had the privilege of leading for three years, I do want to say just this. It is, in my view, not only as strong an appellate court as any in the common law world but it is also one whose capacity for hard work is probably without equal. I would not expect that to change under the incoming President, Justice Ward, whose work ethic and dedication to the discharge of her judicial duty is second to none. Her role in the Court has been and will continue to be central to its success and high reputation. I very much look forward to continuing to work with her, with the telegenic Justice Beech-

Jones, another outstanding lawyer and excellent administrator, and the incoming Chief Judge in Equity.

26. Pursuant to the *Judicial Officers' Act 1986* (NSW), the Chief Justice is the President of the Judicial Commission of New South Wales. I am delighted that the members of the Commission are present today and take the opportunity to pay public tribute to the work of the very recently retired Chief Executive of the Commission, Mr Ernie Schmatt AM PSM who has served the administration of justice in the State in that role for the last 33 years.
27. On a personal note, three years ago I acknowledged my family for their great love and support. Three years on, Lucy is gainfully employed and a very witty and amusing young woman; Tom has scored more runs, left school and is now at the ANU although I am so pleased he is here today; and Jo's very large job at ASIC has become even larger: a more dedicated and hard working senior public servant, and a more supportive and loving partner, I could not imagine. To all of them, and my mother Pamela who I am also thrilled is here today, I owe an enormous debt. I thank them for their love and support, which is wholly reciprocated.
28. And so, to work.
29. The Court will now adjourn.