

**IN THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT**

**BATHURST CJ
AND THE JUDGES OF THE
SUPREME COURT**

Monday 3 December 2012

**FORMAL CEREMONY
IN HONOUR OF THE RE-OPENING OF BANCO COURT
AND
100 YEAR ANNIVERSARY OF THE COURT OF CRIMINAL APPEAL**

- 1 **BATHURST CJ:** Your Excellency, the Attorney General, Chief Justices, your Honours, distinguished guests, ladies and gentlemen, welcome. I would like to start today by acknowledging the Cadigal people of the Eora nation and paying my respect to their elders, past and present. As noted by the first Chief Justice of this Court, Sir Francis Forbes, the Aboriginal people have been custodians of the land on which we meet today for thousands of years.
- 2 It is fitting that as we gather to celebrate significant milestones of this Court's history, we recognise this continuing tradition.
- 3 I would, therefore, like to invite Michael West, who is the cultural representative of the Metropolitan Local Aboriginal Land Council and a delegate to the National Congress of Australia's First Peoples, to deliver a welcome to country.
- 4 Thank you, Michael.
- 5 **MR WEST:** Good morning, my brothers and sisters.

- 6 This beautiful land you meet on, obviously, is a land of the Cadigal people of the Eora Nation, one of the twenty-nine clans of the Eora Nation.
- 7 It is important - the onus is on all Australians - to learn, understand and appreciate the oldest living, continuing culture in the world today. There are great things to learn about community, about understanding the cycles of mother nature, understanding that we are all connected in the scheme of things in the cosmos - from me to you, to the person sitting beside you, to the beautiful whales that come into the Harbour here, part of the totems of the coastal clans and considered elders of the sea, to the fish, the kangaroos, the dugongs, the emus, to me and you, to the drops of rain that are falling on our heads and the particles of dust in the wind. Everything is connected in the cosmos.
- 8 I would also like to acknowledge, not only all the Cadigal of the Eora, but to pay my respects to all Aboriginal and Torres Strait Islander traditional owners, elders and custodians of the past, present and future, who look after this wonderful land, the spirit of the country and culture that we now enjoy called Australia.
- 9 I would also like to pay my respects to all our ancestors who have gone before us. We are the sum of all those who have gone before us, both in our very DNA, our society, our culture and our family traditions.
- 10 I would like you to consider your journey. Everyone has a path and journey in life.
- 11 I have also brought this with us to give you, from the Metropolitan Local Aboriginal Land Council. It has been created by Graham Toomey, a director of the Boomalli Arts Cooperative, and myself. It is a message stick. A message stick is culture. It is about consistent message. Traditionally, the bearer of this would be able to go onto the land. They would have diplomatic immunity and they would be able to talk to the

elders and deliver their message and go onto the next land, the next tribe or the next clan and deliver that message, with safe passage.

12 We have put journey lines on there. Everyone has a path and a journey to find what is best for them. The dots represent time, the concentric circles represent places.

13 Now, everyone has their own journey, their own path. Therefore, the places will be their own interpretation of this.

14 We have also put the scales of justice on there. We have put on the hundred years of the Criminal Court of Appeal and we have put on Banco Court's re-opening, to celebrate that. We have put in honour, yarn, stories, peers, law, justice, rights, duty and freedom.

15 We have done this for you to have, to look at as recalibrating your senses and your duties and how society considers what the law has meant to us.

16 I would like to welcome any of my Aboriginal and Torres Strait Islander brothers and sisters from wherever you come from; from the land, the tribe, the nation and the clan you have come from. Welcome to all our brothers and sisters, and we all are brothers and sisters. We belong to one tribe, ultimately, the tribe of humanity.

17 We would like to welcome you from the land, the community, the neighbourhood and the family you have come from, to this, the ancestral land of the Cadigal people, the Eora land, Aboriginal land. Always was, is, and will be Aboriginal land.

18 A welcome to country has two components: it is about history and it is about rules. A little bit about the history: George Street is an ancient Aboriginal track. Along there would have been going trade, commerce. People would have been going together along there for men's business,

women's business, initiation ceremonies and corroborees. We have been on this land more than 60,000 years.

19 We do want you to really have a special day here today. It is a special day, isn't it, when we think of the history of the law in New South Wales.

20 I was thinking that a hundred years ago, Aboriginal people weren't even considered people. We have come a long way. We have a long way yet to go, but let us all work together and walk together, for a better country, and let us show the rest of the world what we can do as Australians. Thank you.

21 I will present this to you to give to the appropriate persons.

(Message stick presented).

22 **BATHURST CJ:** Thank you, Michael, and thank you for the gift. It is a remarkable memento of the occasion and will be kept in the precincts of the Court to remind us of our responsibility to all members of the community.

23 I would like to particularly acknowledge today the presence of her Excellency, Professor Marie Bashir, Governor of New South Wales, Chief Justice French of the High Court of Australia, Chief Justice de Jersey of the Supreme Court of Queensland, Chief Justice Warren of the Victorian Supreme Court, and Chief Justice Bryant of the Family Court of Australia. Your attendance honours the Court.

24 Today marks a significant day in the history of the New South Wales Supreme Court. This morning we celebrate both the re-opening of the Court's Ceremonial Banco Court, following refurbishment, and mark the centenary of the Court of Criminal Appeal. Both of these institutions are of significant historical and contemporary importance and we are privileged to have the opportunity to acknowledge that today.

- 25 There are many people to thank, both for the impressive surroundings in which we find ourselves and for the refurbishment of the Law Courts building generally. First, my sincere thanks, on behalf of all members of the Court, to both the present and past State Governments and, in particular, their respective Attorneys General, for their recognition of the importance of this building and their commitment to its refurbishment. Your support has ensured that the Court will be able to provide litigants and staff with the best possible facilities and environment, as indeed it should.
- 26 There are two other people, both of whom are here today, who we should particularly thank. The first is my predecessor, the Honourable James Spigelman. His unwavering commitment to the refurbishment was instrumental in the State Government's decision to embark on the project. The second is the Honourable Michael Black, who conceived of the idea for the Federal Court's refurbishment. His vision provided the catalyst for the Supreme Court's own renovation. My sincere thanks to both of you.
- 27 Some of you may have noticed the new coat of arms behind me. It provides a striking and innovative centrepiece to this ceremonial Court and is a fitting symbol of both the dignity of our surroundings and of the Court's modernisation. The Court is indebted to both the New South Wales Bar Association and the Law Society of New South Wales for their significant financial contributions to the coat of arms and, of course, to Janet Lawrence and Jisuk Han, the designers of the work. In Janet's own words, the piece is a "contemporary artwork that has been inspired and drawn from the coat of arms, to have an illusive and perceptual quality; reflecting light and movement so that the work can be experienced rather than merely seen by those in the courtroom".
- 28 My thanks are also due to Justices Sackar and Ball. When the Court decided to commission this work, it was gently suggested in some quarters that I might benefit from a little help in overseeing the design details. I am

not quite sure what this was intended to imply about my taste in contemporary art. Thankfully, Justices Sackar and Ball have provided a wealth of knowledge in this regard and I am indebted to them both for their assistance.

29 I would also like to extend my thanks and gratitude to the contractors and builders who have worked on the restoration over the last 14 months. You have created what I can say without exaggeration is a magnificent courtroom. I must particularly thank Gary Fitzhenry, Kerry Marshall and Malcolm Levy, who have overseen the refurbishment process. Many other people have also contributed. I cannot hope to acknowledge every person who is deserving of it, but to each and every one of you - from the architects to the builders to the cleaners - thank you.

30 In 1937, in anticipation of a redevelopment of the law courts which never came to fruition, Sir Kenneth Street set out the Supreme Court's requirements in detail. He stated:

“The ... Banco Court ... should be larger than the other Courts and be specially fitted to accommodate a large crowd ... care should be taken to give the courtroom ... an impressive and dignified appearance ...

Ample access ... must be provided. The public must be able to reach the galleries or public part of the Court ... without confusion with the profession, litigants ... [or] witnesses ... [the Court] must have high ceilings ... [and] light is a matter of special importance ... this will enable the Courts to be administered with the least possible confusion to the public ... and the work of administration to be carried on with the maximum of efficiency.”¹

31 I have no doubt that Sir Kenneth would be as pleased with the results of the refurbishment as we are.

32 Today's ceremony also marks a recognition that the physical surrounds of a courtroom have a significance far beyond their mere appearance. As Sir

¹ Sir Kenneth Street, “Proposed New Law Courts: Notes on Supreme Court Requirements” (1937) (Collected by Sir Laurence Street and donated to the Law Courts Library, copy on file).

Kenneth Street also said, the courts “not only exist for the public but ... function in the presence of the public”.² The Law Courts building is a physical embodiment of the fundamental tenets of the legal system and exists in the public consciousness as such. It is a powerful symbol of justice and the rule of law.

- 33 The physical environment of a courtroom also plays a central role in maintaining calm and dignity in proceedings. It emphasises judicial authority and impartiality, and the legitimacy of the legal process. It has a significant influence on whether litigants feel that justice is accessible to them. In 1977, when the Supreme Court moved to the Law Courts building, the then Attorney General, Mr Walker, stated that the building had been designed to avoid people being “scared out of their wits” when going to court, and that the new courtrooms would create a more “humane atmosphere”.³
- 34 Rather less graciously, a lawyer touring the facilities commented that the courtrooms looked “just like McDonald's”. He hastened to add that this was a good thing as “courts belong to the people and they should feel comfortable there”.⁴ I do not think anyone could accuse our current surroundings of resembling a fast food outlet, at least I hope not. However, each courtroom, including this one, has been refurbished with the aim of ensuring accessible justice - both through facilities and design - to great success.
- 35 The quality of court facilities also has a substantial and direct impact on the administration of justice. It is worth remembering that the Supreme Court has not always enjoyed facilities as conducive to that end as this courtroom.

² R. Annable, *A Setting for Justice: Building for the Supreme Court of NSW* (2007: UNSW Press) 148.

³ Sydney Morning Herald, “‘Humane’ Courtrooms Opened by Premier (2 February 1977).

⁴ Ibid.

- 36 In the first decades of the New South Wales Supreme Court, the courtroom used as an unofficial Banco was so small that members of the jury would squash in at the bench alongside the judges. Directions took on a whole new meaning.
- 37 Even into the twentieth century, holding civil jury trials in Old Banco - the courtroom we now call "St James Road" - involved the difficulty that the jury room was so close to the street that interested persons could get near enough to hear their deliberations. It was necessary to station a court officer on St James Road to bat away potential snoopers.⁵
- 38 Reflecting on this history should make us all the more appreciative of the facilities which the Court now enjoys, including this ceremonial Banco Court. Of course, courts are not mere buildings or physical infrastructure. Their most vital component is what I might describe as judicial infrastructure. This Court has been privileged for many years to have judges of the highest intellectual quality and integrity, in sufficient numbers to enable it to cope with continually increasing demand. I have no doubt that this will continue into the future, and that this excellent refurbishment will be of great assistance to the judges of this Court as they carry out the vitally important task of administering justice in this State.
- 39 As I have already mentioned, today we celebrate not only the re-opening of the Banco Court, but also the centenary of the Court of Criminal Appeal. Unsurprisingly, their history is closely interlinked. The Court of Criminal Appeal regularly sat in Old Banco in the early twentieth century. St James Road has again been used for this purpose during the refurbishment. When the Supreme Court relocated to the Laws Court building in 1977, provision was also made for this Banco court to be used for criminal appeals. The Court of Criminal Appeal has and will continue to sit in this courtroom when the Chief Justice presides.

⁵ R. Annable, above n 2, 146.

- 40 Of course, the Court also has a long and distinguished history of its own. Justice McClellan will speak in more detail about this at tonight's dinner in honour of the Court's centenary.
- 41 Both the establishment of the Court of Criminal Appeal and its ongoing work over the last 100 years have been matters of intense public interest. This is not surprising. The administration of justice in criminal matters is of momentous importance to the community, touching fundamental concerns about safety and social cohesion.
- 42 This point was well made by the Honourable Fred Flowers in 1911, when reading the Criminal Appeal Bill for a second time. Whilst noting that those acquainted with the “labyrinths of the law” may have been better fitted to introduce the Bill than he, he emphasised that this was not “a matter which belongs purely to those whose occupation takes them to the courts”.⁶ He went on:
- “A question affecting the law in its relation to the people ... is one that ... affects our everyday life, and, as a matter of fact, everything in connection with our well being ... Law and order in the community, the protection of life and property, the punishment of those who do wrong, it must be admitted are some of the most serious and important considerations of a civilised state.”⁷
- 43 The Court of Criminal Appeal is also a forum where the importance of the rule of law, due process and the protection of individual rights become starkly apparent. The establishment of the Court was itself an affirmation of those principles, and formed part of the ongoing reform of criminal justice in this State from its more draconian colonial roots.
- 44 Prior to the Act passing, while there were full rights of appeal in civil cases, convicted persons had only a limited right of appeal on questions of law.⁸ The only way to obtain a review of a conviction based on factual error was

⁶ *Parliamentary Debates*, Legislative Council, 5 December 1911 (The Hon. F. Flowers).

⁷ *Ibid.*

by petitioning the Minister of Justice to re-investigate the case if new facts came to light.⁹ This mechanism was almost never used. The situation in New South Wales, however, was far superior to that in England, where there was almost no way of challenging the decision of a judge or jury at trial.¹⁰

- 45 A number of high profile miscarriages of justice in Britain around the turn of the century eventually led the English parliament to pass the *Criminal Appeal Act* in 1907. The New South Wales Criminal Appeal Bill closely mirrored its English counterpart. While the Bill was widely supported, it was not without controversy. Fears were expressed that allowing criminal appeals would undermine the jury system and overwhelm the appellate Court with 'frivolous applications'. Ultimately, however, the importance of protecting individual rights, ensuring due process and protecting public confidence in the administration of justice proved stronger. As was said at the time:

“It is a reflection on our sense of justice that any man being tried for his liberty or his life has not the same rights and privileges as he who would seek redress in a matter of a few shillings.”¹¹

- 46 The *Criminal Appeal Act* was passed in 1912. The Act provided for an appeal as a right on points of law and on questions of fact and sentence with the leave of the Court.¹² Those remains the bases for appeal today.
- 47 The administration of the Court of Criminal Appeal in the early years of its existence was described as severe but not undeservedly so.¹³ The Court did have a formidable reputation. Appearing before the Criminal Appeal Bench in Old Banco was enough to strike fear into the heart of the most experienced criminal barrister. In the 1940's, the first Public Defender of

⁸ *Parliamentary Debates*, Legislative Assembly, 5 July 1911 (Mr Wade); *Parliamentary Debates*, Legislative Council, 5 December 1911 (The Hon. J Garland); J.M Bennett, *A History of the Supreme Court of New South Wales* (1974: Law Book Company) 182.

⁹ *Parliamentary Debates*, Legislative Assembly, 5 July 1911 (Mr Wade)

¹⁰ J.M Bennett, above n 8, 182.

¹¹ *Parliamentary Debates*, Legislative Council, 5 December 1911 (The Hon. F. Flowers).

¹² *Criminal Appeal Act 1912* (NSW) s 5.

NSW, Gordon Champion, was inspired to pen the following poem, entitled “Old Banco”:

“In a setting severe, aloof and austere,
Sir Freddy, Sir Percy, Sir Tom,
administer law, as applied to the poor
With dignity, grace, and aplomb.

This trinity deals with a man who appeals
And lest he should do something worse he
Is sent back to gaol, unrepentant and pale,
By Sir Freddy, Sir Tom and Sir Percy.

They NEVER uphold an appeal, so I'm told
To dismiss one, they're ALWAYS quite ready,
And I'd tremble with fear if I had to appear
Coram Percy, Sir Tom or Sir Freddy.”¹⁴

- 48 I will admit that reading this poem makes me a little envious. I have been called all manner of things over the years, but “graceful” has never been one of them. Nor, to my knowledge, have any members of the Bar written an ode to me. I should add that Mr Champion must have written this poem on a bad day. Sir Frederick Jordan was one of the finest Chief Justices to grace this Court and a perusal of his judgments in the area of criminal law shows an appreciation of the rights of accused persons well in advance of its time.
- 49 Many important reforms have taken place since the establishment of the Court of Criminal Appeal. During the move to the Law Courts building in the late 1970s, a hangman's noose was discovered stuffed in the bottom of a filing cabinet in the Sheriff's office in King Street. With it was the hangman's black hood and leather straps for binding limbs.¹⁵ It was a macabre but apt reminder of the reforms in criminal law that have taken place since that building was constructed and in particular since 1939, when the last person was hanged in New South Wales¹⁶ – although I

¹³ J.M Bennett, above n 8, 183.

¹⁴ Gordon Champion, “Old Banco” (copy on file, provided by Don Champion).

¹⁵ Sydney Morning Herald, “A grisly memento as court changes house” (17 January 1977)

¹⁶ John Trevor Kelly was the last person hanged in NSW, although the death penalty for murder was not abolished until 1955, and for treason and piracy until 1985.

should add that just last Wednesday, in an Australian first, the Court of Criminal Appeal made orders acquitting a man who had been sentenced to death in 1947 and had passed away in 1977 of natural causes, so we are not so far from that past as we sometimes are pleased to assume.

50 It is fair to say that history hangs heavily over the Court of Criminal Appeal. History is also made there.

51 Another such moment occurred in April 1999 when Justices Beazley, Simpson and Bell sat as the first all female Appeal Bench in the common law world. The sitting was a welcome symbol of the increasing diversity of the judiciary and legal profession, a trend which has continued over the last thirteen years.

52 History has also been made through the Court's judgments. Take *R v King*.¹⁷ In that case, the defendant brutally assaulted the complainant, who had refused to abort her pregnancy by him. The assault caused the loss of the child. The issue on appeal was whether the killing of a foetus could constitute grievous bodily harm against the mother. Then Chief Justice Spigelman held that the "close physical bond between the mother and the foetus [was] of such a character that ... the foetus should be regarded as part of the mother". *R v King* substantially contributed to the amendment of the Crimes Act to include the destruction of the foetus of a pregnant woman within the definition of grievous bodily harm, an amendment which has since been followed in several other jurisdictions.¹⁸

53 Many bizarre stories have also come before the Court of Criminal Appeal. In 1953, Sydney was struck by a thallium poisoning craze. Thallium, a pesticide, caused "blindness, insanity and death" when ingested. In that year, more than twenty-one people either took or were given thallium.¹⁹ In the same year, the Court heard an appeal from a Mrs Grills, who had been

¹⁷ *Regina v King* [2003] NSWCCA 399

¹⁸ See for eg: *Crimes Act 1958* (Vic) s 15; *Crimes Act 1900* (ACT) Dictionary.

sentenced to death after being convicted of the attempted murder of her sister-in-law, Mrs Lundberg.

- 54 In dismissing the appeal against conviction, Justice Owen noted that a “jury might have hesitated to convict a kindly affectionate woman such as Mrs Grills appeared to be”, were it not for the extraordinary series of thallium poisonings that had occurred in her immediate circle of family and friends.²⁰
- 55 It appears that in the previous five years, Mrs Grills had successfully poisoned two distant relatives, a friend, and both her daughter - and son-in-law. The latter had become ill after eating candied ginger prepared by the defendant for her ultimate victim, Mrs Lundberg. The case has already been the subject of a documentary and it would not surprise me if it had made its way into the plot line of at least one classic British murder mystery.
- 56 Today is a day of celebration. It is a time to commemorate the important contribution that the Court of Criminal Appeal and, in particular, the Judges of the Common Law Division, have made to the administration of justice in New South Wales over the past century. It is, however, appropriate that as we acknowledge the history of both the Banco Court and Court of Criminal Appeal, we also reflect on the vast spectrum of human stories that make up their history. This Court has borne witness to stories of violence, death, grief, dignity, survival, redemption and justice. In this room, closure has been brought to victims and their families, and wrongs have been accounted for.
- 57 The history of Banco and the Court of Criminal Appeal are testament to the importance of the courts, both in the broad sweep of history and progress and in individuals' lives. I can think of no better testimony to the continuing

¹⁹ Sydney Morning Herald, “Sydney’s Public Life Came Under Spotlight in 1953” (31 December 1953).

²⁰ Sydney Morning Herald, “Mrs Grills Denied Leave to Appeal” (10 April 1954)

significance and resonance of the rule of law in this State than the history we are marking today.

58 It remains only for me, once again, to sincerely thank you all for being here this morning, as we mark this milestone in the Supreme Court's history and inaugurate the surroundings in which future chapters will be played out.

59 **THE HONOURABLE GREG SMITH SC MP ATTORNEY GENERAL OF NEW SOUTH WALES:** Your Excellency, Chief Justice, other Chief Justices, your Honours, retired Judges, my colleagues, ladies and gentlemen, I hope you will forgive me for signalling out one other person in this distinguished company we are in this morning. Former Justice Jack Slattery QC who, at 94 years of age, is most likely the most senior of the retired Judges in this room and has served in this Court.

60 I am delighted to be given the opportunity to speak of the history of the Banco Court, particularly how its physical appearance, location and usage has changed over time. Banco Court means a place where the Full Court sits en banc, French for "on a Bench". In the most literal sense, it is a Court sitting in which all the judges participate.

61 Early in the Supreme Court's history, it was practical for every Judge to take a seat on the Bench and determine a case. However, as the Supreme Court's operations expanded, the definition of a Full Court sitting adapted accordingly as it became impractical for every Judge to convene on the Bench for anything other than ceremonial occasions, such as today, or to mark the swearing-in of a new judicial officer or the retirement of a Judge of Appeal.

62 Considering that the Court's composition has, over time, increased from the full complement of four judges in 1827, to the 51 judicial officers currently on the Court, it is easy to understand why "Full Court sitting" has come to mean a Bench of five Judges only.

- 63 Without any disrespect intended, aside from the difficulties inherent in incorporating opinions of 51 judicial officers into a single cohesive judgment, the time and effort required to seat the Full Supreme Court regularly on the Bench might considerably increase hearing estimates and listing delays.
- 64 In addition to being the place in which the Supreme Court convenes for Full Bench sittings or to mark significant events, the Banco Court is traditionally regarded as the Chief Justice's Court and, except for some rare exceptions, it is the Courtroom in which any appeals over which the Chief Justice presides will be heard.
- 65 However, when Sir Francis Forbes was appointed the first Chief Justice of New South Wales in 1824, the Supreme Court had no dedicated Banco Court. For approximately the first 70 years of its existence, Court 2 in King Street, not far from here, simultaneously served as this Banco Court and a trial Court.
- 66 The Court's first purpose-built Banco Court formed part of the final substantive building to be constructed along the St James Road frontage of the King Street site. Work on its foundations commenced in December 1894 and it was completed in time for the start of law term in February 1896.
- 67 Perhaps fittingly, the Supreme Court's first dedicated Banco Court was designed by the New South Wales first government architect, Walter Liberty Vernon.
- 68 Vernon purportedly drew inspiration for his design from St Stephen's Court in Dublin and employed a style that was described as a free adaptation of the Georgian. His design was praised at the time, not just for its originality and ornate beauty, but also its practicality. The new building facing St James Road was described as being "bright and pleasant", an atmosphere

attributable to the skylight and windows installed near the ceiling, whose purpose was to draw additional natural light into the Courtroom.

- 69 We take a moment to consider our current surroundings, particularly the light streaming through the magnificent windows installed here in Banco, it seems some design solutions withstand the test of time.
- 70 Although Vernon's Court is still used today as a trial Court and is now affectionately called "Old Banco", it ceased its role as the Supreme Court's Banco Court in 1977, when this building, the Law Courts Building, opened and the Banco Court was relocated to level 13 here.
- 71 It is fair to say that, by 1977, although the intricate beauty of Vernon's original Banco Court design was still a thing to admire and respect, the Supreme Court had well and truly outgrown its quaint, colonial dimensions.
- 72 When Vernon designed the original Banco Court in the 1890s, a full sitting of the Supreme Court was achieved when all seven of the Court's Judges were seated at the Bench.
- 73 By 1977, the Court had grown to comprise 36 judicial officers and the Bench in the new Banco Court was split across two levels, providing seating for 17 judicial officers on the front Bench and 19 on the second tier. In addition, where Vernon's original Banco Court offered public seating for just 80 people, the new Banco Court included seating for more than 300 people, across three-tiered public galleries.
- 74 The dramatically increased capacity in the new Banco Court not only provided greater community and media access to significant Court sittings, but also reflected the growing number of lawyers admitted into the profession each year before the Chief Justice, while proud family or friends watch on from the public galleries. I expect some of the people here today were admitted into the legal profession in a ceremony held in this very Courtroom with the tiered seating, no doubt, packed to the rafters.

- 75 If you can think back to that day, I expect that the sheer size of the Banco Court's public galleries might have left its own specific impression upon you. If so, you are not alone.
- 76 In an article entitled "The Wran Royal Commission" on 17 May 1983, the journalist, Evan Whitton, described the Banco Court in the following terms:
- "Amphitheatrical is the word for Sydney's new Banco Court. On the thirteenth floor of the law court' building in St James Square, it has tiers of seats, in a nice purple cloth, rising on three sides. The carpet is grey: The barristers' seats in the well are bright blue, and the judge's, on the bench above the well, black and high-backed. Behind the Bench is a wall in rosewood or some such, relieved by the Coat of Arms in metal, inscribed with the words 'Dieu et mon droit'."
- 77 While the Banco Court, with its tiered rows of seats quite close to the action, put some in mind of an upmarket Nimrod Theatre, the position of the press gallery puts reporters in, as it were, the Richie Benaud slot, that is, they could bound the pitch at the magistrates from behind and above the bowler's arm.
- 78 Perhaps Mr Whitton would have been gratified to learn that the Court itself indirectly acknowledged the new Banco Court's resemblance to modern commercial theatres when, in 1999, it temporarily became a stage.
- 79 As to Mr Whitton, I remember seeing him in a very plain District Magistrates Court in Dublin where we were seeking the extradition of Robert Trimbole.
- 80 As part of the program of activities to mark the Supreme Court's sesquicentenary in 1999, the former Chief Justice, Jim Spigelman, agreed that Banco Court should play host to a re-enactment of the 1944 trial in the matter of the *Attorney General v The Trustees of the National Art Gallery of New South Wales and William Dobell*, which received national attention at the time.

- 81 The subject of the trial was Dobell's portrait of his friend and fellow artist, Joshua Smith, which was awarded the prestigious Archibald Prize in 1943. The decision to award the prize to Dobell was controversial and members of the conservative Royal Art Society sought to overturn the award, arguing Dobell's painting was not a portrait, but a caricature and ineligible for the competition.
- 82 Based on information supplied to him by members of the Royal Art Society, the Attorney General commenced proceedings against both the Trustee and the artist, William Dobell. The Attorney sought an injunction preventing payment of the prize money, and a declaration of the Trustee's decision to award the prize was contrary to the terms of the trust and, therefore, void.
- 83 Needless to say the Attorney's petition was unsuccessful and unlikely to be followed.
- 84 Justice Roper found that Dobell's painting, while exaggerating some physical characteristics of the subject, bore a strong enough resemblance to Joshua Smith to undoubtedly be considered a pictorial representation of him.
- 85 Consequently, his painting was a portrait for which the Archibald Prize might validly be awarded and the Court affirmed the Trustee's decision to admit the work into competition.
- 86 The cast for this landmark production reads like a roll call of prominent past and present members of the legal fraternity. Justice Roddy Meagher accepted the role of the trial judge, E D Roper; Brian Donovan QC took the part of Mr Barwick KC, counsel for the Attorney General; Nicholas Cowdery QC filled the role of Frank Kitto KC, counsel for the Trustees of the gallery; and James Glissan QC played Mr Dwyer KC, counsel for Mr Dobell.

- 87 But the Banco Court's association with portraiture is far more significant and tangible than the re-enactment of the Dobell trial. When the Banco Court relocated here to level 13 in 1977, it provided the first opportunity to display, in its entirety, the Court's collection of portraits of every Chief Justice to have served in the office in New South Wales, from Sir Francis Forbes to Sir Laurence Street.
- 88 The vast majority of these portraits were commissioned by the New South Wales Bar Association and generously donated to the Supreme Court upon completion.
- 89 You will note that this most recent renovation of the Banco Court still allows for the display of this unique collection of artwork which has increased by two, since 1977, and now includes the portrait of the former Chief Justices, Gleeson and Spigelman.
- 90 Another prominent feature of the 1977 design, which has been retained in the most recent refurbishment, is the distinctive cedar panelling installed behind and on the Bench. The architects responsible for this most recent refurbishment, Group GSA, are to be commended for both so skilfully incorporating these original features into their new design, arguably in a manner that showcases both elements even more effectively than originally.
- 91 And as pleasing as always to see that some original features have been retained, the aim of any refurbishment is, broadly speaking, to modernise and improve the existing space by introducing contemporary design concepts and functionality.
- 92 I am told that after close consultation with the Court and, in particular, the former Chief Justice Spigelman, the vision for the design of the refurbished Banco was to introduce natural light into the room and remove the sense

of separation of the Courtroom from the outside world, thus promoting transparency and openness to the process.

- 93 The design was to focus on the activity of the Court, eliminated by natural light rather than an intensity of colour, from its surrounds. Colour intensity was to be provided by activity in the Courtroom, particularly in the ceremonial sittings and there was to be no heaviness in the look of the room.
- 94 As we can see, in keeping with that design concept, the Banco Court is now flooded with natural light, promoting that atmosphere of openness and transparency that echoes the manner in which justice is administered in the Courtroom.
- 95 Another benefit of the additional natural light, the new windows introduced into the Courtroom is how well it highlights the specially commissioned coat of arms installed behind the Bench. This work which was designed and produced for the Court by the artist, Janet Lawrence, and the designer, Jisuk Han, transforms a historical, heraldic, sculptural coat of arms, published in the 1906 Gazette into its contemporary artwork that reflects variations in ambient light and movement.
- 96 The imagery in the artwork is contained within a series of painted glazes into transparent, negative, photographic layers mounted onto acrylic panels, with the ground layer being a mirror. The design concept with the mirror is that it reflects the changing light and movement within the Court and is, metaphorically, registering and reflecting the process of the Court proceedings.
- 97 I have been informed by the New South Wales Bar Association and the Law Society of New South Wales - I have been assured - that they made a substantial and generous contribution to the cost of the coat of arms, which I acknowledge and for which I echo the thanks of the Chief Justice.

98 The main entry into Banco has been altered so that now, for the first time, people with impaired mobility can access the Courtroom directly from the entry hall. Significant improvements to the facilities available in the Courtroom have also been made that provide digital accessibility and the projection of material onto screens, facilitate appearances by audiovisual links and enhance sound reinforcement in the Courtroom.

99 I genuinely believe that the newly refinished Banco Court provides the Supreme Court with a fittingly impressive and functional ceremonial Court capable of meeting its current and future needs and is in keeping with the needs of the community for accessible justice with openness and transparency in this new, new Banco.

100 If the Court pleases.

101 **MR JUSTIN DOWD PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

102 The Law Society of New South Wales is honoured to have the opportunity to address the Court on behalf of the 25,800 solicitors in this State and proud to have played a part in the development of such a significant project. The Society was also pleased to provide a contribution towards the cost of the artistic centrepiece of this refurbishment, the coat of arms.

103 In his book, "Reflections on the revolution in France", 18th century British statesman and philosopher, Edmund Burke, observed that "a State without the means of change is without the means of its conservation". This was a maxim echoed by former Chief Justice of Australia, the Honourable Murray Gleeson AC, during his address at the 175th anniversary dinner of the Supreme Court of New South Wales, in 2005. "The Supreme Court", he said, "is one of Australia's great and enduring institutions of State. Such institutions frequently need development, modernisation and revitalisation. They need to be able to change in order to stay the same."

- 104 The transformation of the Banco Court, a ceremonial Court where Supreme Court Judges are sworn in and farewelled, where tributes are made to their passing, and where thousands of solicitors have their admissions moved and, at times, revoked, is nothing short of impressive.
- 105 When my admission was moved in 1976, I stood in the gallery of the former King Street Banco Court with Chief Justice Sir Laurence Street presiding. His daughter, Sylvia, was in the same group. My overwhelming memory is not so much of the Courtroom itself, as the excitement of joining the solicitor ranks.
- 106 I am sure that incoming admittees to solicitor ranks this week will certainly experience that same sense of excitement, but will also undoubtedly note the modern ambience, architectural design, technological features and the furnishings befitting the dignity and seriousness of this Court.
- 107 The metamorphosis of the Court and, indeed, the 23 storeys of the Law Courts is a credit to all parties involved. The fact that this major project has been undertaken without shutting down the Courts is a tribute to the resilience and tolerance of all those affected by the logistical complexities and often intrusive nature of such building renovation.
- 108 The legal profession applauds the decision to retain and refurbish the current site. We welcome the increased use of modern technology, the environmental and design improvements and reconfigured public spaces, all of which facilitate greater access to justice for everyone. That said, this Courtroom, impressive as it is, is, essentially, just a Courtroom. Its real significance is that it represents the pinnacle of the judicial system in New South Wales.
- 109 That supremacy was established by the 1823 Charter of Justice. This Court has always had a supervisory role in admitting solicitors to and, where necessary, striking them from, the roll. We are delighted that the Court will maintain that roll under the development of a National Legal

Profession. Our duty to this Court overrides our duty to our clients and to ourselves.

- 110 The prime focus of the Law Society of New South Wales, in 2012, has been to promote the rule of law and its essential role in the administration of justice, in delivering certainty in decision-making and instilling public confidence in the Court system.
- 111 The Courts and the legal profession stand as one at the arms of the Westminster system. As such, it is vital that the judiciary maintains its independence to carry out its proper role. Judicial independence also requires that Courts be properly resourced.
- 112 A wonderful example is the New South Wales Court of Criminal Appeal which, this year, celebrates 100 years. While celebrating that centenary, it is sobering to reflect that this fundamental right of appeal was not available for indictable matters prior to the 1912 *Criminal Appeal Act* and the creation of that Court of Appeal.
- 113 On August 9, 1912, the Court of Appeal sat for the first time with the Chief Justice, Mr Justice Pring, and Mr Justice Gordon presiding. On that day, the case of *King v Ringer* came before the new Tribunal. Henry Ringer was convicted of the offence of receiving a watch which he knew to be stolen.
- 114 The judge had inflicted the maximum penalty of ten years imprisonment, saying that he had a strong suspicion that two of Mr Ringer's associates were habitual criminals. That suspicion was not borne out by any evidence presented to the Court at the time.
- 115 At appeal, the Court ruled that Mr Ringer's sentence be reduced to five years deeming that sufficient penalty for the offence proved.

- 116 While the maximum penalty for being in receipt of stolen property other than a motor vehicle is still ten years, such a crime today would more likely be dealt with much more summarily.
- 117 Today is the first time I have stood in this new Banco Court and, indeed, as I relinquish the presidency of the Law Society of New South Wales to resume more mundane matters, it is probably the last time.
- 118 On behalf of the solicitors of this State, it has been an honour and a privilege to do so.
- 119 The Court pleases.
- 120 **BATHURST CJ:** The Court will now adjourn.
