

THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

KIRBY P
CLARKE JA
POWELL JA

THURSDAY 9 NOVEMBER 1995

WELCOME TO NEW SENIOR COUNSEL

After each of the new Senior Counsel had announced their appointment, the President welcomed each in turn, saying:

KIRBY P:

MR T R HOYLE, SC

Mr Hoyle, you come from a noted legal family. You are a Crown Prosecutor, indeed, Deputy Senior Crown Prosecutor. You have also seen service in the Royal Australian Naval Reserve. You have taken part in many courts martial. Your work has been mostly in big trials in the Supreme Court. We have not seen enough of you in the Court of Criminal Appeal and the Court of Appeal. I hope that such will be the organisation of the Crown's business that we will see more of you, at least in the Court of Criminal Appeal.

In our profession the criminal law is not always seen, as it is in seen in the community, as the most important cornerstone of the administration of the

law. We, the judges know that it is so. You know it. Your service is critical to a civilised society. So we congratulate you on this step in your career. We look forward to much assistance from you in the years to come.

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MR M J CRANITCH, SC

Mr Cranitch, it is said of you that you fell under the spell of Mr Richard Burbidge QC at an early stage in your career. It was not a bad spell to fall under, for there are few counsel who are more resilient and energetic. You joined with him in founding new chambers, which has been such an important feature to the life of the Bar in recent years. Your work has involved you quite often, in this court, coming as it did from the Common Law and Workers' Compensation side. This is still an important part of the work of the Court of Appeal. Your life, as we know, has had its personal burdens. But today is an undoubted personal success, a joy for you. We, the judges, are very glad for you. We congratulate you on the step in your career and we look forward to a lot of help from you in this court.

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MR D G T NOCK, SC

Mr Nock, in preparation for this event I called for "the Bible" which is now produced by the Bar with its very interesting self-advertisements of Members of the Bar as to their qualities and talents. It notes unusually, in your case, the fact that you had a previous occupation as a farmer. That is no doubt, in Australia, an occupation with hazards, requiring great patience and

perseverance. It was therefore a good preparation for your time in the law. Your work has been on the Common Law and Workers' Compensation side, with insurance and maritime work, such as will undoubtedly bring you quite often into this Court. It is said of you that you are no shrinking violet, that you show great courage and determination as counsel. Courage, well honed and fashioned in such a way that it is sensitive to the responses of the decision-maker is a very important quality in a great barrister.

We congratulate you and look forward to being helped by you in the years to come.

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MR C R HOEBEN, SC

Mr Hoeben, it seems only yesterday that you were sitting at that point at the Bar table in this room. Indeed, it was only yesterday. You are certainly no stranger to this courtroom. You come here very often and if I can say so, in your praise, you are one of those counsel who is economical in argument. I remember very vividly when I was first appointed to this Court, how Mr Meagher QC, then of the Bar, would come into this room. He would identify the issue. He would fight on the chosen point that he thought was strong in his case. I detect similar skills in you. It is a great quality in a barrister. It takes confidence in one's ability. When that is deserved, it is a skill that is admired and appreciated by the Court.

You have seen service in the Army Reserve. Indeed, I once attended a dinner where you looked even more splendid than you do today. You have

served on the Bar Council. I notice from "the Bible" that you previously worked as a secondary teacher. I detect in your forensic flights that same didactic skill of teaching the Judges, which, in the communication between us, is part of the daily life of Bench and Bar.

I congratulate you on behalf of the Court, we know we will have a lot of assistance from you.

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MR D J HIGGS, SC

Mr Higgs, I count you a personal friend. I am delighted with this development in your career. Your legal work is in banking, in financial cases, commercial cases. It has seen you come very often into this courtroom. We have seen much of you, especially in recent years. Noticing a corner of the market, you, in recent times, have moved very resiliently into the field of professional liability which is said to be a growth area in legal practice. It is one which you were one of the first to detect. You were here recently in the case involving the claim against a medical practitioner in respect of the failure to detect a pregnancy. It was a very difficult and important case. You persuaded Meagher JA into legal error. But that may not be the last word to be said on the case. It may go elsewhere. You have argued many difficult cases before us. Your skills have been honed and refined. We know that we will have a lot more help from you in the years to come.

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MR I G HARRISON, SC

Mr Harrison, you are a living example of the fact that the courts do not now require legal academics to perish before we use them in the law. You came to the Bar from an important post in the University of New South Wales where you were very highly spoken of as a law lecturer. Your work has been in areas of commercial law, trusts, equity and property law. I think you lectured in property law. You have been very fair and very helpful to the Court in your appearances. You do difficult work. It is the kind of work of which this Court needs all the help it can receive from the Bar. You are serving on the Bar Council. You are an outstanding leader of the profession. We congratulate you on this move in your career.

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MR J V AGIUS, SC

Mr Agius, how could I possibly have been looking around the Court when I was looking for you? It is said that you are presently the most famous member of the New South Wales Bar. That has been said by many people to me because of your appearances before the Royal Commission into New South Wales Police. The work that you are doing at this time is extremely important work for our institutions. You seem to have developed a skill in working in areas of the law that are most important for its institutions. You worked for a time with the Crime Commission. You have argued many cases in the Court of Criminal Appeal. You have appeared in some very important

long criminal trials. Sully J says of a recent case in which you appeared, how skilful and helpful you were in that context.

No doubt for a time you are going to be busy in the important work you are doing now. But we look forward with enthusiasm to your return to the general practice of the Bar. You will be strengthened by the work that you are doing for the Royal Commission. When you return to this table, it will show. It will be demonstrated in the skills that you bring to bear on your work.

We congratulate you on your achievement of Senior Counsel status. We wish you well in the future.

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MR L KATZ, SC

Mr Katz, I have to say that I think it is with you that I have had the longest association of any of the new Senior Counsel. In my early days in the Law Reform Commission and on the Administrative Review Council, I called on the assistance of a young law lecturer at the University of Sydney, to go through my papers of the Administrative Review Council when we were building the new Federal Administrative Law in Australia. You were then, as you are now, a stickler for detail. You proved a person with a very fine legal mind. Your refined capacity to see the point helped me greatly at that time, under the pressure of my work in the Law Reform Commission, to play a useful part in the Administrative Review Council.

I remember how I used to ask you, "Yes, yes, but what is the policy behind the proposed reform?" You would then answer, "Well, I will give you the law. It is up to you to work out the policy." If I ask you that question again, in the Court, you will not be able any more to give that answer. You are now part of the living institutions of the law that develop and apply legal policy. Precedent, principle and legal policy of the law are now very much in your hands.

In a recent judgment Meagher JA spoke glowingly in praise of your forensic efforts. At least, I think it was in praise, because his Honour's comments about you were in Latin. On that occasion he spared us the usual Greek comments - which are sometimes, when translated still puzzling.

We have seen you appear often with the Solicitor General and also with the redoubtable Mr Burbidge. I think we will see even more of you now, leading, as indeed you have in recent times. The Court congratulates you on this new step in your career.

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MS H G MURRELL, SC

Ms Murrell, you are a person who has taken a leading part in a number of activities, not just in the practise of the law but in areas of life in which it is very important that lawyers should be concerned. You have taken part in the Women's Lawyers' Association's concerns. You have been counsel for the Environmental Protection Authority, and associated with Greenpeace and the Australian Conservation Foundation. It is inevitable that a person such as

yourself (and you would appreciate this fully) will become a role model in the legal profession. That is something of a burden to carry. But it is unavoidable. I am sure that it is a burden which you will carry with grace and with ability, realising always that you are a single example of the changes that are happening in our profession, changes undoubtedly for the better. Your work in environmental cases will doubtless bring you before this Court many times. That is very technical and difficult work. It is a substantial part of the Court of Appeal's business. We look forward to your help in the years to come.

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MR S C ROTHMAN, SC

Mr Rothman, your practice is in the industrial sphere where I cut my eye teeth, and Powell JA too. Although some people in our profession do not know it, do not appreciate its significance for our society, and its legal complexity, it is undoubtedly a very important part of legal practice. I hope that we will see a lot of you in this Court. Of course our hopes may be dashed by the recent decision of the High Court which took, what I think is, an unduly narrow view of what is the "record" for the purposes of the prerogative type relief. Perhaps Meagher JA and Powell JA will think that this is a return to true doctrine. However that may be, your legal ingenuity will no doubt find ways occasionally to bring you here, despite the privative provisions which generally exclude this Court from supervision of industrial courts and tribunals. I wish you well in that endeavour for at stake is nothing

less than the rule of law. In whatever capacity, we hope that we will see you often. We congratulate you on this important move.

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MR M A PEMBROKE, SC

Mr Pembroke, next perhaps to Mr Katz, I think I have known you the longest in this new team of Senior Counsel because we met in days far back (which I have not forgotten) soon after I had left the Bar on the twelfth floor of Wentworth Chambers. Mr Greg Isaac - whom I am so pleased to see here today with so many clerks who continue the high tradition - was my clerk, as he became yours. We were fortunate in his energetic support and wise counsel. You have had a distinguished career as a leader, even from your school days. You were educated not only in Australia but also at Cambridge University. We often detect the skills that have come from that extra time in Cambridge.

The nature of your practice brings you often to this courtroom. We have seen a lot of you in the past. We will see more of you in the future and we congratulate you.

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MR A J MEAGHER, SC

Mr Meagher, you come from a famous legal family. And you are famous now in your own right. You have a large practice in commercial, banking, insurance and other matters. It is the nature of the business of this Court that your work brings you often here. You have been editor of the

Insurance Law Journal. I noticed in one editorial a very wise and helpful comment on one of my dissenting views, with which, needless to say, I entirely agreed. You have been a Director of the Fire, Sickness and Accident Fund of the Bar. You have been a very active member of the community of the Bar, which is to your credit and for which we give full praise.

I recently saw you going, with your wife and children to *Phantom of the Opera*, I think, which doubtless you took as relief after a week in the Court of Appeal - where is neither phantom nor opera, just an occasional drama. Your family will be very proud of this recognition of your professional skills. We hope that we will see much more of you in this room.

You are most warmly congratulated on this step in your career.

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MR A ROBERTSON, SC

Mr Robertson, you too are no stranger to this Court. Your work in Administrative Law and Constitutional Law is really of the highest quality. That has been recognised at the Bar Council itself in seeking your advice about the Bar's problems from time to time on difficult questions. You are the editor of the *High Court and Federal Court Practice*.

Your career got off to a wonderful start when you were asked to assist Sir Maurice Byers QC in the *Tasmanian Dams Case*. You have taken part as junior counsel in many, many leading constitutional cases. I have no doubt that this new step in your career will see you further advance an already distinguished career. We congratulate you.

MR R KELEMAN, SC

Mr Keleman, your role as Deputy Director of Public Prosecutions and previously Senior Public Defender has seen you conducting a very large number of important trials and also important appeals in the High Court and in the Court of Criminal Appeal. It is in that last Court that we will probably see most of you in the years to come. You have served as counsel assisting the National Crime Authority. Your career has taken you into the criminal branch which, as I said earlier, is the branch of the law that citizens think is the most important branch. We should, as lawyers, pause to ask ourselves whether the citizenry are necessarily wrong in their estimation. Your work is therefore extremely important for society. We look forward to your help in the years to come.

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MR R F EDMONDS, SC

Mr Edmonds, your practice in revenue law is such that it is likely that your work will be largely before the Federal Court of Australia. That is a source of some regret to us. I have always thought, myself, that revenue legislation represents just another statute to be construed like any statute. But the mysteries of the Federal Act, such as they are, have been consigned by law elsewhere. Occasionally, because of the *Stamp Duties Act* and other revenue legislation in the State, we see the Tax Bar in the Court. Very recently we had Mr David Bloom QC before us, arguing with great style and ability: giving us glimpses of the high standards required in revenue work.

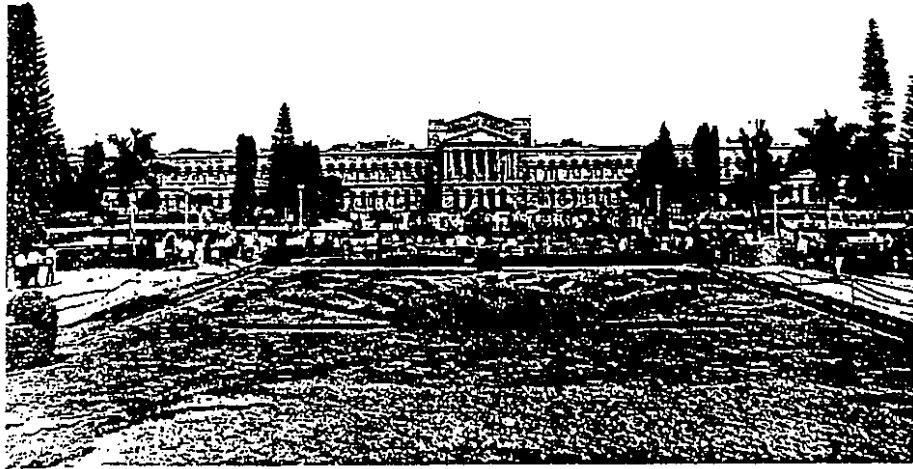
We look forward to seeing many such glimpses in the future from you. We hope that we will see a lot of you in the future. Do not reserve yourself solely to the upper floors of this building.

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KIRBY P Having welcomed the newly appointed Senior Counsel, it remains only to say a few words of general approbation. It is an important day for you. It is an important day for the Court. It is also a great day for your families and clerks and other employees. The Court congratulates them all on their contributions to this day.

Two weeks ago I was in Bangalore, India. I was there for the triennial meeting of the International Commission of Jurists. I walked along what used to be called South Parade and is now named Mahatma Gandhi Road - named after the leader of Indian independence, himself at one time a barrister. Bangalore was a garrison town. At one end of the parade is a statue of Queen Victoria which looks remarkably like the statue that is in Queen's Square, Sydney. At the other end is Holy Trinity Church which is an absolute replica of St James' Church, Sydney. Our city was also once a garrison town, with a garrison church. It began as a place of law and order.

As I knelt to say my prayers I looked up and saw a small brass plaque that read "The Hon'ble the Resident". This was the place that The Resident, representing the Crown in Mysore, came to worship. I reflected upon the debts which Australia and India have to that period of our shared constitutional tradition.



HIGH COURT OF KARNATAKA STATE, BANGALORE, INDIA

Later in the week I was taken to the High Court of Karnataka State. That is a State in which Bangalore now prospers. The Court was built by the British. The old Royal insignias have all been removed. Yet apart from that and apart from the absence of wigs, everything else was the same. Absolutely the same. True, they have two judges sitting in appeals. But the conversation that took place between the Bar and the Judges was exactly the same as it is in this courtroom. It is one of the abiding legacies of the period of the British Government. We should not disdain or forget our debt to that period.

The Senior Counsel in India are called Senior Advocates. They wear the same gown as you do, that is silk, with a square back. They have a special relationship with the Court. They are trusted by the Court. They are, in the words of Chief Justice Brennan, the ministers of justice who, with the Court, fashion the legal principles under which we all live.

When I go to Cambodia for the United Nations I see a contrast in the legal system of that land from the system which India, Australia and other countries of the Commonwealth enjoy. The biggest contrast is seen here in this courtroom today. We choose the leaders of our profession, and in most cases, the Judges, from the senior members of the private Bar. They are not promoted in a public or governmental service. Those chosen have worked their lives in the private sector. Most have never worked as government employees until that moment when they receive a judicial commission. Even then they are not government servants. They are independent in law and in their attitudes. That is tremendously important. It is significant for the whole life of a barrister and ultimately, if they accept appointment, in life as a judge. It means that those chosen have never looked at life and never looked at government and never looked at bureaucrats as being part of their team. They have looked at them as something separate and different. It is a truly remarkable system of law which we inherited. It is institutionally designed, and regularly replenished, to uphold an independence of mind and of action. This is a major justification of our system of administering justice. We should

never forget that. We should seek to explain and to justify its merits to fellow citizens who may not know its history and may not appreciate its purpose.

It now really falls on you, as the successors to 800 years of people who have gone before, including in ceremonies such as this, to carry on the high tradition. There is no doubt that, in your careers as leading counsel, you will see great changes. In this Court, changes have been proposed by Clarke JA who is in charge of our list. Something will have to give. We cannot maintain things quite as they are. The pressure on the few Judges is so great, the pressure on time is so pressing, the number of judges is limited. Therefore, in your professional careers as Senior Counsel, you will have an important role to play in, at the one time, maintaining the high standards which we have secured from the past and, at the same time, making sure that we are not part of the problem of unacceptable delay and cost.

I hope, as you go forth into your practice as Senior Counsel, that you will bear in mind the added responsibility which you have now assumed as leaders of the legal profession. You are leaders in society and not just in the courtroom. We send you out with a great deal of applause, with good wishes, with full hearts for your success and with great expectations.