

THE HON T F BATHURST AC
CHIEF JUSTICE OF NEW SOUTH WALES
WELCOME ADDRESS TO THE 30TH ANNIVERSARY OF THE JUDICIAL
COMMISSION RECEPTION
GOVERNMENT HOUSE, SYDNEY
11 OCTOBER 2017*

1. I am delighted to welcome you to Government House which stands on the land of the Gadigal people of the Eora Nation, to whom I pay my respects. I acknowledge their living culture and I affirm my respect for their Elders, past, present and emerging. On behalf of His Excellency the Governor of New South Wales, who is currently overseas, I am pleased to welcome you and to extend the congratulations of His Excellency on this celebratory occasion. I am in a unique position this evening, as I welcome you both as Lieutenant Governor and as President of the Judicial Commission.
2. This evening we mark 30 years of the Judicial Commission of New South Wales. This 30 year milestone records both a journey and an achievement. Tonight, I would like to briefly outline that journey by taking you back to the social, political and legal context of New South Wales in 1986 and 1987, a time that might be described – politely – by those of us who lived through it, as ‘highly charged’.
3. In taking you back to this time, I am indebted to the excellent Judicial Commission of NSW publication: *“From controversy to credibility: 20 years of the Judicial Commission of New South Wales”*. While proposals for a Judicial Commission had been floated on a few occasions throughout the late 70s and early 80s, including by then High Court Chief Justice Sir Garfield Barwick,¹ decisive action leading to the establishment of the Commission in New South Wales began in 1986 when Premier Barrie Unsworth tasked Attorney General

* I express my thanks to my Research Director, Ms Bronte Lambourne, for her assistance in the preparation of this address.

¹ Sir Garfield Barwick, “The State of the Australian Judicature” (1977) 51 *Australian Law Journal* 480, 494.

Terry Sheahan to ‘do something’ about a perceived crisis in public confidence in the Judiciary.

4. The Premier’s exhortation was in response to public concern about the administration of justice:
 - a. Two prominent members of the Judiciary had been tried the preceding year with attempting to pervert the course of justice – High Court Justice Lionel Murphy and former Chief Magistrate Murray Farquhar;
 - b. Complaints of unjustified leniency in sentencing offenders had been made against a District Court judge;
 - c. Allegations of lengthy delays in delivering judgments, and inconsistent and lenient sentencing, were recorded in *Hansard* and in press reports of the day; and
 - d. The *Vinson* report had claimed that there was systematic disparity in sentences imposed on drug offenders.
5. As a result of these crises of confidence, it had become apparent that the absence of a judicial education body and a repository for sentencing statistics for State courts in New South Wales was a shortfall.
6. The absence of proper channels for complaint against judicial officers had seen judges resort to newspaper columns to respond to public criticism,² while litigants were left to air their grievances through the inappropriate mechanism of an appeal. The only disciplinary tool was removal by the Governor upon the address of both Houses of Parliament, a power that, at that time, had never been used in New South Wales. As the Honourable John Basten, a current member of the Court of Appeal, said of the state of judicial

² See John Basten, “Judicial Accountability: A Proposal for a Judicial Commission” (1980) 52 *The Australian Quarterly* 468, 468-9.

accountability mechanisms in 1980, “at present we possess only a sledge hammer rusting with disuse”.³

7. The government’s announcement in September 1986 that it intended to establish a Judicial Commission was, at the time, highly controversial. The announcement generated heated exchanges in Parliament and between the Chief Justice of the Supreme Court, Sir Laurence Street AC, KCMG, QC, and Attorney General, Terry Sheahan.
8. There was concern that the Judicial Commission would become a branch of the Attorney General’s Department. The Honourable Sir Laurence Street issued a public statement, signed by 32 Supreme Court judges, condemning the ‘extraordinary haste’ with which the Bill had been drafted and the lack of consultation. The controversy raged for a few “heady weeks”. Judicial pressure on the government led to further legislative amendments, ultimately resulting in the Judicial Commission becoming fully independent of the executive government.
9. The Judicial Commission commenced operations in the old Chief Secretary’s Building on the corner of Bridge and Macquarie Streets in October 1987, with Sir Laurence Street as first President. Thirty years on, judicial independence from the executive government is a central value of the rule of law. As Chief Justice Gleeson put it, the duty of a judge is to administer justice according to the law, without fear or favour, and without regard to the wishes or policy of the executive government.
10. When the Commission finally commenced operating as an independent statutory corporation, it had its own budget, was financed directly by Parliament, would report annually to Parliament, and directly employed its own staff. The membership of the Commission, as proposed in the original Bill, included the six heads of jurisdiction and two lay members appointed by the Governor as nominated by the Minister. The Act provided that sentencing information and judicial educational services would be established.

³ Ibid 481.

11. The outcome of the “stoush” that resulted in the establishment of the Judicial Commission is – and was ultimately recognised at the time – to the advantage of the State of New South Wales. Reflecting on the “most public and deep battle” he fought, Sir Laurence Street announced the establishment of the Commission as “a huge victory for the judiciary” and “a bastion of the independence of the courts”. Former Attorney General Sheahan was also “immensely proud” of his role in forming the Commission, commenting that it was “the best thing for judges, although they didn’t realise it at the time”.⁴
12. As I wrote in my President’s Foreword to last year’s *Judicial Commission of New South Wales Annual Report (2015-16)*, the Commission has proven itself to be an invaluable institution for the maintenance of public confidence in the NSW Judiciary.⁵ It significantly enhances the capacity of the Judiciary to administer the law in an accountable and informed way, through examining complaints against judicial officers, organising and supervising judicial education and training programs, and providing up-to-date research and sentencing information. I am proud to say that I have personally benefited from both the education and training opportunities provided by the Commission, as well as the research it has conducted, including that available on the Judicial Information Research site (JIRS), and in bench books and papers on sentencing trends and issues.
13. Consistent with its track record of combining innovative technology with judicial education, the Commission is developing online learning through webinars, interactive learning modules as both a stand-alone app and as a component of JIRS, and re-launching the Commission’s website to promote accessibility. Significantly, complaints in the 2015-16 year against judicial officers fell to 44, with 98% of complaints summarily dismissed. This statistic attests to the high standard of judicial performance in NSW, as well as to the

⁴ Background history has been sourced from “*From controversy to credibility: 20 years of the Judicial Commission of NSW*” <<https://www.judcom.nsw.gov.au/wp-content/uploads/2014/07/judcom-20years-web.pdf>>.

⁵ All following information from “*Judicial Commission of New South Wales Annual Report 2015-16*”, President’s Foreword by The Honourable TF Bathurst AC, Chief Justice of the Supreme Court of NSW.

hard work of the Commission in handling complaints in a consistent and timely manner.

14. Community engagement continues to be an important focus for the Commission. Of particular note, the *Ngara Yura* program takes a multi-faceted approach in order to raise judicial awareness of Aboriginal culture and interactions with the criminal justice system. The program offers judicial officers community visits, seminars and publications designed to promote cross-cultural understanding. In addition, the Community Awareness of the Judiciary Program provides community representatives with the opportunity to learn more about the work of judges and magistrates and to highlight the complexities of the judicial task. The Commission is also engaged with the Rule of Law Institute to provide educational resources to high school students.
15. A cultural diversity online training program for judicial officers, developed in partnership with the Judicial College of Victoria, the National Judicial College of Australia, the Australasian Institute for Judicial Administration and the Family Court of Australia, was launched in June this year. The focus of the program is on ensuring that there is an effective and consistent administration of justice across Australia's multicultural society and demonstrates the judiciary's commitment to diversity and to catering to Australia's multicultural population.
16. The Commission has continued to build on and develop relationships with its partners both at home and abroad. Working with its partners in Australia, New Zealand, Papua New Guinea, the Asia-Pacific region and some African countries is an important part of the Commission's mission and its forward focus.
17. In highlighting these activities, as President, I wish to extend my personal thanks to the Chief Executive Mr Ernie Schmatt and his executive team, and to all of the judicial officers who contributed their time and energies to the Commission's work. That the Commission achieves exceptional quality and quantity of outcomes is entirely attributable to their hard work and dedication. It remains for me to congratulate all members, past and present, on this

significant anniversary ... the 30th Birthday of the Judicial Commission of New South Wales.