

FORMAL OPENING CEREMONY

IN THE COURT OF APPEAL SITTINGS AT NEWCASTLE

THE HONOURABLE JUSTICE BASTEN PRESIDING

WARD JA

PAYNE JA

WEDNESDAY 20 JUNE 2018

Mr A Henskens SC, MP

Mr M Graham, President, Newcastle Bar Association

Mr G Fox, President of the Newcastle Law Society

BASTEN JA: It gives Justice Ward, Justice Payne and myself great pleasure to constitute the Court of Appeal on the occasion of its first sitting in Newcastle. It may be that it took us more than 50 years to come to you, although you have long been coming to us. Indeed, you have contributed to this Court in many ways.

Famously, the Hon Michael McHugh was a member of the Court from 1984 until his elevation to the High Court in 1989. Now we are delighted to have Justice Ward and, indeed, my tipstaff, Alex Winn, both Novocastrians, with us today.

You are blessed with a handsome court building, much of which I inadvertently explored this morning.

We were to have the Mayor, but she has been unable to attend, and apologises. Local members, Sharon Claydon and Tim Crakanthorp, have also extended their apologies; they are required in other places.

But it is appropriate that we share this occasion with Magistrates Stone and Price, and also Acting Judge Quirk and the resident members of the District Court, Judge Ellis and Judge Gartelmann. Judge Hock, whom I am told is perilously close to attaining resident status, is sitting next door with a jury, and sends her apologies.

We are also honoured by the presence of members of the legal profession and the broader community here today.

In opening this ceremony, I acknowledge that we are present within the traditional lands of the Awabakal and Worimi peoples. The Court pays its respects to their elders, past and present.

In making that acknowledgement, I am conscious that they can no longer exercise custodianship of the land on which this Court stands. That is not merely because it was taken long ago, without compensation, although that is true. To express it in that way is to adopt a perspective that the land belonged to the traditional owners. It would have been more accurate to say that the traditional owners belonged to the land.

Furthermore, dispossession of land is not the only factor in the disadvantage and dislocation suffered by Indigenous Australians. That was a lesson I learned through the privilege of acting for Aboriginal and Torres Strait Islander communities across the country during my time at the bar.

It is also true that, while some have suffered greatly, others have availed themselves of the opportunities which modern Australia provides. It is particularly pleasing to see the numbers of young Indigenous people who are entering the law. The University of New South Wales Law School will celebrate its one hundredth Indigenous graduation this year.

I also acknowledge the disruption that has afflicted many in Greater Newcastle. You have experienced two decades of economic upheaval and social recalibration. Anxious to promote the potential opportunities, you are recasting Newcastle as a restorative city. The law is part of that.

As recently explained in a paper by John Anderson and Nicola Ross, both of Newcastle Law School, there are many ways in which Newcastle, as a restorative city, can be a model for other communities. Restorative justice can provide hope for many who have failed to accommodate the pressures of modern society.

We have three leaders of the profession at the bar table, whom I will now call on.

Mr Henskens.

HENSKENS: Your Honours, this morning the Supreme Court of New South Wales Court of Appeal will, as it usually does, on a week day during the court term, commence to hear an appeal at 10.15am, assisted by the barristers and solicitors that appear before it. But today is an important milestone for the history of the Supreme Court of New South Wales, and it is a privilege to represent the Attorney-General to make some observation about the Court sitting today and tomorrow.

The Supreme Court has, of course, heard many criminal trials in Newcastle, and stands ready to hear civil matters in Newcastle if the occasion requires it, but today the Court of Appeal will, for the first time, sit in Newcastle.

This development fits neatly in the arc of Newcastle's history. As many of you will know, Newcastle began its life as a place of punishment after its European discovery in 1797. Recalcitrant convicts, like those involved in the 1804 Castle Hill Rebellion, were dispatched to Newcastle, where they were put to work in coal mines, in the timber industry, or in producing lime.

Life in early Newcastle in the 19th century was brutal, but there were early green roots of civilisation. The warden of the penal colony, who believed in the enlightenment, with the encouragement of Governor Lachlan Macquarie, commenced the education of the children of convicts in 1816, believing that their family background should not determine their future. As a result, Newcastle East Public School was founded in 1816, and today stands as the oldest continuing school in Australia, and one of our nation's longest continuous European institutions.

For many years, the likes of Sir William Dobell, Senator Arthur Sinodinos and other students of Newcastle East Public School, including me, were, until the early 1980's, able to watch, from the windows of the Bolton Street side of the school, barristers and solicitors walk up the hill to the old Newcastle Courthouse. The school has since moved further up the hill to Tyrrell Street, and more recently the Court has moved to this building, more suited to the modern demands of the administration of justice.

It was not until Governor Macquarie determined in 1823 that Newcastle was to no longer be considered as a place of banishment for our felons, but to be favoured with the immunities of the capital, that Newcastle began to start to evolve away from its convict roots, headed for the more just and compassionate city that it is today.

So it is fitting that one of the State's most important repositories of justice comes today to Newcastle, our State's second largest city, to supplement the course that Newcastle has always taken.

On regional sittings, the Chief Justice has said that holding civil hearings in criminal trials in the area where the event giving rise to the trial took place, or the parties are based, makes it easier for people interested in the matter, and the general community, to attend court and see justice in action.

As the jurisprudence on suppression orders makes it clear, it is vitally important for justice to be dispensed in public, so the community may say first hand a world-leading appellate court like this Court, which plays such an important role in the rule of law in our country.

Interested spectators can be expected to include the students of Newcastle University's Law School, located near this Court, in this recently created legal precinct.

As the presiding judge has already acknowledged, Novocastrians have a proud history of contribution to the composition of the Court of Appeal. In addition to Justice Michael McHugh and the Chief Judge in Equity, who is sitting this morning, another recent Novocastrian who has been a Justice of Appeal of this Court is the Honourable Reginald Barrett, who was educated at Newcastle Boys' High School, some distance away from Newcastle Girls' High School, where Justice Ward was educated.

I know that by sitting in Newcastle, the Court will make a marked difference, not only to the people involved in today and tomorrow's appeal, but to the broader Newcastle community.

I thank the Court, its Justices and their staff for its attendance. Your sitting in Newcastle today is very welcome.

If your time permits, I would encourage you to explore Newcastle. A walk along Nobby's Breakwater, for example, will give you a unique insight into the magnificence of one of the largest working harbours in the world. It is a wonderful city, made even more majestic by the Court's presence today.

May it please the Court.

BASTEN JA: Thank you, Mr Henskens. Mr Graham.

GRAHAM: Your Honours, on behalf of the Newcastle Bar Association, it gives me and my fellow Novocastrian counsel, of which Mr Henskens was once one, who form our association, considerable pride and satisfaction to welcome this Court of Appeal to Newcastle, and particularly to our new court facility.

This complex was long needed in Newcastle, and its arrival is a credit to both those in government and the many other individuals, including those from the bar, who had the vision and patience to ensure its construction.

We are honoured that this Court of Appeal sees that it is both in its, and our city's best interest, to sit here, and we would also like to congratulate the Court on its aforethought in doing so, and we look forward to seeing the Court's return in the not too distant future.

If the Court pleases.

BASTEN JA: Thank you, Mr Graham. Mr Fox.

FOX: Your Honours, could I begin by saying welcome to Beirut by night. So our city was described not so long ago by a former Premier of this State. Now, it is true that if one were to take a glance out of the windows of this building now, to take in the scene of Hunter Street, our main thoroughfare, in all its current glory, one might think that the ex-Premier had been prescient. Bomb site it may presently be, but I want to submit to your Honours that the ex-Premier's comment was a Sydney-centric view, and that in all truly important respects, Newcastle and the Hunter have always, as my friend has said, contributed mightily to our State and nation, not least in the field of generating worthy candidates for judicial office.

Justice Ward, you, with respect, as my friend has said, are an exemplar of the contribution of which I speak.

Justice Wilson and Acting Justice Barrett, again as my friend has said, likewise. Brought up and schooled in Newcastle, you each demonstrate the talent which lies here in the Hunter.

Similarly, Justice Stewart Austin of the Family Court of Australia is another judge of a superior court of record who hails from the Hunter and calls Newcastle home.

Down the decades, names such as, already mentioned, the Honourable Michael McHugh, Basil Hogan, Kevin Lindgren, Graham Mullane, Ralph Coolahan and Giles Coakes, are others from Newcastle and the Hunter who have held judicial office.

Senior Counsel, such as my learned friend Mr Henskens, but also Paul Rosser, Simon Harben, Peter Barnett, now Magistrate Barnett, Peter Cummings and Wayne Creasey, either hail from Newcastle or have called it home for substantially the whole of their professional lives.

Our university law school produces graduates of a high standard, and who are amongst the most job-ready in Australia.

Novocastrians will forever think that from their ranks there can always be found an eminently qualified candidate for any judicial office, and they ask governments of all stripes, State and Federal, to take notice.

Of course, it is not only in the law, but other fields, where people of Newcastle and the Hunter have excelled. One thinks of artists, as my friend has mentioned, Sir William Dobell, John Olsen and Margaret Olley; actors, such as John Bell, Susie Porter and Sarah Winter; these are household names.

The same is true in virtually every other field of professional endeavour.

The sporting contribution, of course, is legendary.

Your Honours, this is a region where there had been sittings of the Supreme Court from 1823, and solicitors were in practice here then. Now on any given day in our region there might be 20, or even 30, judicial officers, of various courts, State and Federal, dealing with cases.

Although it might not be apparent when your Honours look behind me, in the area bounded by Swansea and Morisset in the south, Newcastle in the north, and Wallsend in the west, there are now in excess of 1,000 solicitors in practice, in firms big and small, sole traders, Legal Aid and DPP, departmental solicitors, and in-house counsel.

Those 1,000 for whom I speak welcome the Court to Newcastle on this historic, second only sitting outside Sydney. They wish your Honours well and trust that you enjoy your stay. They look forward to welcoming your Court to Newcastle much more frequently in future, and trust that this oddly attractive, light-filled building will encourage that.

They recognise and thank you, and all the judges and magistrates, for the enormous contribution which the courts make to the maintenance of a just and equitable society, which is, therefore, hopefully a happier and more cohesive society.

Our State and nation are better for a skilled and independent judiciary, and our citizens know that in their bones.

May it please the Court.

BASTEN JA: Yes, thank you, Mr Fox.

Thank you, Mr Henskens, Mr Graham, Mr Fox for your warm words of welcome.

The Court is also honoured by the presence of everyone who is here to mark this occasion.

The Court will now adjourn to reconvene at 10.15.