

THE HON T F BATHURST AC
CHIEF JUSTICE OF NEW SOUTH WALES
REMEMBRANCE DAY CEREMONY COMMEMORATING THE SACRIFICE &
SERVICE OF THE NSW LEGAL PROFESSION IN THE FIRST WORLD WAR
INTRODUCTION
MONDAY 12 NOVEMBER 2018

1. It is a great pleasure to be invited to speak to you at this ceremony commemorating the sacrifice and service of the New South Wales Legal Profession in the First World War. Before I begin, I would like to acknowledge the traditional owners of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their elders, both past, present and emerging.
2. In the spirit of today's event I would also like to acknowledge the service of Indigenous Australians in the Australian Imperial Force. Despite being exempt from military service on the basis of unjust discrimination, approximately 1,000 Indigenous Australians answered the call to enlist at the outbreak of World War One, offering to give their lives in service of a country that was 50 years away from recognising their citizenship.
3. Remembrance Day is always significant. This year it is especially so. It marks 100 years since the guns on the Western Front fell silent after more than four years of continuous warfare. The weight of commemoration was felt heavier this year than other years, as we mark this significant anniversary. As we do so, it should not be forgotten that the horrors of war, and the struggles of those who return home from it and of their families, continues to deserve our ongoing attention.
4. Today's event is directed at remembering the involvement of barristers in the War. In my introduction today I will take a slightly broader view, and speak generally about the service of the legal profession in New South Wales.
5. While popular stereotypes of lawyers do not often include an association with the physical rigours of armed service, there are various similarities between

the legal profession and the armed services. A few obvious parallels are our shared reliance on discipline – the military through its chains of command and the legal profession’s observance of the doctrine of precedent, our broad objective of service to the community, our use of ceremony and uniforms, and finally, our hierarchical structures.

6. In regard to members of the judiciary, three of my predecessors as Chief Justice saw active service. Sir Kenneth Whistler Street fought in World War One. His son, Sir Laurence Whistler Street, served in World War Two, as did Sir John Kerr.
7. This tradition of active service amongst the judiciary is by no means confined to Chief Justices. While I will not list all of the judges who have served, I do note that Justice Brereton, who was recently appointed to the Court of Appeal, has long served in the Army Reserves. Justice Slattery who is speaking tonight has also long served in the Navy Reserves, and currently serves as Judge Advocate General.
8. During the First World War, judges were at the forefront of recruitment and advocacy campaigns. Notable amongst judicial supporters of the war, breaking the typical political impartiality expected of judges, was New South Wales’s own Chief Justice, Sir William Cullen. Not only did he accompany the Governor-General, Sir Ronald Munro-Ferguson, as he made impassioned speeches about the need for loyalty to the British Empire, but he led recruitment and advocacy campaigns in his own right.
9. Another judge of the Supreme Court, Justice Ferguson, became intensely absorbed in the Gallipoli campaign, fostering a large network of soldiers and giving practical support through his leadership of the “20th Battalion’s Comforts Fund”. Justice Ferguson, and other judges such as Justice Harvey, who would later become the Chief Judge in Equity, also acted as ‘Official

Visitors' to internment camps for enemy aliens.¹

10. Given judicial support for the war, it is unsurprising that the sons of judges were amongst the highest enlisters of the armed forces. So much so that in 1917, the *Weekly Times* reported that “[i]n proportion to numbers, no trade or profession in Australia has suffered more bereavement in the war than have the judges in the higher tribunals”.²
11. Judges’ families also took on public positions. Chief Justice Cullen’s wife, Lady Cullen, was the President of the Red Cross during the war. It was she who suggested the slogan of “Carry on!”³
12. I do not mean to suggest by these example that judges and their families were the only representatives of the legal profession in active service. As today’s event will highlight, the historical contribution of the legal profession to the Defence Forces has been both rich and diverse.
13. At the outbreak of the First World War, out of approximately 100 practicing barristers of enlistment age, 40 enlisted for the front line and of these, 10 lost their lives. This makes the sacrifice of barristers in the war well above the percentage of the wider population.
14. We can only speculate about the reasons for this numerical over representation of barristers in active service. However, I would suggest that the fundamental values of the legal profession – a commitment to public service, through duty to the court, and to others, through faithful representation of one’s client – share a lot with the ethics of duty and service at the heart of military service.
15. The legal profession’s historical links with the army go beyond participation as armed personnel. The profession also has a long history of using its

¹ Tony Cunneen, ‘A Social History of the New South Wales Supreme Court Judges in the First World War’ [2009] (Winter) *Bar News: Journal of the NSW Bar Association* 73, p 76.

² ‘Judges’ Sons, Make the Final Sacrifice’, *Weekly Times*, 6 January 1917, p 23, quoted in Cunneen, above n1, p 1.

³ Cunneen, above n 1, p 497.

specialist skills to support the armed forces and military objectives.

16. During World War One, many legal firms and individual solicitors offered free legal advice to soldiers. Given the numbers of men taking part in the war, and their need for assistance in areas as diverse as being charged for disciplinary offences through to preparing wills, this was a substantial undertaking.
17. Barristers and other lawyers across Australia, led by local silk Sir William Francis Langer Owen KC, who later became a Supreme Court Judge, also gave their time to conduct the Red Cross Missing and Wounded Bureau, which performed an invaluable service in searching for information regarding casualties in battle.
18. Exploring these connections between the legal profession and defence forces reveals not only a fascinating history, but a history of which both professions can be rightly proud.
19. Today you have the privilege of hearing from Justices Tony Meagher, Julie Ward and Michael Slattery, on two barristers and one aspiring barrister involved in World War One. Justice Meagher will speak about Major Adrian Consett Stephen, the aspiring barrister and law student killed in action with the Royal Field Artillery. Justice Ward will tell us the story of Major James Whiteside Fraser McManamey, the barrister, rugby player and veteran of the Sudan, killed at Gallipoli. Finally, Justice Slattery will share his knowledge of Lieutenant Edwin Mayhew Brissenden, the barrister offered judicial office while still on active service.
20. Before we begin, I also offer my personal thanks to Tony Cunneen for his ongoing assistance with this event. It is my pleasure to be here tonight in the presence of so many members of the legal profession who have contributed to the work of the Defence Forces. On that note, it remains only for me wish you an informative and reflective evening.