

# **FAREWELL CEREMONIAL SITTING ON THE OCCASION OF THE RETIREMENT OF JUSTICE FABIAN GLEESON**

**The Hon A S Bell, Chief Justice of New South Wales**

**Banco Court**

**9 May 2025**

1. I begin by acknowledging the Gadigal of the Eora nation and pay my sincere respects to elders, past and present, and to all Aboriginal and Torres Strait Island people and practitioners.
2. I also acknowledge the presence of a number of Justice Gleeson's family, his wife Sue, his son Tom and his wife, Catherine (with grandsons Charles and George), his daughter Kate and her husband Anthony and their son Jack, his other daughter Sarah and her husband Maguire, and two of the judge's siblings, Catherine and Justin (in that order!)
3. I have said many times, and I find myself saying it increasingly, that institutions matter. Justice Fabian Gleeson, whose career and service we acknowledge this morning, is a strong believer in the importance of civic institutions and his Honour's contribution to this institution has been an extremely important and much valued one.
4. When Justice Richard White retired from the Court shortly prior to Christmas last year, some of you may recall that the judge confessed to being "mesmerised by the beautiful cadence" of Dr

Higgins' voice. I expect no such emotion this morning from Justice Gleeson, long regarded as the "hard man" of the New South Wales Court of Appeal. That is, of course, a term of affection. It is not a reference to any lack of empathy or compassion on his part but to his rigorous and principled approach to the discharge of his judicial responsibilities.

5. In his Court and in his judgments, no hard case was allowed to make bad law; no corner was cut; no difficult issue of law or fact was glossed over. Nor was any counsel, junior or senior, permitted to obfuscate or engage in bluff when confronted with a difficulty in their case. Justice Gleeson would politely but firmly direct counsel to a particular issue and clearly ask for a response to a simply worded but invariably centrally important question. They were generally given two opportunities to respond.
6. Justice Gleeson took a similar business-like approach to unrepresented litigants whom he treated firmly but always fairly and with respect. The difficulties in keeping some such litigants to the point and foreclosing repetition can tax judicial patience. One colleague has referred to feeling a palpable sense of relief when Justice Gleeson presided: the litigant was moved along with a firm hand, without a trace of impatience and seemed to realise the judge was helping, not shutting them down. Most responded well to such direction and proceedings moved ahead.
7. In his more than 12 years as a justice of the Supreme Court and as a judge of appeal, and over 1000 judgments later, his Honour has earned great respect from both his peers and the profession, many

of whom have gathered here this morning to honour that contribution and, perhaps, to ascertain his availability for future advice! This is hardly surprising. Justice Gleeson came to the Court in April 2013 with an outstanding reputation, especially in the areas of corporations law, equity, insolvency and commercial matters more generally. That personal reputation has only been further enhanced, as has this Court's commercial reputation, during and by reason of his time on the Bench. Part of his commercial acumen may be attributed to his boyhood excitement on being introduced to double-entry book-keeping. He remains a "fun guy".

8. Sitting with his Honour for the last six and a half years has, for me, been a privilege. He has brought to all his work not only his strong intellect and deep legal and commercial knowledge but thorough and early preparation which allows the Court to maximise the benefit of oral engagement during the hearing, and also facilitates the expedition with which the Court invariably delivers its judgments.
9. Some cases, of course, take longer than others to deliver, usually because of the number and complexity of issues, a multiplicity of parties and the length of the underlying trial. The fact that Justice Gleeson has sat on many multi-day appeals is no coincidence. Demanding acute concentration, the ability to master detail and a laser-like focus, such appeals require extensive preparation and pre-reading as trials which may have taken many weeks or even months are condensed into an appellate hearing of a matter of days. And then, there is the writing involved ... His judgments are always models of clarity built on a superstructure of systematic logic.

10. Some of the lengthy and difficult multi-day appeals in which his Honour has participated include:

- *Sze Tu v Leow* (2014) 89 NSWLR 317, a six day appeal in which his Honour wrote the leading judgment on important, difficult issues such as limitation by analogy in equity, equitable tracing and the effect of indefeasibility on personal claims in equity;
- *Sydney Local Health District v Macquarie International Health Clinic Pty Ltd* [2020] NSWCA 274, a five day appeal following an extremely lengthy and protracted trial involving questions of mesne profits, taxation and accounting;
- *Clancy v Bird* [2022] NSWCA 119, another five day appeal, involving multiple allegations of sexual assault at a child care centre;
- *Cassaniti v Ball* (2022) 109 NSWLR 348, [2022] NSWCA 161; *Bluemine Pty Ltd* [2022] NSWCA 160 in which some fifteen appeals were heard together arising from the principal judgment of some 2,784 paragraphs and a supplementary judgment involving claims of breach of fiduciary and statutory duty and accessorial liability in equity and under statute for knowing assistance or knowing involvement in those breaches of duty; and
- *Anderson v Canaccord* (2023) 113 NSWLR 151; [2023] NSWCA 294 – another eight day hearing in the Court of Appeal.

11. There are countless other judgments of his Honour in the Court of Appeal which are of great significance and which span the whole panoply of the Court's work, including his last decision, delivered yesterday, in *Metal Manufactures Pty Limited t/as TLE Electrical v*

*WesTrac Pty Limited* [2025] NSWCA 97, which involves a detailed consideration of the personal property securities legislation which may be his favourite piece of English literature. Moreover, as public lawyers have noted, without extensive pre-judicial exposure to public law or crime, his Honour immersed himself in novel areas and wrote with the assurance of one enjoying long-experience.

12. Areas in which his Honour has given leading decisions include:

- Equity, including:
  - breach of fiduciary duties (*Hartnell v Birketu Pty Ltd* (2021) 105 NSWLR 542; [2021] NSWCA 201);
  - proprietary estoppel (*Pirrottina v Pirrottina* [2025] NSWCA 55; *Doueihi v Construction Technologies Australia Pty Ltd* (2016) 92 NSWLR 247; [2016] NSWCA 105);
  - subrogation (*Aged Care Services Pty Ltd v Kanning Services Pty Ltd* (2013) 86 NSWLR 174; [2013] NSWCA 393);
  - equitable remedies (*Xiao v BCEG International (Australia) Pty Ltd* (2023) 111 NSWLR 132; [2023] NSWCA 48; *Australian Executor Trustees (SA) Ltd v Kerr* (2021) 151 ACSR 204; [2021] NSWCA 5); and
  - trusts (*Segelov v Ernst & Young Services Pty Ltd* (2015) 89 NSWLR 431; [2015] NSWCA 156; *Sze Tu v Lowe* (2014) 89 NSWLR 317; [2014] NSWCA 462).
- Tort (*Real Thing Food Supplements CC v Media Tag Pty Ltd* (2018) 364 ALR 712; [2018] NSWCA 318; *Motorcycling Events Group Australia Pty Ltd v Kelly* (2013) 86 NSWLR 55; [2013] NSWCA 361);
- Corporations law (*Hillig in his capacity as liquidator of ACN 092 745 330 Pty Ltd (In Liq) v Battaglia* (2018) 125 ACSR 171; [2018]

NSWCA 67; *Bitar Pty Ltd v Hebbel Constructions Pty Ltd* (2019) 136 ACSR 71; [2019] NSWCA 38);

- Administrative law (*Director of Public Prosecutions (DPP) (NSW) v Hamzy* (2019) 101 NSWLR 405; [2019] NSWCA 314; *Kirby v Health Care Complaints Commission* (2021) 105 NSWLR 217; [2021] NSWCA 139);
- Restraint of trade (*Creak v Ford Motor Co of Australia Ltd* (2023) 112 NSWLR 272; [2023] NSWCA 217; *Isaac v Dargan Financial Pty Ltd ATF Dargan Financial Discretionary Trust* (2018) 98 NSWLR 343; [2018] NSWCA 163);
- Tax (*Resilient Investment Group Pty Ltd v Barnet and Hodgkinson as Liquidators of Spitfire Corp Ltd (In Liq)* (2023) 111 NSWLR 446; [2023] NSWCA 118);
- Child welfare (*Secretary, Dept of Family and Community Services v Smith* (2017) 95 NSWLR 597; [2017] NSWCA 206);  
and
- Issue estoppel (*Drive My Car Rentals Pty Ltd v Gabriel* (2021) 104 NSWLR 697; [2021] NSWCA 73).

13. Some of his Honour's judgments have been actively debated, including internationally. By way of recent example, *Xiao v BCEG International* (2023) 111 NSWLR 132, [2023] NSWCA 48, addressing, inter alia, split elections in equity has been the subject of learned articles in UNSWLJ, Commercial Law Quarterly, and discussed in the *Cambridge Law Journal* (2024) 83 CLJ 21.
14. Justice Gleeson has also participated in over 150 decisions of the Court of Criminal Appeal. Widely cited cases in which he has participated and written the leading judgment include:

- *Rao v R* [2019] NSWCCA 290 involving an appeal from conviction and sentence in relation to counts of sexual intercourse without consent and indecent assault;
- *Pratten v R* [2021] NSWCCA 251 involving offences of dishonestly obtaining a financial advantage by deception by lodging tax returns which did not disclose all assessable income. The case also considered the distinction between “new” and “fresh” evidence;
- *Stubbings v R* [2023] NSWCCA 69 involving the meaning of pleading guilty “as soon as practicable” after being found fit to be tried;
- *Zheng v R* [2023] NSWCCA 64 involving sufficiency of reasons in a judge alone trial;
- *Benn v R* [2023] NSWCCA 24 involving the requirement that sentencing judges transparently explain the degree of notional concurrency and accumulation of sentences for multiple offences against multiple victims; and
- *AKB v R* [2024] NSWCCA 169 involving the unanimity direction required to be provided to a jury as to the actus reus causing the death of the deceased.

15. His Honour has been a valued mentor to many judges of the Court, not only on the Court of Appeal but especially in the Equity Division and then especially in matters involving schemes, insolvency, fiduciary duty and corporations law where his knowledge and expertise has been in much demand.

16. He delivered judgments in 124 matters at first instance, principally but not exclusively, in the Corporations List where expedition in the resolution of issues is frequently demanded (and delivered). His work in this area dealt with a range of issues including:
- Special purpose liquidators and special purpose receivers (*In the matter of 77738930144 Pty Limited (in liq) (formerly Commercial Indemnity Pty Ltd)* [2017] NSWSC 452; *In the matter of Banksia Securities Ltd (in liq) (receivers and managers appointed)* [2017] NSWSC 540)
  - Windings up and appointment, removal and remuneration of liquidators (*In the matter of Kimberley Diamond Company Pty Ltd (in liq) (ACN 061 899 634)* [2017] NSWSC 538; *In the matter of Hawden Property Group Pty Ltd (in liq) (ACN 003 528 345)* [2018] NSWSC 481; *In the matter of Glen Elgin Retreat Pty Limited* [2019] NSWSC 1395; *In the matter of ACN 134 017 171 Pty Ltd (in liq) (formerly known as DPSA Pty Ltd)* [2017] NSWSC 488; *In the matter of BBY Limited (Receivers and Managers Appointed) (in liq)* [2021] NSWSC 1299)
  - Liquidator's examinations: (*In the matter of Cardinal Group Pty Ltd (in liq) and Cardinal Project Services Pty Ltd (in liq)* [2018] NSWSC 748)
  - Distributions on insolvency (*In the matter of Broens Pty Limited (in liq)* [2018] NSWSC 1747)
  - Derivative actions (*In the matter of DH International Pty Ltd (in liq)* [2017] NSWSC 870); and

- many matters concerned with practice and procedure in corporations list matters including corporate reinstatement; scheme meetings; statutory demands; offsetting claims.
17. Attention should also be drawn to his Honour's lengthy and oft cited first instance decision in *Lauvan Pty Limited v Bega* (2018) 330 FLR 1; [2018] NSWSC 154 an eight day trial with the judgment dealing with loan facilities, consumer credit, equitable remedies and fiduciary duties, guarantor liability and restitution.
  18. Justice Gleeson has been a most valued colleague to me. As an extremely senior judge in the Court, I have regularly sought his counsel on difficult issues confronting the Court and run ideas of varying merit past him. He has pointed out that the merit of my ideas varied(!) but his advice has always been shrewd, astute and concise. He generally does not "do" small talk but is always happy to discuss matters of state, national or international politics or rugby union. As a former first grade rugby union player, his knowledge of the configuration of the dressing shed at Drummoyne Oval and lines of sight was especially invaluable during the hearing of the defamation case involving the West Indian cricketer, Chris Gayle. You will have to read the judgment to see what I mean.
  19. As an intellectual leader of the Court, his Honour has also delivered a number of learned papers to the profession, one example being his recent presentation on the High Court's decision in *Kramer v Stone* [2024] HCA 48. His Honour will deliver the Bathurst Lecture in October of this year, focussing on legal issues surrounding crypto currency, expanding upon his initial exploration of the topic in Hong

Kong last March as part of the biennial NSW, Singapore and Hong Kong commercial judges' colloquium. I am confident that that will be a very significant occasion and heavily attended not only by the profession but by senior members of the commercial community.

20. On behalf of the judges of the Court, I thank Justice Gleeson for his substantial contribution to the life and work of the Court and wish him a healthy and happy retirement.

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