

**FAREWELL CEREMONIAL SITTING ON THE OCCASION OF THE  
RETIREMENT OF JUSTICE RICHARD WEEKS WHITE**

**Banco Court**

**The Hon AS Bell,**

**Chief Justice of New South Wales**

**19 December 2024**

- 1 I begin by acknowledging the Gadigal of the Eora Nation and pay my sincere respects to Elders, past and present, and extend those respects to all Aboriginal and Torres Strait Islander people.
- 2 This morning we mark the retirement and honour the very significant judicial contribution of Justice Richard Weeks White after more than 20 years of service as a judge of the Equity Division between 2004 and 2017, and as a judge of appeal between 2017 and tomorrow! This broadly coincides with the 50<sup>th</sup> year of his Honour's commencement of articles of clerkship.
- 3 His Honour has produced a quite exceptional body of judicial work, marked by meticulous attention to detail, technical brilliance, great scholarship and a deep and abiding sense of justice. The quality of his Honour's work is perhaps only exceeded by his quiet modesty.
- 4 I acknowledge the presence of Her Excellency, the Governor and Mr Wilson, Justices Gleeson, Jagot and Beech-Jones of the High Court (with an apology from Gageler CJ), judges of the Federal Court of Australia, former Chief Justices Spigelman and Allsop (with

apologies from former Chief Justice Bathurst), other current and former judicial officers from a range of courts, and many other distinguished guests. Their presence is a proper reflection of the wide respect in which Justice White is held.

5 I single out for special welcome Justice White's wife Catherine and their children, Helen, Sebastian and Annabelle, recently returned from London.

6 Justice White had the (possibly dubious) good fortune of having been appointed to the Court in a year in which the President of the Bar Association was one IG Harrison SC who introduced him at his swearing-in ceremony as having two interests: "cricket and the actuarial assessment of future claims liability", asking rhetorically "How often in daily life does one meet an individual with precisely these passions?"

7 My research does not extend to knowing whether or not, as White JA, his Honour has had the pleasure of upholding any appeals from IG Harrison in his subsequent capacity as a judge of the Common Law Division and more recently as Chief Judge. I am sure Harrison CJ at CL will tell me, although he really doesn't mind being overruled. Really!

8 To return to our subject. Justice White's career has been outstanding from the very outset, graduating from Sydney University with First-Class Honours and the University Medal in Law in 1976 before working between 1977 and 1978 as an associate to Sir Nigel Bowen, the first Chief Justice of the Federal Court. Sir Nigel had, however, been Chief Judge in Equity before moving to the fledgling

Federal Court and it was in the Equity Division that Justice White was to spend the majority of his judicial life as one of that Division's most respected members.

- 9 Although an articled clerk at Allen Allen & Hemsley under a Mr William Gummow, his Honour moved to Stephen Jaques and Stephen (as it then was) where he was rapidly made a partner before coming to the Bar. It was at Stephen Jaques that we first met in the summer of 1983 as I was doing "roustabout" work in the firm as an office boy having recently finished school and was dragged (willingly) into the annual cricket match between Allens and Stephen Jaques. I cannot remember how many his Honour scored on that occasion but I am sure that it was more than the average number of speeches at a Federal Court retirement ceremony. I should add that this was not the occasion Allens hired Kepler Wessels to push trolleys for a week so that he could play in the game, a fact that KWM happened to recall in passing in its recently published two volume history!
- 10 Early evidence of the future judge's scholarship which was to become a hallmark of his Honour's judicial career was supplied in the form of two articles, published in the Sydney Law Review in 1982 and 1986 respectively, namely "Enforcement of Foreign Judgments in Equity"<sup>1</sup> and "Equitable Obligations in Private International Law: The Choice of Law".<sup>2</sup> The latter was cited by Spigelman CJ almost 25 years later in *Murakami v Wiryadi*<sup>3</sup> and has also been cited in the

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<sup>1</sup> (1982) 9 *Sydney Law Review* 630.

<sup>2</sup> (1986) 11 *Sydney Law Review* 92.

<sup>3</sup> (2010) 109 NSWLR 39; [2010] NSWCA 7.

Full Court of the Federal Court<sup>4</sup> as well as in two Canadian intermediate appellate courts.<sup>5</sup>

- 11 His Honour's one time Chief Judge in Equity, the Hon PA Bergin AO SC, has said (not in "words to the following effect", but in these actual very words, and I quote):

"White J, as his Honour was between 2004 and 2017, was the quintessential Equity Judge. The apparent ease with which his Honour reached the correct legal and/or equitable outcome supported by perfectly constructed reasons, coupled with the obvious joy in the judicial role made him such a delightful colleague. White J was always destined to become White JA. However, his Honour's pivotal presence and enormous contribution to Equity delayed that elevation. The Equity Division was indeed the very happy beneficiary of that delay."

- 12 Examples of his Honour's contribution to the work of the Equity Division span the gamut of that Division's broad jurisdiction including probate,<sup>6</sup> adoptions,<sup>7</sup> trusts,<sup>8</sup> property,<sup>9</sup> breach of fiduciary duties,<sup>10</sup> general equity and all matters of equity practice and

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<sup>4</sup> *BHP Group Ltd v Impiombato* (2021) 286 FCR 625; [2021] FCAFC 93 at [52]; *Paramasivam v Flynn* (1998) 90 FCR 489 at 502-3; [1998] FCA 1711.

<sup>5</sup> *Meeking v. Cash Store Inc.*, [2013] M.J. No. 294 at [89]-[91] (Manitoba Court of Appeal); *British Columbia v. Apotex Inc.*, [2023] B.C.J. No. 1477 at [35] (British Columbia Court of Appeal).

<sup>6</sup> *Slack v Rogan* (2013) 85 NSWLR 253; [2013] NSWSC 522 – Whether a revoked will can be revived by an informal instrument.

<sup>7</sup> *Re S and the Adoption Act 2000 (NSW) (No 2)* (2006) 68 NSWLR 467; [2006] NSWSC 1438 – adoptions – concerning inconsistency between the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cth) and s 107 and Chapter IV of the *Adoption Act 2000* (NSW). Pursuant to s 109 of the *Constitution*, the Hague Convention Regulations prevailed. See also *Re Felicity* (2012) 84 NSWLR 25; [2012] NSWSC 494 – concerning whether a parent is a "person" under s 69ZK(1) of the *Family Law Act 1975* (Cth), which refers to a child "under the care (however described) of a person under a child welfare law"; *Re Application of A & B and the Adoption Act 2000* (2005) 63 NSWLR 594; [2005] NSWSC 916 – involving a successful application by biological mother and husband for adoption of 15 year old child.

<sup>8</sup> *James N Kirby Foundation v Attorney-General (NSW)* (2004) 62 NSWLR 276; [2004] NSWSC 1153 – finding that an amendment of trust deed is a "transaction" for the purpose of s 81(1) of the *Trustee Act 1925* (NSW).

<sup>9</sup> *White v Betalli* (2006) 66 NSWLR 69; [2006] NSWSC 537.

<sup>10</sup> *Calvo v Sweeney* [2009] NSWSC 719.

procedure, of which his Honour was a master. Many of his first instance decisions were reported in the New South Wales Law Reports and other specialist series of reports.

13 Of particular note, his Honour served for a number of years as the Corporations List judge and his work in this area was exceptional and extensive, as a review of the Australian Corporations and Securities Reports will confirm. His Honour has delivered some 338 judgments concerning the Corporations Act. Leading decisions, as identified by Justice Black who makes the need for resort to Gen AI utterly unnecessary, include:

- *Re Molopo Energy Ltd*<sup>11</sup> – concerning company meetings and capital reductions;
- *Re All Class Insurance Brokers Pty Ltd (in Liq)*<sup>12</sup> – relating to the treatment of a brokers' trust account in liquidation;
- the many *ASIC v Sigalla* cases in 2010-2012,<sup>13</sup> dealing with issues as to breach of directors' duties, freezing orders and contempt;
- *Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd*<sup>14</sup> – a very important case about shadow directors, cited

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<sup>11</sup> (2014) 104 ACSR 46; [2014] NSWSC 1864.

<sup>12</sup> [2014] NSWSC 475.

<sup>13</sup> See, eg, *Australian Securities and Investments Commission (ASIC) v Sigalla* [2010] NSWSC 606; *Australian Securities and Investments Commission (ASIC) v Sigalla (No 2)* [2010] NSWSC 792; (2010) 79 ACSR 198; *Australian Securities and Investments Commission (ASIC) v Sigalla (No 6)* [2012] NSWSC 83; (2012) 291 ALR 391.

<sup>14</sup> [2010] NSWSC 233; (2010) 77 ACSR 410.

internationally,<sup>15</sup> by almost every intermediate appellate court in Australia,<sup>16</sup> and in the High Court in *ASIC v King*;<sup>17</sup>

- *Short v Crawley*, a mammoth oppression case which resulted in his Honour publishing multiple judgments from 2005 to 2013;<sup>18</sup> and
- *Super 1000 Pty Ltd v Pacific General Securities Pty Ltd*<sup>19</sup> – dealing with indefeasibility and accessorial liability. This was the first decision after *Farah v Say-Dee* which made it clear that, in NSW, a statutory bar to a proprietary claim does not prevent a knowing recipient from being ordered to account personally as a constructive trustee, a position that was confirmed in three subsequent decisions of the Court of Appeal.<sup>20</sup>

14 Allied to his Honour's work in corporations was that undertaken in the revenue list where a judge must be at once expert in the principles of equity and trusts, contract, property and statutory construction. His Honour delivered leading and oft cited decisions in the areas of:

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<sup>15</sup> See, eg, *Gilles Bakery Ltd v Gillespie* [2015] NZCA 93; [2015] NZCCLR 9 at [67].

<sup>16</sup> In New South Wales, see *Perpetual Custodians Ltd (as custodian for Tamoran Pty Ltd as trustee for Crivelli) v IOOF Investment Management Ltd* [2013] NSWCA 231; (2013) 304 ALR 436 at [114]; in the Federal Court, see *Commissioner of Taxation v BHP Billiton Ltd* (2019) 263 FCR 334; [2019] FCAFC 4 at [92]; in Victoria, see *Boz One Pty Ltd v McLellan* [2015] VSCA 68; (2015) 105 ACSR 325 at [236]; in Western Australia, see *Kelbush Pty Ltd v Australia and New Zealand Banking Group Ltd* (2016) 49 WAR 37; [2016] WASCA 14 at [74].

<sup>17</sup> *Australian Securities and Investments Commission (ASIC) v King* (2020) 270 CLR 1; [2020] HCA 4 at [40] (Kiefel CJ, Gageler and Keane JJ).

<sup>18</sup> See, eg, *Short v Crawley* [2005] NSWSC 928, and finally, *Short v Crawley (No 46)* [2013] NSWSC 1624.

<sup>19</sup> [2008] NSWSC 1222; (2008) 221 FLR 427.

<sup>20</sup> *McFee v Reilly* [2018] NSWCA 322 at [108], *Turner v O'Bryan-Turner* (2022) 107 NSWLR 171; [2022] NSWCA 23 at [101]-[103] and *Blue Mirror Pty Ltd v Tan & Tan Australia Pty Ltd (in liq)* [2024] NSWCA 253 at [30].

- (1) Payroll tax;<sup>21</sup>
- (2) Land tax and the exemption in s 10AA of the *Land Tax Management Act 1956* (NSW) for land used for primary production. Particularly notable in this area were his Honour's judgments in *Vartuli v Chief Commissioner of State Revenue*,<sup>22</sup> *Metricon Qld Pty Ltd v Chief Commissioner of State Revenue*<sup>23</sup> and *Leppington Pastoral Co Pty Ltd v Chief Commissioner of State Revenue*.<sup>24</sup> His Honour's judgment in *Ferella v Chief Commissioner of State Revenue*,<sup>25</sup> when sitting in the Court of Appeal before his formal elevation to it, has been described as one of the three critical cases on the correct construction of s 10AA(3)(b) of the *Land Tax Management Act*,<sup>26</sup>
- (3) Stamp duty where his Honour addressed a number of issues under the *Duties Act 1997* (NSW) including:
  - What is an amount secured by a mortgage for mortgage duty purposes;<sup>27</sup>

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<sup>21</sup> See, eg, *Freelance Global Ltd v Chief Commissioner of State Revenue* [2014] NSWSC 127 and *UNSW Global Pty Ltd v Chief Commissioner of State Revenue* [2016] NSWSC 1852 which were referred to as 'illuminating' by Holmes CJ in *Compass Group Education Hospitality Services Pty Ltd v Commissioner of State Revenue* [2020] QSC 184 at [53].

<sup>22</sup> [2014] NSWSC 678.

<sup>23</sup> [2016] NSWSC 332.

<sup>24</sup> [2017] NSWSC 9.

<sup>25</sup> [2014] NSWCA 378 (Barrett and Leeming JJA agreeing).

<sup>26</sup> See *Young v Chief Commissioner of State Revenue* [2020] NSWSC 330 at [121] (Payne JA).

<sup>27</sup> *Visy Kraft Holdings Pty Ltd v Chief Commissioner of State Revenue* [2017] NSWSC 8.

- The scope of the exemption in s 63 of the Duties Act concerning the appropriation of property of a deceased estate by an executor;<sup>28</sup>
- The duty implications of the assignment of rights under put and call options;<sup>29</sup>
- The scope of the concession from the operation of the land rich duty provisions in s 163H of the *Duties Act*;<sup>30</sup>
- Power of commissioner to backdate a certificate of exemption in relation to stamp duties;<sup>31</sup> and

(4) GST.<sup>32</sup>

15 Since 2017 the Court of Appeal has had the benefit of his Honour's dedicated service and deep knowledge and experience. On that Court, he has participated in the full panoply of work, sitting on almost 470 cases in seven years as well as some 31 cases on the Court of Criminal Appeal. 500 appeals in a little over seven years is an indication of his Honour's diligence, as well as that of his colleagues.

16 I should also note that his Honour continued to sit at first instance from time to time following his elevation to the Court of Appeal and delivered 25 first instance judgments whilst a judge of appeal, notwithstanding the risk of reversal by his peers!

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<sup>28</sup> *Tay v Chief Commissioner of State Revenue* [2017] NSWSC 338.

<sup>29</sup> *Oak Brick Investment Pty Ltd v Chief Commissioner of State Revenue* [2016] NSWSC 1039.

<sup>30</sup> *Milstern Nominees Pty Ltd v Chief Commissioner of State Revenue* [2015] NSWSC 68.

<sup>31</sup> *ANZ Banking Group v Chief Commissioner of State Revenue* (2005) 64 NSWLR 347; [2005] NSWSC 960.

<sup>32</sup> *Toyama Pty Ltd v Landmark Building Developments Pty Ltd* [2006] NSWSC 83; (2006) 62 ATR 73.



17 Some (but only a small selection) of his Honour’s most significant decisions on the Court of Appeal have included:

- *Rodny v Weisbord*<sup>33</sup> – involving a discussion of requirements of informal wills distinguishing between adopting a document as a testamentary act rather than as expressing testamentary intentions;<sup>34</sup>
- *Steinmetz v Shannon*,<sup>35</sup> a family provision case discussing concepts of “moral duty” and “community standards”;
- *Turner v O’Bryan-Turner*,<sup>36</sup> concerning *Barnes v Addy* liability and *in personam* exceptions to indefeasibility;
- *Anderson v Canaccord Genuity Financial Ltd* litigation,<sup>37</sup> heard over 8 days, and in which the No 2 judgment on costs and litigation funders’ premiums was itself a very long judgment also to be reported in the New South Wales Law Reports;<sup>38</sup>
- *Zurich Australian Insurance Limited v CIMIC Group Limited*,<sup>39</sup> another multi-day appeal of much complexity dealing with insurance issues (interpolating there his Honour’s earlier role as one of the senior counsel assisting the HIH Royal Commission);

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<sup>33</sup> (2020) 102 NSWLR 403; [2020] NSWCA 22.

<sup>34</sup> Drawing upon his Honour’s earlier decision in *Bell v Crewes* [2011] NSWSC 1159.

<sup>35</sup> (2019) 99 NSWLR 687; [2019] NSWCA 114.

<sup>36</sup> (2022) 107 NSWLR 171; [2022] NSWCA 23.

<sup>37</sup> (2023) 113 NSWLR 151; [2023] NSWCA 294.

<sup>38</sup> [2024] NSWCA 161.

<sup>39</sup> [2024] NSWCA 229.

- *Cisera v Cisera*,<sup>40</sup> an important decision on the postponement of the vesting date of a trust;
- *Deigan v Fussell*,<sup>41</sup> dealing with the effect on the commencement of legal proceedings of the vesting of a deceased estate in the NSW Trustee until the grant of probate. Newey LJ, writing for the Court of Appeal of England and Wales, recently referred to this as an “erudite judgment”;<sup>42</sup> and
- *Barrak v City of Parramatta Council*,<sup>43</sup> concerning the power of a mayor and council to expel councillor for “act of disorder”, and whether describing a mayor as a “clown” during meeting constituted an “act of disorder”.

18 White JA also sat on *White v Redding*,<sup>44</sup> a torts case involving an individual being hit by a tennis ball “during an informal game of cricket in the Function Room at the Manly Lifesaving Club”. The person who hit the tennis ball was also Mr White. This could have been his Honour’s *Bolton v Stone*<sup>45</sup> or *Miller v Jackson*<sup>46</sup> moment, noting his love of cricket and indeed most sports. He was Sir Nigel’s Associate when *World Series Cricket Pty Ltd v Parish* was decided,<sup>47</sup> and was junior silk to the late TEF Hughes QC in *South Sydney District Rugby League Football Club Ltd v News Ltd [No 3]*.<sup>48</sup>

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<sup>40</sup> (2018) 98 NSWLR 747; [2018] NSWCA 286.

<sup>41</sup> [2019] NSWCA 299; (2019) 19 BPR 39,853.

<sup>42</sup> See *Jennison v Jennison* [2023] Ch 225; [2022] EWCA Civ 1682 at [44].

<sup>43</sup> [2019] NSWCA 213; (2013) 237 LGERA 420.

<sup>44</sup> [2019] NSWCA 152.

<sup>45</sup> [1951] AC 850.

<sup>46</sup> [1977] QB 966.

<sup>47</sup> (1977) ATPR 40-040.

<sup>48</sup> [2000] FCA 947.

19 In addition to judicial work, as with so many judges of this and other courts in New South Wales, his Honour has conscientiously served on a large number of committees and in positions over and above his heavy daily caseload. These positions have included membership at various times of the Supreme Court Education Committee, rules Committee, Law Extension Committee (of which he served as Chairman) as he did as Chairman of the Legal Qualifications Committee of the LPAB.

20 His Honour has also delivered many papers and lectures during his judicial career including:

- “The Position of Executors Before Grant”,<sup>49</sup>
- “Knowing Assistance and Knowing Receipt: Divergences between England and Australia”,<sup>50</sup>
- “Insolvent Trusts: Implications of Buckle and CPT Custodian”,<sup>51</sup>
- “Advocacy and Ethics: The Self-Represented Litigant”,<sup>52</sup>
- “Use of Extrinsic Evidence to Construe Wills”,<sup>53</sup>
- “Overview of the Evidence Act”,<sup>54</sup>

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<sup>49</sup> Speech, Bar Association, 27 June 2024, available at <[https://supremecourt.nsw.gov.au/documents/Publications/Speeches/2024-speeches/White\\_27062024THE\\_POSITION\\_OF\\_EXECUTORS\\_BEFORE\\_GRANT.pdf](https://supremecourt.nsw.gov.au/documents/Publications/Speeches/2024-speeches/White_27062024THE_POSITION_OF_EXECUTORS_BEFORE_GRANT.pdf)>.

<sup>50</sup> Speech, Law Extension Committee, 13 June 2024, available at <[https://supremecourt.nsw.gov.au/documents/Publications/Speeches/2024-speeches/White\\_13062024\\_Knowing\\_Assistance\\_and\\_Knowing\\_Receipt\\_13\\_June\\_2024.pdf](https://supremecourt.nsw.gov.au/documents/Publications/Speeches/2024-speeches/White_13062024_Knowing_Assistance_and_Knowing_Receipt_13_June_2024.pdf)>.

<sup>51</sup> (2017) 44 *Australian Bar Review* 1.

<sup>52</sup> Speech, 18 October 2014, available at <[https://supremecourt.nsw.gov.au/documents/Publications/Speeches/Pre-2015-Speeches/White/white\\_20141018.pdf](https://supremecourt.nsw.gov.au/documents/Publications/Speeches/Pre-2015-Speeches/White/white_20141018.pdf)>.

<sup>53</sup> Speech, Law Society of South Australia, 15 November 2011, available at <<https://www8.austlii.edu.au/au/journals/NSWJSchol/2011/38.pdf>>.

<sup>54</sup> (2010) 34 *Australian Bar Review* 71.

- “Trusts – An Australian Perspective”,<sup>55</sup> and
- “The Nature of a Beneficiary’s Equitable Interest in a Trust”.<sup>56</sup>

21 I should also mention his Honour’s service for the last five or so years on the Court of Appeal of the Kingdom of Tonga, where he has followed in the footsteps of Handley of the South Pacific. In that role, he has decided cases involving:<sup>57</sup>

- Tongan constitutional law;<sup>58</sup>
- Electoral law;<sup>59</sup>
- Defamation;<sup>60</sup>
- Contracts and shipping;<sup>61</sup>
- Criminal law;<sup>62</sup> and
- Land law, including a dispute relating to an entitlement to an allotment in the estate of Prince Tungi of Navutoka,<sup>63</sup>

22 On behalf of the Court, I thank Justice White for two decades of exemplary service as a judge of this Court and judge of appeal. Very few judges serve for as long or produce a body of work of such enduring value. His Honour leaves a great legacy. He has been a

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<sup>55</sup> Speech, New Zealand Institute of Judicial Studies, 21 May 2010, available at <<https://supremecourt.nsw.gov.au/documents/Publications/Speeches/Pre-2015-Speeches/White/white210510.pdf>>.

<sup>56</sup> Speech, Supreme Court of NSW Annual Conference, 2007, available at <<https://supremecourt.nsw.gov.au/documents/Publications/Speeches/Pre-2015-Speeches/White/white00807.pdf>>.

<sup>57</sup> *Taufahema v Taufahema* [2023] TOCA 1.

<sup>58</sup> *Helu v Electoral Commission* [2023] TOCA 6.

<sup>59</sup> *Ulakai v Piukala* [2023] TOCA 13.

<sup>60</sup> *Tonga Weekly Newspaper Ltd v 'Amanaki* [2023] TOCA 5.

<sup>61</sup> *Royco Shipping Services Ltd v Matson South Pacific Ltd* [2021] TOCA 17.

<sup>62</sup> *Attorney General v Fa* [2023] TOCA 10.

<sup>63</sup> *Taufahema v Taufahema* [2023] TOCA 1; *Tungi v Napa'a* [2021] TOCA 12.

valued and much admired colleague. As he sings his way into retirement, and divides his attention between the golf course and his various choirs, we wish him a very happy and healthy retirement.

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