

**IN THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT**

**BELL CJ
AND JUDGES OF THE
SUPREME COURT**

THURSDAY 6 FEBRUARY 2025

**SWEARING IN CEREMONY OF PETER BRERETON SC
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **BELL CJ:** Well, Justice Brereton, on my own behalf, and on behalf of your new colleagues on the bench, I congratulate you most sincerely and welcome you to the work of the Court. Yours has been an immensely well-received appointment. A mark of the respect that you have earned over more than a quarter of a century as a leading commercial barrister. I have no doubt knowing you that your technical skills and your temperament will make you ideally suited to do an outstanding job and I welcome you to the Court.
- 2 **BRERETON J:** Thank you, Chief Justice.
- 3 **BELL CJ:** Dr Higgins, Do you move.
- 4 **HIGGINS SC:** May it please the Court. I acknowledge the Gadigal people of the Eora nation. I give my respect to their elders, past and present, and extend that respect to all First Nations persons present today.
- 5 Chief Justice Bell, it is an honour to speak today on behalf of the New South Wales Bar Association. Justice Brereton, warmest congratulations on your appointment to this Court.
- 6 Your Honour had several nicknames at the Bar. One was "Peter Perfect". Another was "Whispering Pete". Any practitioner who does not currently understand that name, soon will. Your Honour's perfection was as understated as your enunciation, but equally clear. It had manifested early.

- 7 You were Dux of Trinity College, which you attended on a scholarship; a champion sprinter, swimmer, and member of the Rugby First 15. University continued the tale: first class honours at Sydney in law and economics, followed by a Masters at the London School of Economics. Admitted in 1993, you practiced at Freehills, then Mallesons Stephen Jacques, before coming to the Bar in 1997.
- 8 Your Honour's time as junior counsel was similarly blessed with success. Practising in commercial law with a focus on competition and consumer law, financial services and telecommunications, your Honour was in demand for every significant junior brief. The many appearances that followed included a multi-year and wholly successful outing for News Limited in the C7 litigation with, among others, your friend and frequent leader Noel Hutley SC.
- 9 Your Honour was equally in demand as a floor member, initially practicing from Eight Selborne before becoming a founding member of Banco Chambers in 2005. As a senior junior, your Honour became an absurdly in-demand tutor for readers joining the bar. It was in that role that I was first fortunate to encounter your Honour. Today, your Honour joins another of your former readers, Justice Nixon, on this Court.
- 10 The relation of tutor and reader is a singular one. The reader enjoys guidance from a trusted member of the profession, an open door, and a willing ear, essentially forever. Perhaps more significantly, the reader is allowed to bask in the nimbus of their tutor's reputation and achieve a form of affirmation by association. In your Honour's case, that nimbus had quite the glow.
- 11 And in that context, your Honour gave me perhaps the sagest advice I have ever received: that the best day one can have in court is when you say absolutely nothing and get everything you want. It is a rare barrister who both appreciates, and can instantiate, silence.
- 12 Consistent with this, your Honour was renowned for economy and elegance of expression.

- 13 A Brereton SC written submission was a thing of beauty: carefully crafted; sparse, but fluid; polite but punchy, lightened always by a smirk of wit. The first paragraph of your Honour's submissions did not recite the order pursuant to which they were filed, but told the judge immediately what the issue was, and why you won.
- 14 Much the same was true of your Honour's oral submissions. In one arcane case in the Australian Competition Tribunal, concerning the allowable regulatory return on equity in respect of a gas distribution system, your Honour's opponent had, somewhat improbably, contrived a convoluted analogy between the weighted average cost of capital and a dog. When your Honour was in full flow, Justice Finkelstein interrupted to ask, "But Mr Brereton, what am I to do with the dog?". Your Honour quietly replied, "I regret to inform your Honour that the dog must be killed". Regardless of what happened to the dog, your Honour won the case.
- 15 In 2009, 12 years after commencing at the Bar, your Honour took silk. Things continued to go well. Your Honour appeared frequently in significant competition law cases, including success with Metcash and ACCC and Metcash, and for Vodafone in its application for negative declaratory relief to permit its acquisition of TPG. Those cases were your Honour's natural milieu: you were equally conversant in economics and law and genuinely thrilled by both.
- 16 Your Honour recently graced Western Australia with your skills in the long-running case of Wright Prospecting and Hancock Prospecting. You also graced that State with your sporting prowess. During the trial, your Honour's many, many team members were alarmed to discover that each of your mornings began with a 4.30am stand-up paddle board outing on the Swan River with a torch strapped to your head. That crepuscular pursuit was just one of your Honour's many sporting diversions, which range from low-handicap golf, to competitive surfing, to slaloming through fresh powder in Japan with your family.

- 17 As a result of this, appreciation of Peter Perfect was not confined to the legal profession. One of your Honour's colleagues in Banco chambers, David Sulan, made the elementary error of buying a beach house next to your Honour. His children soon began asking to know more about the tall, lean silk who ran by sunrise down to the beach, board or blade under his arm, and launched himself dexterously into the surf.
- 18 When David himself took silk, two of his children congratulated him. The other asked whether this meant he would now be a little bit more like Peter Brereton.
- 19 Things worsened the following summer when David, away for a night for work in Sydney, asked your Honour to help his family free a bird which had unwittingly flown into his house. Your Honour, unsurprisingly, effected that emancipation in one elegant move. As the Sulan family drove home from that holiday, a paraglider launched quietly from a cliff alongside the road. From the back of the car a child wistfully said: "That's probably Peter Brereton."
- 20 Thrumming quietly in the background of all of these pursuits, was your Honour's commitment to education and learning and the various institutions of the law.
- 21 Your Honour tutored at the University of Sydney in the 1990s and lectured there again between 2009 and 2018. In 2007, you were appointed an advisory committee member of the Australian Law Reform Commission Report "Privilege in Perspective: Client Privilege in Federal Investigations".
- 22 From 2008 to 2015, your Honour was a member and later chair of the Council of Law Reporting for New South Wales. Since 2022 your Honour has been a member of the Legal Profession Admission Board.
- 23 However, amidst all of these professional excellences and action hero antics, your Honour's abiding priority has been your family: your wife Linda, your sons Joe and Sam, and your daughter Mercy.
- 24 Your Honour's family has been equally committed to you.

- 25 During the first decade of this century, Mercy became inadvertently famous among the security staff at courts across Australia.
- 26 At that time, your Honour and I travelled around Australia for a series of cases arising under s 92 of the Commonwealth Constitution. Court staff from Darwin to Melbourne to Adelaide registered surprise when small, stuffed toys flopped out of your Honour's suitcase. Your Honour would quietly explain that your daughter, Mercy, worried about you getting lonely on interstate travel and sneaked cuddly toys into your bag to keep you company.
- 27 Almost all of the court staff believed you, your Honour.
- 28 A ceremony like today is an act of stopping. We pause and mark a moment. It allows us to measure a life thus far, a little like silence measures music.
- 29 Justice Brereton, your many, many friends and colleagues at the New South Wales Bar are so delighted for you. We are so proud of you. We know that you will be a truly superb judge. And we will miss you a very great deal.
- 30 But how fine it is that the people of New South Wales can soon take as much joy in a Justice P Brereton judgment as we have all taken in a Brereton SC submission. May it please the Court.
- 31 BELL CJ: Thank you, Dr Higgins. Ms Ball, President of the Law Society of New South Wales.
- 32 BALL P: May it please the Court. I, too, acknowledge the Gadigal people of the Eora Nation, the traditional owners of the land on which this Court stands, and pay my respects to their elders past and present. I acknowledge and extend my respects to all Aboriginal and Torres Strait Islander peoples who are with us today.
- 33 Perhaps one of the best testaments of temperament which one could hope for in a new judge of this bench came to us via non-legal sources. Simply this, some of your Honour's friends know a little of your work, some not much, and

many nothing. Even family members, none of whom are part of law, primarily know someone other than one of the top commercial legal minds in Australia. As one of your children said, "he's got a bit of a background in economics."

34 Your Honour is a grounded, very well rounded individual. You met Linda, your wife, at university. It is your family, your three wonderful children, who have matured into lovely people and a wide circle of strong friends, all of whom have kept your Honour level for decades. You are, in short, primarily respected for the person you are, not your work.

35 That may seem like an odd testament for a Supreme Court Justice, but when one considers the level of professional legal success your Honour has enjoyed and the countless opportunities for the all-consuming growth of law in one's life, the wider importance of this balance is perhaps clearer and more startling.

36 Although your Honour is not too respected, we were told by an informant that in golf your competitiveness outstrips your ability. That, ultimately - and these are not my words - but that your wife is the cool one... you the nerd. That is very reductionist, I might add, although your Honour did not defend the charge. However, I did hear that your Honour has been considered easy on the eye by some, with more than one solicitor comparing your Honour to Simon Baker from The Mentalist.

37 It was said that outside of Court your Honour is a layered mischief-maker, competitive, and loves getting one over your mates. Your Honour, I am told, is artful at manipulating others to deploy your missiles. When asked for an example, we were given the time you played Call of Duty online with a friend. When getting beaten, you put your more-practised son on the controls, whilst continuing to trash talk into the headset as though you were still playing. Your friends can hold their own, though, as only later did you learn your friend had also put his own son on the controls.

38 But one friend, more informant than friend for our purposes, went on to conclude your Honour is a beautiful family man and a wonderful mate with an

incredible work ethic, outstanding values and a huge appetite for adventure, and fun.

- 39 Of course, we are here because of a legal career. You do not become a Judge of the Supreme Court simply because you are a great person, and through your advocacy, your Honour has made a unique impression on our legal system. The past 14 years include being nominated as a leading silk, Band 1 ranking of Chambers Global, for your commercial and competition law work which has been exceptional, and being a foundational member of one of the best chambers of the country. As a leading advocate, your cases like Vodafone v ACCC, ACCC v Google, ACCC v Metcash, C7, and Wright Prospecting v Hancock Prospecting are famous.
- 40 There are also cases about constitutional issues, matters about the vicarious liability of the State in policing matters, Section 92 Freedom of Interstate Trade, the Tabcorp cases; very difficult, intellectually-challenging cases across decades. These were all for clients like Optus, Vodafone, Facebook, Google, Apple, BHP, Grant Thornton, Westpac, CBA Hancock Prospecting, Qantas, Transgrid, the National Competition Council - bear with me - Toyota, Volkswagen, Consolidated Press Holdings, and Tabcorp, to name a few.
- 41 But I will bet that few who worked alongside your Honour ever saw your Honour's 1991 Sydney University Blackacre year book entry. Thankfully, research is more than Jade Net. With some omissions suitable for this occasion, that 1991 entry reads like this:
- 42 "Underneath a deceptive veneer of reserve, Peter hides an ever-expanding diversity of traits which make it impossible to categorise him.
- 43 "He is ready to leap onto the football field, as to defend his idiosyncratic view of the law. [I am told nowadays, perhaps, that it should be a hoverboard or a foil, not a football field.]

- 44 “He works an inordinate number of hours [and some things do not change it seems], but still finds time for countless long lunches in Hyde Park. Caring and loyal and such good company.”
- 45 Prior to this coming to our attention, solicitors from across the interceding 34 years had already reflected a very similar albeit deeper view, approachable, flexible and accommodating of demands of clients. Your Honour was always noted as being collaborative and collegial. Working with your Honour, it was said, one was guaranteed to be part of an effective team, delivering the best results for a client that they could possibly get. And your Honour has in turn, reflected on the importance of the amazing legal world you have been a part of. The superior project management abilities of partners and more junior solicitors. Their legal knowledge, artful care for their clients and ability to manage huge competing demands in short timeframes. All that allowed you to be a well-functioning part of a bigger picture, you have said.
- 46 One solicitor offered, that it did not matter whether you were the partner or the junior lawyer, if you knew the answer you were the person your Honour encouraged to speak. Everyone had a voice. And junior lawyers said they felt respect regardless of their seniority or experience.
- 47 Your Honour is calm, measured and quietly spoken. One could make the mistake for this being casual. I did hear reports of possibly coming out of the surf for conferences, on occasions, of course. But here is the thing: your Honour was always masterful before the Court-- “the Judge Whisperer,” as one person said. Masterful with clients, with executive boards, precise to the point of a pin. Your principled approach showed the supreme importance of mutual respect between the Court and the legal profession. One which would be a huge benefit to this Court.
- 48 So too, were your Honour’s independent thinking and rigour, preparing everything to within a millimetre. Identifying and grappling with weak points in a case. Cross-examining top experts as equal and not being afraid to change

tact. All with an exacting idea of the evidence, all the facts and the abundance of law always within reach.

- 49 Juliana Warner, former president of the Law Society of New South Wales, current president of the Law Counsel of Australia, who, as a senior solicitor at a top firm, instructed your Honour for 15 years, recollected a barrister with a wry sense of humour, and regularly doubling over and laughter while working together. Law is not easy, but she said your Honour had a knack for being so easy to work with and making work much less stressful.
- 50 Your Honour was described across the profession as a first port of call for years. Articulate advocates became speechless in trying to convey what your Honour has meant to them. Put simply, one said, “He’s not all that stuffy. A very thoughtful advocate, who did not put forward positions that couldn’t be really well substantiated. He has really good instincts. I have great faith in his judgement. There is a deep intellect happening”.
- 51 Noted as an exceptional chef, with a sophisticated pallet, except for pizza where it is strictly ham and pineapple. Your Honour is also a great lover of steak, although I am reliably told you insist on scrutinising a menu at length, considering all options, when all know it is going to come down to a ribeye or a scotch fillet.
- 52 Friends remembered an action man and surfing, foiling and competing in standup paddle boarding in the glittering waters of Hawaii. Another passion is skiing, where your Honour has aversion to any route that is not unknown and treacherous. But here, your competitiveness and love of challenge invariably exceeds the ability of those you are leading, generally astray.
- 53 I know your Honour has held an appointment to the bench as the pinnacle of any legal career, with honest reverence borne from studying the law for so long. Really from seeing, since law school, the centrality of good judges to our law. As Linda said, this seems absolutely fitting. This was your dream trajectory.

- 54 I invite you, then, your Honour, to stand outside yourself and look at what you are a part of today. There is purpose, intellect and passion in this room that could rival the best of any country. Today we celebrate your appointment to the bench. What is Banco Chamber's loss and the solicitor profession's loss, is this Court's deep gain.
- 55 Finally, as a fellow legal profession admission board member, I would like to make a special note of, and thank you, for your work in helping maintain the suitability of people being admitted as lawyers in New South Wales. On behalf of more than the 43,000 solicitors of New South Wales, congratulations on this appointment.
- 56 As the Court pleases.
- 57 BELL CJ: Thank you, Ms Ball. Brereton J.
- 58 BRERETON J: Chief Justice, fellow judges, distinguished guests, colleagues, family and friends, thank you all for coming. You do the Court and me a great honour.
- 59 I join in by acknowledging that we are on Gadigal country.
- 60 Thank you, Dr Higgins and Ms Ball for your remarks, and for your skilful weave of flattery and truth. Working with you over many years, Dr Higgins, has been a professional joy.
- 61 As many of you know, it has now been 11 weeks since my appointment was announced. This period between jobs has allowed me to enjoy the most relaxed holiday I have had since I came to the Bar. I have spent a lot of that time in the ocean, relaxing and psyching myself up for what is to come.
- 62 One of my holiday goals has been learning to ride a foil board. Linda says that she suspects I took this appointment so that I could spend 11 uninterrupted weeks learning to foil. It is an addictive sport, but one that, sadly, exposes my age and the lack of coordination, and my goal has only been partially realised.

- 63 I have been struck by how many people have asked me over the past 11 weeks why I took this appointment. I think that for many it is a question about leaving a good and successful career for what might be more work, and certainly, a lot less freedom.
- 64 The short answer is that after 30 years as a lawyer I fully appreciate a number of things. I know that the Court and the independence of the judiciary are critical to the rule of law, and that the rule of law is critical to the wellbeing of the nation. Many of my family and friends here would not know that this Court has been the pillar of the rule of law in this State for over 200 years. I also appreciate that the Court's institutional robustness depends upon individuals accepting the call of public service. The Court, although more than the sum of its parts, speaks through its judges. I have seen those judges apply themselves with intelligence, determination and fearless independence to the just resolution of disputes between citizens, corporations and governments. I know how important that is.
- 65 While I have relished most moments of being a barrister, I am honoured now to contribute to the profession and serve the people of New South Wales as a judge. That is why I have taken this appointment. I am proud to be joining this Court and will do my best to live up to the standards that have been set by those who sit with me on the bench today, and our predecessors.
- 66 My first academic and professional interest was not law, it was economics. It is an interest that permeated my practice. In recent times, I have had the good fortune to work with some world-renowned behavioural economists who have shown that humans can be relied upon to be consistently irrational and are beset with many forms of cognitive bias. Bias, like prejudice, is always easier to detect in others than oneself. My training as an economist helped me figure out that I would be a better lawyer than economist, and so law is what I pursued, and I have not regretted it.
- 67 One of the realities of life as a lawyer is that by the time a person gets to my age and stage at the Bar, he or she owes their professional success to many

people. People who have given their time to explain or mentor or correct, those who have been kind in what they say, and kind in what they do not say. People who have supported you by briefing you, by having you as their junior, by nominating you for positions of responsibility. Others who have made the going bearable, and even enjoyable and fun, with their humour and grace. There have been juniors who are so able and so hard working and so intelligent, that they make you look better than you really are. That is what I always told my juniors was their main job.

- 68 It is not possible for me to name all the many people to whom I am indebted in these and other ways, and so I do not propose to make a start. Instead, I will make some general remarks.
- 69 Although the legal profession has a reputation for being stuck in the past, one of the constants of my career has been change and while some people bemoan change, to my mind, it should be and has to be embraced if the law is to continue to serve its purpose.
- 70 One such change has been the increasing recognition that the practice of law, as well as being a satisfying and rewarding career, can be immensely stressful. The effects of burnout and vicarious trauma on people, their families, the quality of their work and ultimately the administration of justice are hard to overstate. I support the change of culture in the law towards recognising the importance of good mental health and well-being more generally.
- 71 Another change has been the increase in the number of women at the Bar. I do not pretend that gender equity is a problem that has been solved, but I would emphasise that many of my best leaders, opponents and juniors have been women and that clients and solicitors would be miscalculating to overlook the depth of talent amongst the women at the Bar.
- 72 A third change has been technological. I was a teenager at a time when if you wanted to speak to someone, you had to call the family landline and inevitably

have awkward conversations with parents. I sent and received a lot of faxes as a solicitor, all the while scoffing at the obsolescence of the telex machine.

- 73 As a junior barrister, carrying a mobile phone betrayed you as a technophile. I never imagined a world where I would carry my practice on an iPad or that I would have an Apple watch through which I can take calls, monitor emails and texts, as well as keep an eye on my pulse and sleeping patterns.
- 74 I believe that technological change, at least in the main, has made legal practice much more efficient and assists the administration of justice. We stand now at the edge of massive technological change with artificial intelligence. It will no doubt present many challenges but I am looking forward to dealing with those challenges, as well as to the opportunities that evolving technologies will bring to the role of a judge.
- 75 While I will continue to refrain from naming individuals, it would be an unforgiveable oversight for me to fail to acknowledge my professional home for the past 20 years, Banco Chambers. I was privileged to be a founding member and the decision in setting up the chambers with others was the best professional decision I made as a barrister. It has been very hard to leave. My time there has been filled with collegiality. Apart from friendship, the common thread among the members of the floor is intelligence, forensic talent and resilience, the three qualities that are essential for success at the Bar. I look forward to seeing the chambers continue to thrive.
- 76 I wish to say something briefly about my family. I was fortunate to grow up in a loving family in suburban Sydney. I had doting, supportive parents. I am delighted that my siblings, David and Helen, and my mum, Carolyn are here, but sad that my father, Michael, is not. He died less than a year ago and would have been over the moon to be here today. Both he and my mum were highly attuned to the necessity of and rewards that come from community service and led by example.

- 77 I am immensely proud of my three children, Joe, Sam and Mercy. All three are forging their way in this complex world. None has followed me into the law. Joe and Sam have degrees in economics from Sydney Uni but neither is an economist. Mercy, probably sensibly, by-passed economics and studied politics and international relations. Few things make me as happy as being in their company and seeing genuine friendship and affection among them and now also among partners, Nadine and Chess.
- 78 To my wife, Linda, apparently the cool one in our marriage. It is not easy being the partner of a busy commercial barrister. The hours have often been long and the pressure can be immense. Those things do not come without a cost. I have not made it easy for you but you have been a beacon. By dint of your forceful character, you have thrown your arms around our immediate family and have made us happy, good and, I believe, grounded. I owe more thanks to you than anyone.
- 79 Finally, one of the key pieces of advice I often gave as a barrister was that attention should be paid to what a particular judge might perceive as persuasive or helpful or important. It is only fair that I reveal three things about myself.
- 80 First, as I learned very early on from Ball J, who I am honoured to replace in the Equity Division, I understand the value of economy in communications. An argument is not improved through repetition. Secondly, I have great confidence in the junior Bar and I believe they should be given appropriate speaking roles. What matters is the quality of an argument, not who delivers it.
- 81 Finally, I consider professional courtesy amongst practitioners and between the Bench and Bar as critical to the administration of justice.
- 82 On that note, I thank you for your attendance and will take no more of your time.
- 83 BELL CJ: Thank you, Justice Brereton. The Court will now adjourn.