

**THE HONOURABLE JUSTICE D M PRICE AO**  
**CHIEF JUDGE OF THE DISTRICT COURT OF NEW SOUTH WALES**  
**MONDAY 26 OCTOBER 2020**

- 1 **Frank Anthony Veltro SC**, since your admission to the Bar in 1997, you have made your reputation in criminal law, serving as a Crown Prosecutor for the Director of Public Prosecutions. In 2019 you were appointed as a Deputy Senior Crown Prosecutor and since March of this year you have been the head of the Court of Criminal Appeal Unit.
  
- 2 **Jason Downing SC**, since your admission to the Bar in 2000, you have made your reputation in appellate law, personal injury, coronial inquests, and public and administrative law. You have served as a legal member and Chairperson of the NSW Cancer Council Ethics Committee and from 2007 as a member of the NSW/ACT AFL Tribunal.
  
- 3 **Andrew Francis Fernon SC**, since your admission to the Bar in 2000, you have made your reputation in commercial law. Your expertise focusses on property, family, corporation law and equity.
  
- 4 **Vahan Varoujan Bedrossian SC**, since your admission to the Bar in 2000, you have made your reputation in equity, appellate and commercial law. You served on the Professional Conduct Committee for a number of years and regularly assist with the conduct of the Bar Practice Course and other workshops for new barristers.
  
- 5 **Kenneth Leslie McKay SC**, since your admission to the Bar in 2000, you have made your reputation in criminal law, serving as a Crown Prosecutor for the Director of Public Prosecutions. In 2017 you were appointed Deputy Senior Crown Prosecutor.

- 6 **Jodi Antoinette Steele SC**, since your admission to the Bar in 2002, you have made your reputation in commercial litigation, personal injury, employment, international and appellate law. You are also an officer in the Royal Australian Navy Reserve.
- 7 **Justin Hogan-Doran SC**, since your admission to the Bar in 2003, you have made your reputation in equity, appellate, commercial and international law. You are an Adjunct Senior Lecturer at the University of Sydney and have co-authored a chapter published in *Commercial Issues in Private International Law*. In 2015 you were a Councillor and the Treasurer of the NSW Bar Association.
- 8 **Benjamin Frederick Katekar SC**, since your admission to the Bar in 2003, you have made your reputation in equity, commercial and appellate law. Your practice focusses on insolvency, banking, acquisitions, construction, intellectual property, competition, professional liability and property litigation.
- 9 **Madeleine Avenell SC**, since your admission to the bar in 2004, you have made your reputation in appellate and criminal law with a passion for criminal defence. In 2018 you became a Public Defender.
- 10 **Andrew Charles Harding SC**, since your admission to the Bar in 2004, you have made your reputation in commercial litigation, equity and appellate law. Your practice has also included professional negligence, banking, insolvency, employment, intellectual property, insurance, and succession matters.
- 11 **Andre Raymond Zahra SC**, since your admission to the Bar in 2004, you have made your reputation in appellate law, commercial litigation, insolvency and restructuring.
- 12 **Richard William Potter SC**, since your admission to the Bar in 2005, you have made your reputation in media and defamation law. You have also maintained a broad practice in commercial litigation and equity, which includes consumer and commercial disputes.

- 13 In this year of virtual courtrooms and appearances by remote means, I am delighted to be able to take your bows in person even though COVID-safe physical distancing requires two ceremonies.
- 14 On behalf of the Judges of the District Court, I congratulate you upon your appointment as Senior Counsel. When each of you took your bows announcing your rank and precedence in the order of Senior Counsel, the short recitation by me that followed, demonstrates how well deserved your appointments are.
- 15 The tradition of the appointment of silk finds its origin in England over 400 years ago. However, when New South Wales was colonised in 1788, there was no general right for an accused to employ counsel. The right of appearance by counsel was not strictly granted by law until 1840.<sup>1</sup> Nevertheless, well before then, a practise had developed which allowed counsel to do everything for prisoners accused of a felony except addressing the jury.<sup>2</sup>
- 16 The disadvantage of accused in felony trials before 1840 appears from the judgment of Mr Justice Willis in *Ex parte Nichols*.<sup>3</sup> Referring to the then recent Myall Creek case, where seven were hanged, his Honour said:
- “Who can say what might have been the effect of an impassioned and eloquent defence by counsel on the minds of the jury.”<sup>4</sup>
- 17 The adoption by New South Wales in 1840 of the English *Prisoners’ Counsel Act* allowed counsel in a felony trial to make a general speech on the evidence after the close of the prosecution case.<sup>5</sup> It was not until 1861, that in

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<sup>1</sup> Greg D Woods, *A History of Criminal Law in NSW: The Colonial Period 1788-1900*, (The Federation Press, 2002) 145.

<sup>2</sup> Greg D Woods, *A History of Criminal Law in NSW: The Colonial Period 1788-1900*, (The Federation Press, 2002) 145 quoting J. F. Stephen, *A History of The Criminal Law of England*, (Macmillan, 1883) Vol 1, 424.

<sup>3</sup> (1830) 1 Legge 123 at 133.

<sup>4</sup> *Ex parte Nichols* (1830) 1 Legge 123 at 133 per Willis J.

<sup>5</sup> Woods (n 1) 147.

felony cases, the speech of defence counsel could be made, when all of the evidence, including defence evidence, had been presented.<sup>6</sup>

- 18 Following that time, there emerged in the New South Wales Bar, some eloquent Queen's Counsel, one of whom was Sir James Martin QC. In the *Eugowra Gold Escort* trials at Darlinghurst in 1863, Sir Martin's final address was so powerful and clever, that the trial judge alert to the possibility that the accused might be acquitted, interrupted Sir Martin's speech and ordered the recall of a critical Crown witness.<sup>7</sup> Unsurprisingly, Sir Martin QC was outraged.
- 19 Sir Martin is of course, the namesake of Martin Place. Sir Martin began his career as a journalist for the Australian. In 1845 he was admitted as a solicitor and in 1856 he was admitted to the Bar. Between 1863 and 1872 he was the Premier of NSW for three separate terms and was then Chief Justice of New South Wales from 1873 until his passing in 1886.
- 20 These anecdotes of legal history have been drawn from GD Woods QC, *A History of Criminal Law in New South Wales – The Colonial Period 1788-1900*. Greg Woods, an eminent silk, was appointed a Judge of this Court in 1997. Upon his retirement in 2017, Judge Woods was appointed an acting judge of this Court, a position he holds today.
- 21 Although the right of counsel's appearance may have been founded in the legislative reforms in 1840, in the bulk of criminal cases the defendant could not afford a lawyer. The deficiencies of the criminal legal aid system persisted well into the 20<sup>th</sup> century.
- 22 Whilst reading Judge Woods' second work "A History of Criminal Law in NSW 1901-1955" volume 2, I ventured on "the dock brief" which was of particular

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<sup>6</sup> Ibid 147-148.

<sup>7</sup> Ibid 195.

importance in providing legal aid to an accused facing trial in the Quarter Sessions at Darlinghurst.<sup>8</sup>

23 In 1938, the Council of the New South Wales Bar Association set out to address the lack of access to legal representation by adopting a version of the “dock brief” system which had previously operated in England.<sup>9</sup>

24 It was first introduced at the Quarter Sessions, Darlinghurst, at the commencement of the law term on August 2, 1938.<sup>10</sup> The “dock brief” meant that any prisoner in custody awaiting trial could brief counsel, if he could pay forthwith £1 3s 6d in cash for the service.<sup>11</sup> A “guinea” was for counsel and “half a crown” for the barrister’s clerk.<sup>12</sup> The prisoner, however, was permitted to see only the backs of the array of counsel, who were prepared to offer their services and from there, the prisoner could select one to defend him at his trial.<sup>13</sup>

25 The NSW Bar Association invited members who were prepared to accept a dock brief fee to be in attendance on August 2, when Judge White would preside.<sup>14</sup> Counsel were informed that all prisoners in custody awaiting trial would be brought into Darlinghurst Court on that day so they could select counsel.<sup>15</sup>

26 The Sun, an evening newspaper, reported with somewhat theatrical flourish:

“Selected haphazardly from a group of 14 young barristers, Mr J.G. Coyle, son of Judge Coyle, to-day secured the first brief under the new system of “dock defence”. From the Quarter Sessions dock, a prisoner surveyed a phalanx of black-robed backs and picked him out at random. “I’ll have the

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<sup>8</sup> Greg D Woods, *A History of Criminal Law in New South Wales: the New State 1901-1955*, (The Federation Press, 2018) vol 2, 653-655.

<sup>9</sup> *Ibid* 653.

<sup>10</sup> Greg D Woods, *A History of Criminal Law in New South Wales: the New State 1901-1955*, (The Federation Press, 2018) vol 2, 653, quoting *Sun*, 21 Jul 1938, 1.

<sup>11</sup> *Ibid*.

<sup>12</sup> Woods (n 8) 654.

<sup>13</sup> Woods (n 10).

<sup>14</sup> *Ibid*.

<sup>15</sup> *Ibid*.

middle man in the back row” he said without hesitation. Mr Coyle rose smilingly to accept the brief...”<sup>16</sup>

27 Only two prisoners took advantage of the dock brief on 2 August. Judge White graciously said to counsel:

“The Court is obliged to you for offering your services from the point of view, if not of philanthropy, then of humanity... I’m only sorry there were not enough [dock briefs] to go around.”<sup>17</sup>

28 Unsurprisingly, the “dock brief” scheme proved a failure. A major problem was that many accused simply did not have the necessary fee. Some counsel considered that the dock brief cheapened the profession.<sup>18</sup>

29 Apparently, the scheme limped along until war broke out in September 1939.<sup>19</sup>

30 You may be pleased to know that I have not arranged for remand prisoners awaiting trial this morning in the Sydney District Court to be present behind you.

31 On behalf of all Judges of the District Court, I wish Senior Counsel every success in your leadership roles at the Bar.

32 Please now join us for morning tea.

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<sup>16</sup> Greg D Woods, *A History of Criminal Law in New South Wales: the New State 1901-1955*, (The Federation Press, 2018) vol 2, 654, quoting *Sun*, 2 Aug 1938, 1.

<sup>17</sup> *Ibid.*

<sup>18</sup> Woods (n 8) 654.

<sup>19</sup> *Ibid.*