



AUSCRIPT AUSTRALASIA PTY LIMITED

ACN 110 028 825

T: 1800 AUSCRIPT (1800 287 274)

E: [clientservices@auscript.com.au](mailto:clientservices@auscript.com.au)

W: [www.auscript.com.au](http://www.auscript.com.au)

TRANSCRIPT OF PROCEEDINGS

---

O/N H-1619698

**FEDERAL COURT OF AUSTRALIA**  
**CEREMONIAL SITTING OF THE FULL COURT**  
**TO FAREWELL**  
**THE HONOURABLE JUSTICE MCKERRACHER**

**THE HONOURABLE JAMES ALLSOP AO, Chief Justice**  
**THE HONOURABLE JUSTICE MCKERRACHER**  
**THE HONOURABLE JUSTICE KERR**  
**THE HONOURABLE JUSTICE BANKS-SMITH**  
**THE HONOURABLE JUSTICE COLVIN**  
**THE HONOURABLE JUSTICE JACKSON**

**GUESTS OF THE BENCH:**

**THE HONOURABLE ROBERT FRENCH AC**  
**THE HONOURABLE ROBERT NICHOLSON AO**  
**THE HONOURABLE ANTONY SIOPIS SC**  
**THE HONOURABLE MICHAEL BARKER QC**

**PERTH**

**3.34 PM, FRIDAY, 3 DECEMBER 2021**

ALLSOP CJ: Mr Associate, please call the matter. Thank you. Welcome to this ceremonial sitting of the Court to farewell our colleague and friend, Justice McKerracher. May I commence by acknowledging the traditional custodians of the various lands upon which we meet today and pay my respects to their Elders, past,  
5 present and emerging.

The current and prevailing health emergency has meant that many of us, myself included, have been unable to travel to Western Australia to farewell our brother, McKerracher. I am deeply grateful that his Honour is joined in Perth by judges and  
10 former judges who have come to honour him. Sitting on the bench with Justice McKerracher are Justice Kerr, Justice Banks-Smith, Justice Colvin and Justice Jackson. Justice McKerracher is also joined on the bench by former colleagues, the Honourable Robert French AC, the Honourable Robert Nicholson AO, the Honourable Antony Siopis SC and the Honourable Michael Barker QC. John  
15 Gilmore is, of course, not here though I am sure he is looking down. Marcia Gilmore is with us today and I am sorry I cannot be there to say hello, Marcia. John is always in our thoughts. Many judges and members of the profession who are unable to travel to Perth have also joined us remotely.

Justice McKerracher, I acknowledge particularly the presence in Perth of members of  
20 your family: your wife, Leith, your children, Jeremy and Amy, their spouses, Kate and Jarrad, and your grandson, Lachie, your brothers, Peter and Craig, and other members of your large, extended family and friends in addition to a number of your former associates.

25 I also acknowledge the presence of a large number of distinguished guests, not all of whom I can name: the Honourable Peter Quinlan, Chief Justice of the Supreme Court of Western Australia, the former Chief Justice, the Honourable Wayne Martin AC QC, judges and former judges of the Western Australian Court of Appeal and  
30 Supreme Court, judges of the Federal Circuit and Family Court, of the District Court of Western Australia, the Deputy President Stephen Boyle of the Administrative Appeals Tribunal and former Justice McKechnie, Commissioner of the Corruption and Crime Commission.

35 I also acknowledge at the bar table Ms Jennifer Flinn, representing the Commonwealth Attorney-General, Mr Matthew Howard SC, president of the Australian Bar Associate, Mr Martin Cuerden SC, president of the Western Australian Bar Associate, Ms Jocelyne Boujos, President of the Law Society of  
40 Western Australia and Mr Joshua Thomson SC, the Solicitor General of Western Australia.

I also note the apologies of a number of those who wished to be present here today, including the Honourable Susan Kiefel AC, Chief Justice of the High Court of  
45 Australia, the Attorney General of Australia, the Honourable Michaelia Cash, the President of the Court of Appeal, the Honourable Michael Buss, the Honourable William Alstergren, Chief Justice of the Federal Circuit and Family Court of Australia. Former judges of the court, the Honourable Malcolm Lee QC and the Honourable Dr Christopher Carr, and many other current and former judges,  
50 distinguished guests and friends, including your son, Peter and his wife, Ilana, and Mrs Val French and Mrs Sue Lee.

Ceremonial sittings are cherished events in the life of the Court. Their importance only increases in circumstances such as these of a pandemic, bridged, to an extent, through the use of technology that has facilitated this ceremonial sitting as a national  
5 event. Events such as this provide us with a valuable opportunity to reflect upon the contributions made by judges of this Court to the Court, itself, to the law in its entirety, and to the people of Australia. Justice McKerracher, you have made a significant contribution during your tenure as a judge of this court, to all three.

10 You have been a judicial officer for 14 years, having been appointed to the Federal Court in 2007, after spending 13 years as a partner of Robinson Cox, before moving to the bar and taking silk in 1997. At your swearing in, you were lauded for your energy, your enthusiasm and your work ethic, all of which you have displayed on the court. Though, I am pleased to say, that you appear to have shaken the habit of  
15 sending work-related emails and calls on Christmas Day.

You have been a tireless contributor above all, and beyond the call of duty, to the administration of the Court which has benefited greatly from your dedication and leadership in the areas over which you have taken responsibility. Particularly, in the  
20 Admiralty and Maritime Practice Area, of which you, alongside Justice Steven Rares, have been national coordinating judges. You have been an integral and active member of numerous judges' committees throughout your time on the Court, including the Judicial Education Committee and Conference Subcommittee, the important Operations and Finance Committee, and before that, the Finance  
25 Committee, the Rules, Security, Admiralty, Native Title, Information Technology, ADR, eServices and Class Actions Committees. For your tireless contribution to the administration of the Court, your dedication and your leadership in those matters, I thank you.

30 I would also like to acknowledge your extra-curial roles as Chair of the Uncitral Coordinating Committee of Australia from 2018 to 2020, and as an incumbent Director, in which roles you have played a part in steering almost to shore an important convention on the judicial sale of ships. Also as a Judicial Deputy  
35 President of the Administrative Appeals Tribunal and for your involvement in the Australian Centre for International Commercial Arbitration and the Maritime Law Association of Australia and New Zealand.

Your many judgments span the work of this Court and include such diverse matters as admiralty, corporations law, administrative law, migration, patents and intellectual  
40 property, taxation, conflicts of law, native title and industrial law. The breadth and depth of your contribution to the work of this Court and to the law of this country has been extremely significant.

In the sphere of our shared loved, admiralty law, you have contributed mightily being  
45 regularly reported in the Lloyd's Reports, "a mark of recognition" by knowledgeable publishers. Your contributions include *CMA CGM SA & Anor v The Ship "CHOU SHAN"* [2014] FCA 74 which concerned a collision between two vessels in the East China Sea and a writ in rem commencing proceedings on a maritime lien in this Court. In a careful and thorough judgment, you examined the competing evidence,  
50 the relevant *lex causae* and connecting factors and determined the accumulation of

these factors led to the conclusion that this court was clearly inappropriate and Chinese courts, which you recognised, were the appropriate forum to hear the dispute. That conclusion was unimpeached on appeal. In *Offshore Marine Services Alliance Pty Ltd v Leighton Contractors Pty Ltd* [2017] FCA 333; 252 FCR 574  
5 which concerned the liability to contribute to general average, a topic rarely touched by courts, especially courts away from the great maritime dispute centres; *Bhagwan Marine Pte Ltd v The Ship "Teras Bandicoot"* [2020] FCA 1224 which concerned a writ in rem against the vessel claiming unpaid mooring fees for the use of cyclone mooring in Darwin; *Programmed Total Marine Services Pty Ltd v The Ship Hako Fortress* [2012] FCA 805; 293 ALR 139, an important case which concerned the demise charter and entitlements to subrogated benefit of the crews maritime lien,  
10 *Shagang Shipping Co Ltd v The Ship "Bulk Peace"* [2014] FCAFC 48; 314 ALR 230 which we heard together concerning an application for surrogate ship arrest, and, of course, for the cognoscenti, *Reiter Petroleum Inc v Ship Sam Hawk* [2015] FCA  
15 1005; 338 ALR 393, a major worldwide maritime case concerning the treatment by a domestic court of foreign maritime liens in this case under the Admiralty Act. While you, at first instance, and the Court on appeal, reached different conclusions on the issue, the disagreement arose from different legal choices as to principle and was in no way a criticism of your thoughtful and careful judgment. It should be noted that  
20 many commenters, Professor Martin Davis included, agree with you. I'm sure you're aware of that although I took a little pride in the dismissal of my and Justice Edelman's reasons by Professor Davis as really only Lord Diplock's views but with better reasons. I'm prepared to take that as a possible consolation prize if found later to be wrong.

25 Combining your aptitude in all things maritime and your expertise in administrative and migration law, in *Allseas Construction S.A. v Minister for Immigration and Citizenship* [2012] FCA 529; 203 FCR 200 you declared that foreign workers on board vessels owned by a Swiss contractor were deemed not to be within Australia's  
30 migration zone.

Demonstrating the breadth of your legal acumen, a judgment of yours concerning attempted extradition of an applicant to Hungary on suspicion of his involvement in war crimes during the second World War was upheld on appeal both to the Full  
35 Court of this Court and the High Court: *Zentai v O'Connor (No 3)* [2010] FCA 691; 187 FCR 495 (on appeal, *O'Connor v Zentai* [2011] FCAFC 102; 195 FCR 515 and again in *Minister for Home Affairs v Zentai* [2012] HCA 28; 246 CLR 213).

The judgment of the Full Court, comprising you and Justices Derrington and Colvin  
40 in *Tiger Yacht Management Ltd v Morris* [2019] FCAFC 8; 268 FCR 548 is an invaluable pronouncement of the conflict of law principles applicable to foreign service and *forum non-conveniens*. And in the recent decision of the Full Court comprising you and Justices Middleton and Lee in *BHP Group Limited v Impiombato* [2021] FCAFC 93, you confirmed that foreign residents can be group  
45 members in Australian class actions without being subjected to differential treatment. This was the first time an Australian appellate court had considered the question in the context of Part IVA of the *Federal Court of Australia Act 1976* (Cth).

50 These are but a snippet of your intellectual achievements in writing on and for the Court. Perhaps even more important is the subtle but continuing thread woven

through each of your decisions of your sense of fairness. It goes without saying, given the audience in this room, that such a sense of fairness is indispensable to justice:

5           *In justice, as fairness –*

Rawls says –

*men agree to share one another's fate.*

10

It has been a privilege to see you walk in the shoes of the parties that come before you and to strive to do what is fair and, thus, just between them.

15           As Chief Justice, I have had the benefit of your kindness, tact and wisdom: always given when asked for, and, more importantly, given when I did not realise I needed it. You have my life much easier. You have always thought of others and the Court first. You have been steadfast in protecting the Court. You have been one of the rocks for me in making difficult decisions. Words cannot adequately express my gratitude for this assistance.

20

Your work as a judge has been marked by your always collegiate search for the right answer without ego, without pride of authorship, and never standing on your dignity.

25           Many things will be missed by your judicial colleagues in Perth upon your departure, but your smile and your warm and vibrant presence will be chief among them. Also, your sense of humour, kindness and good company will be sorely missed, not just by your colleagues in Perth, but by the entire Court.

30           On behalf of all the judges of the Court, may I wish you and Leith a long, joyful, and rewarding next stage of life. I look forward to seeing you in the coming year.

Ms Flinn to represent the Attorney General of the Commonwealth.

35           MS FLINN: May it please the court. I would like to acknowledge the traditional custodians of the land on which we gather today, the Wadjuk People. And I also pay my respects to their elders, past and present, and I extend that respect to the Aboriginal and Torres Strait Islander People who are with us here today. It's a great privilege to be here today on behalf of the government and the Australian people to celebrate your Honour's time as a judge on the bench.

40

The Attorney General, the Honourable Michaelia Cash, regrets that she cannot be here today to share this occasion with you. But she has asked that I convey the Australian government's sincere appreciation for your Honour's distinguished career on the bench, and for your substantial contribution to the work of the Federal Court of Australia, from which your Honour retires after 14 years of dedicated service.

45

Your Honour is clearly held in exceptionally high regard, as demonstrated by the number of esteemed guests that join us here today. May I acknowledge the current and former members of the judiciary and the AAT, the Solicitor General of Western Australia, and the presidents of the bar associations and the Western Australian Law

50

Society who are here today. And may I also acknowledge the presence of your Honour's family and friends who proudly share this occasion with you.

5 Time does not permit a full exposition of your Honour's achievements, so I will focus on some key achievements that mark your distinguished career and your accomplishments. Before you commenced your career, your Honour attended Scotch College where you were a strong student – and I understand an excellent sportsman. I understand that you were a keen hockey player, and you have won multiple premierships at the top level, a hobby which your Honour pursued beyond  
10 your schooling years.

After graduating with a Bachelor of Law from the University of Western Australian in 1974, your Honour worked as an article clerk for the late Justice Geoffrey Kennedy at Robinson & Cox in Perth. In 1975, your Honour was admitted as a  
15 solicitor to the Supreme Court of Western Australia. As a testament to your Honour's diligence and hard work, you soon became a partner at Robinson & Cox, now Clayton Utz, in 1977, where you stayed until 1989. You then practiced as a barrister at Francis Burt Chambers where you led a very busy commercial practice.

20 And your Honour's extensive experience and esteemed reputation ultimately culminated in your appointment as Queen's Counsel in 1997. As a practitioner, your Honour successfully represented Australian Ocean Lines in a defamation action against West Australian Newspapers. This was a ground-breaking case which exposed the significance of the then misleading or deceptive conduct provision in the  
25 Trade Practices Act as expressing a broad standard for commercial behaviour, and ultimately led to the creation of a media exception to the law.

Your Honour has been actively involved in several professional bodies, including serving as both chairman and deputy chairman of the Western Australian Bar  
30 Chambers prior to your appointment to the bench. Your Honour additionally acted as commissioner of the Corruption and Crime Commission, served as a senior sessional member of the State Administrative Tribunal, and was a commissioner of the Supreme Court of Western Australia.

35 Your Honour's contributions to the legal profession led to your appointment as a judge of the Federal Court of Australia in October 2007. During your time on the bench, your Honour has determined a number of significant native title claims, and many commercial cases. Of note, your Honour presided over the many hearings concerned with the extradition of Mr Charles Zentai in *Zentai v O'Connor*,  
40 identifying the exceptional features of the case that set it aside from any precedent, and finding that the offence for which extradition was sought was not an extradition offence. The decision was ultimately upheld by the High Court in *Minister for Home Affairs v Zentai*.

45 I am told that on one occasion, your Honour convened the Federal Court at 5 am to beat the tide at Port Hedland Harbour. The case revolved around an arrested but fully laden iron ore carrier which needed to be moved from the port channel before the tide turned. Your Honour has also made a significant contribution in the area of maritime law and serves as Australia's representative on the United Nations

Commission on International Trade Law working group, developing the international convention on the judicial sale of ships.

5 Throughout your career, your Honour has always been known to be courteous, fair, attentive, engaged and keen to focus on the real issues.

10 Your Honour has also been described as enthusiastic and approaching every case with interest. These qualities, no doubt, helped in consistently managing a complex, broad and very heavy judicial workload. As counsel acting for a party, your Honour understood the issues and had a complete grasp of the relevant law to be applied, as well as a genuine concern for the real life consequences for the parties involved. It was mentioned that, over your whole career, your reasons have been characterised as being logical, timely, clear, comprehensive and practical.

15 Your Honour has been actively involved in the broader community through your role as chair of the Western Australian Institute of Sport from 1996 until 2003 and in your position on the board of the Western Australian Hockey Association. Your Honour has also maintained a lifelong attachment to Scotch College by serving on the school's board from 1982 until 2002 and chairing the board for eight years during  
20 that time. Beyond the bench, I'm told that you enjoy spending much deserved holiday time at your home in Gracetown with your wife, Leith, and catching up with your grandchildren, and I hope you enjoy the additional time you are able to spend with them during your retirement.

25 Your Honour, it has been a privilege to be here today to celebrate your remarkable career. Your professionalism, dedication and commitment to the improvement of the legal profession and the judiciary is an example for us all and, on behalf of the government, the Attorney General and the people of Australia, I thank you for your extraordinary contribution you have made to the administration of justice in Australia  
30 and wish you all the very best as you commence this new chapter of your life. May it please the court.

35 ALLSOP CJ: Thank you, Ms Flinn. Mr Howard is the president of the Australian Bar Association and representing the Western Australian Bar Association.

MR HOWARD: May it please the court. It is my privilege to appear this afternoon on behalf of the Australian Bar Association and the Western Australian Bar Association at this sitting to farewell your Honour. It is also a particular pleasure, and I am grateful to both presidents. Both associations join in acknowledging the  
40 continuing relationship between the First Nations People and the land on which the members of both work. In typically self-effacing fashion, it appears that the transcript of your Honour's welcome has mysteriously disappeared from the published web. I am indebted to your Honour, the Chief Justice, for having the court track it down for this afternoon's purposes.

45 Judicial welcomes are now attracting a certain body of academic analysis but it gives me some comfort, for this afternoon's purposes, that no such scrutiny appears to have been lavished on farewells. Such was the epic nature of your Honour's appointment some 14 years ago that one speaker invoked the full gamut of Shakespeare's plays –

the histories, the comedies, the tragedies – but without identifying exactly into which of them your Honour’s appointment fell.

5 Taking that as a cue, it occurred to me that this address may be something of a reverse Mark Anthony. It might start something like this. Friends, litigants, colleagues, lend me your ears. I come to praise McKerracher, not to bury him. At that welcome, those who spoke noted your professional achievements, the contributions you have made to the life of our society outside of law and your personal attributes. Without embellishment, it was the sort of list that made one  
10 wonder exactly what one had been doing with one’s allocated time on this planet.

I will not seek to rehearse those matters, save to say that each of the speakers, on behalf of the government and branches of the profession, saw your Honour’s appointment as obvious, inspired and of great advantage to the administration of  
15 justice and the service of our society. It almost goes without saying that those predictions have been more than fulfilled and, indeed, exceeded by your Honour’s time on the bench. At drinks to farewell your Honour from chambers, your Honour said that you thought you had spoken enough in court and it was time to listen to others.

20 While said in jest, perhaps, it was an accurate harbinger of your Honour’s approach on the bench. No one who has appeared before your Honour left without feeling that they had been properly heard and, in many cases, felt that, by your Honour’s careful and incisive questions, they perhaps had a better time of presenting their case than they deserved. It is said by some, though it could scarcely be believed, that some  
25 judges, and not always as they age, display a certain irritability or grumpiness with counsel or with other aspects of doing their job.

30 Remarkably over a judicial career of significant length and with the prodigious workload which your Honour has never shirked, your Honour has invariably demonstrated patience, courtesy, and a complete lack of ego in hearing whatever was before the court. I fear that approach and your Honour’s no-nonsense disposition of seemingly endless judgments has caused some to underrate your Honour. Such is your focus on the job and humility, I am confident that could not trouble you less.  
35 Nonetheless, your present and former colleagues on the bench speak of your Honour’s enormous hard work, endless good cheer and inexplicable enthusiasm for the job.

40 Those of the local and national bars who have been lucky enough to appear in front of your Honour, both at first instance and in your Honour’s significant workload on the Full Court, appreciate those qualities as well. The only time perhaps it may have been said that your Honour had overlistened was during the course of your Honour finding against a particularly volatile in person litigant. That person, I am reliably informed, was prone to extremely profane in court reactions to some of your  
45 Honour’s determinations. Of course, if the in person litigant thought they were likely to shock your Honour, they were clearly not aware of the amount of time you had spent in and around sport, a particular law firm and the bar.



Nonetheless, after one adverse ruling and some, shall we say, unfiltered consumer feedback, your Honour was sufficiently concerned to contact certain authorities, which led to a partial shutdown of the CBD. Mary Gaudron, at her swearing in, ceremonial sitting in the High Court, said that she believed three things would  
5 remain inevitably unchanged for the administration of justice and the business of judging. They were the need for rigorous and dispassionate intellectual analysis; the obligation to ensure equality before and under the law; and the obligation to ensure that justice is done in accordance with the law. Your Honour has stayed true invariably to each of those.

10 However, with respect, your Honour also has never lost sight of the fact that the administration of justice is a human process which derives its legitimacy from holding the confidence of the society it serves. Your Honour has never thought that it was about you or that legal principles were an end in themselves, somehow  
15 divorced from the life of our community. Simply, our society has been enriched by your service. The court and this registry lose an admirable servant. You will be missed greatly by the bar. We wish you all the best for a long, healthy and productive retirement. May it please the court.

20 ALLSOP CJ: Thank you, Mr Howard. Ms Boujos, President of the Law Society of Western Australia and representing the Law Council of Australia.

MS BOUJOS: May it please the court. I acknowledge the traditional owners of the lands on which we meet and pay my respects to their elders, past and present. I also  
25 acknowledge all the judicial officers, dignitaries, family, friends and most of all, McKerracher J. I am honoured to appear on behalf of the Law Society of Western Australia and the Law Council of Australia to congratulate you on an exemplary career. While delivering the 2018 Annual Quayside Oration, Chief Justice Allsop AO said:

30 *The law is human in its character and its object. Law, being society's relational rules and principles that govern and control all exercises of power must have a character and form that is adapted to and suited for application to law's human task. An appreciation of this humanity of the law is central to its proper expression and to preserving its strength. Law, at its very foundation, is conceived and derived from values. These values inform and underpin a fair and reasonable expectation of how power should be organised, exercised and controlled at a private and public level. These values find their expression not only in the formal law, but also in societal expectations, behaviour and actions.*  
35 *These transcend cultural boundaries. They lie in the heart of every individual and at the heart of society. These are the human values. They are honesty, a rejection of unfairness, an insistence on essential equality and respect for the integrity and dignity of the individual, and, above all, mercy.*  
40

45 I share this quote because I believe it sums up why and how your Honour has forged such an extraordinary legacy, and that is by appreciating the humanity of the law, by recognising that at its heart law is about people. Your judgments demonstrate your

steadfast commitment to the equitable administration of justice for all those who come before you. You have never lost sight of the law's primary role: to protect our citizens and our society by upholding our human values. You've helped shape and ensure the administration of justice in this country. You have presided over matters of critical significance, where the outcome has not only been vital to the individual parties concerned, but had a ripple effect felt by the broader community.

I would like to highlight your judgment in one such matter to demonstrate the grace and empathy you have always shown, the humanity of the law you have modelled for us all. In *Murray on behalf of the Yilka Native Title Complainants v The State of Western Australia*, following a lengthy contested hearing that commenced in 2011, was finalised in 2017, you determined that both the Yilka claim group and the Sullivan/Edwards claim group held exclusive native title subject to extinguishment across the respective claim areas. You found that the bases upon which the members of the two claim groups held native title were indistinguishable. You held on the facts of the case that there should be one determination and one prescribed body corporate. In your judgment, you said:

*Whilst this determination reflects the past, its main function relates to the future. It is not appropriate to perpetuate the errors of the past by isolating the two groups. It is time they worked together. It is time for the leaders to take responsibility to see that this occurs. I do not intend to penalise others within the groups and others external to them by requiring them to deal with an unwieldy and inappropriate set of multiple structures. This is not to say that all difficulties are in the past, but it is to say that it is time to move on from them.*

From native title through to intellectual property, administrative, taxation, corporate, maritime law, you've been involved in more leading cases than can easily be counted, but let's try. I understand that from the time of your appointment in 2007 until as recently as this week you have rendered 939 written judgments, and that number in my speech kept having a line crossed through it and changed. Right. Now, I don't know if that's a record, but it's a very high bar that you have set. I sort of tried to work out how many that might be per week, but I'm pretty rubbish at numbers and I didn't credit the figure, thought it was impossible. But this only reflects your dedication to the court and its work and to your commitment to rendering detailed, well-considered judgments without undue delay. You've definitely never shied away from hard work. I, too, have heard the stories of working on Christmas Day and just rolling with the punches when people were cross with you.

As noted by previous speakers, you've had many, many appointments, and the hole you leave in our judicial system is immense. It's interesting where life takes us and those we meet along the way. On the occasion of your swearing-in and welcome, you were lauded by the then Minister of Education, Julie Bishop. Ms Bishop did not speak as a Minister, but as your friend, as a colleague from Robinson Cox. Beyond the contributions you have made, which I have already mentioned and as all the speakers have mentioned. Amongst our profession there is a league of lawyers, not

to mention your fellow judges who have benefitted from your mentorship, your passion and enthusiasm for the law, your knowledge and insight and your friendship. The impact, of course, goes much further and much deeper. The local WA sports scene, as noted, owes you a debt of gratitude.

5

Thanks to you, Westside Wolves Hockey Club exists today and my daughter was a member but I never mastered the offside rule. At all. And, as noted, you were influential in the development of sport in this State as Chair of the West Australian Institute of Sport. You have given generously of your time as a volunteer, including many years of service to Scotch College. I'm sure you will agree that even in light of all these accomplishments your greatest achievement is your family who I know are watching on today with immense pride. I'm sure you're looking forward to being able to spend even more time with them or maybe some time with them. Let me close by quoting you back to you. In a speech you delivered at the 42<sup>nd</sup> conference of the Maritime Law Association of Australia and New Zealand you said:

15

*There is a real art to modern efficient dispute resolution.*

This most definitely is an art you have mastered. In summary, you have brought to this court not only your abundant wisdom and fairness but also your passion for the truth. Your enormous capacity to listen to not only what is said but to what has remained unsaid. Your uncommon good sense, your grace and your courage. Your judgments are strong and clear. You will be missed. On behalf of both the West Australian and the Australian legal profession I thank you most sincerely and deeply for the contributions you have made and wish you well for your retirement. May it please the court.

20  
25

ALLSOP CJ: Thank you, Ms Boujos. Justice McKerracher.

MCKERRACHER J: Thank you, Chief Justice. Distinguished guests, ladies and gentlemen, may I commence by thanking you all, colleagues and former colleagues in the courts and tribunals, colleagues in the profession, friends and family for greatly honouring me with your attendance today at this farewell ceremony. Some of us go back many years, even to manual typewriters and to wet photocopiers and Dictaphones which were the size of small briefcases. It is very difficult to disguise one's age on an occasion such as this.

30  
35

May I particularly acknowledge former and current serving judges of the court sitting on the bench today, including Justice Kerr from Tasmania, who has been allowed into Western Australia.

40

And it's very good of the Chief Justice to sit at what is now about 7 o'clock Eastern Summer Time, well past the hour for a cup of tea on a Friday night.

I also am pleased to acknowledge the traditional custodians of the land on which we meet, the Whadjuk people of the Noongar nation and I pay my respects to their elders past and present. I acknowledge their rich contribution to our community. May I thank you sincerely, Chief Justice, Ms Flinn, Mr Howard and Ms Boujos for your incredibly kind and overly generous words. Before today I was frankly wondering what could possibly be said of my rather modest career but occasionally it

45  
50

doesn't hurt to varnish the truth a little bit and I'm hopeful that what you've said will achieve a much needed ratings boost amongst my family and friends.

5 I've noticed at most of these events that the almost invariable rule is to conclude the response with an acknowledgement made last and not least to one's partner or spouse. As some of you know, despite being a judge I think rules are a little overrated so I would actually like to commence my thanks with my acknowledgement to my wife Leith. The Chief Justice has been known to remind us very occasionally, while cracking the whip in the slave galley of judicial  
10 productivity, that the court is hardly a sweatshop. That is true, of course, but by the same token, it is not, as he acknowledges, a nine-to-five job. Mentally switching off from tasks at hand does not always occur the moment the whistle blows or, in fact, for some considerable time after. The support and tolerance from home, despite that and all the peculiarities of this office, has been invaluable. Thank you.

15 I've thoroughly enjoyed my career in law to-date and have made many lifelong friends. Importantly to today's event, I acknowledge how privileged I have been to serve as a judge of this distinguished court. To have attended to the people of Australia in this role has been a deep honour. The variety of work has been ever-  
20 expanding. From the moment of my commencement in this position, I was exposed to problem-solving in areas well beyond my former comfort zone.

Ever since then, the range of work covered by the court has continued to steadily increase the emergence of so many expanding areas, such as defamation,  
25 Commonwealth crime and class actions. Together with cases that have tested the hundreds of pieces of Commonwealth legislation and regulation, topped up with some State legislation and common law and equity, there has scarcely been a dull moment. I greatly enjoyed the cases and the writing, as I fully expected to, but I had no expectation in 2007 of the vast range of other opportunities that have emerged.

30 From sleeping in a hutchie in the middle of the Great Western Desert after observing a Secret Men's Business meeting, to conferring in China with senior judges of the Supreme People's Court about international admiralty protocols, to teaching judicial officers in the South Pacific about decision making, to speaking on draft shipping  
35 conventions in the UN in person in New York and virtually to Vienna. Added to these experiences has been the pleasure and privilege of speaking in various parts of the local community and professional community about the role of the justice system generally and the role of law. These have all been greatly and largely unanticipated bonuses.

40 Along my journey for some decades since graduation from UWA, I have been fortunate to have been guided by some very fine lawyers and fine people, some of whom have sadly passed on. Some at the firm of Robinson Cox, such as Ian Medcalf, Geoffrey Kennedy, George Sadleir, Michael Lewis and David Newby  
45 taught professional and life lessons that have been priceless. Some of my former partners and friends from that firm, later Clayton Utz, have been kind enough to attend today.

Similarly, in my years at the independent bar, the assistance willingly rendered and examples set by senior counsel, many of whom went on to the bench and some of whom are also present today, has always been appreciated. I acknowledge them all.

5 In the court, I have greatly enjoyed sitting as both a first instance judge and with my colleagues on Full Court appeals around the country in a wide variety of work with commercial, public and personal flavours. The respect I have for the talent and decency, dedication and acumen of my colleagues, both in this registry and nation-wide, is heartfelt and immense, including some who have, very sadly, passed on.  
10 Again, great friendships have evolved and the day-to-day contact will be sadly missed.

When I commenced this job, the court was largely paper-based with some very big files. It is now almost entirely electronic, as many of our hearings have been. The  
15 arrival of COVID has meant very little travel in the last two years. While the rise in regular video hearings from multiple locations in, across and beyond Australia has been a real benefit in disposing of court business, it has changed many aspects of life in the court during that time. New judges have been appointed who may have not yet met other than on a screen. I hope my colleagues and the litigants enjoy safely  
20 returning to the more human side of a busy national court next year with fingers crossed travel restrictions ease.

I have been honoured to serve with three distinguished and thoroughly decent chief justices. Each as his own style and interests. I'm greatly indebted, in particular, to  
25 the present chief justice, James Allsop, for his leadership and generous personal support, guidance and friendship over the years. As with all my judicial colleagues of this court and in the other courts in Australia and Western Australia, his commitment to the rule of law is unquestioned. His reforms brought to this court, and still being brought, are on the cutting edge of dispute resolution and are internationally  
30 recognised. The contribution his court has made to the rule of law in Australia is rarely the hot topic of Instagram and Snapchat. Nonetheless, the contribution his court has made for the betterment of Australian society at large has been and remains enduring and most significant.

35 The work of this and all courts would be much harder without the quality of the professional services of counsel who appear before us, and of those who brief counsel. We have the pleasure of being assisted by a range of personnel from the most junior to the most senior – from those still learning to the most eminent in the country – who are still learning – as indeed we all are. But the quality of service  
40 from the profession in Australia is just as valuable to the court as it is to the community it serves. The methods of practice have changed significantly since I commenced legal life, but not, I believe, the professionalism and dedication.

I'm indebted, also, to staff of the Federal Court – the secret heroes of the court's  
45 operations – for making my job as a judge so much more effective than it might otherwise have been. The manager of court services in Western Australia, Susie Ladlow, the manager of court support operations, Donna Friedl, spring to mind. I acknowledge, gratefully, the assistance of the many who have done so much to make today's sitting possible, particularly Melissa Charles and Dimitra Argyros.

50

I also record my thanks to current and former registrars of the court, including – to name only a few – Sia Lagos, Paul Farrell, Martin Jan, Tony Tesoriero, Russell Trott, Matthew Benter, Ann Daniel, and Laurelea McGregor. The talented services provided by these people are amongst the most valuable tools in the armoury of  
5 dispute resolution. Some of those whom I have mentioned have been leaders in mediation, and through their hard word, talent, and dedication, have saved litigants much anguish and money in achieving settlements of disputes.

10 They solve between 75 and 90 per cent of matters referred to them. Their work depends on civil and face to face discussions which strive to calmly find common ground and resolve that which is not. In doing so, the process exemplifies the need for tolerance and restraint rather than grandstanding and showboating. Perhaps there are even other areas of society which could learn from this approach.

15 I also thank chambers staff, WA registry staff, court officers, and the court’s security officers for making the work of a judge easier and safe. I should make special mention of court officers Dave Aldman and Brendan Mitchell, who accompanied me on country on native title hearings. Brendan, in fact, being the former military man with whom I shared that rather small hutchie in the middle of the desert. These  
20 people were always great fun to be with on some occasionally quite long days.

I particularly wish to thank those in my immediate professional sphere. At both a professional level and socially, the support and dedication of my several associates, some of whom are here today, and all of whom have been in touch, has been  
25 inspirational. All who are COVID permitted to attend have done so. They are invariably highly talented individuals who have excelled at law school and beyond. They have usually been involved in an exhausting range of extracurricular activities. Their research skills have consistently been of the highest standard and their proofing of my rather rambling draft judgments essential. I have taken pleasure in the  
30 excitement they in turn have reflected in their contribution to some challenging and important legal work. They have now embarked upon remarkable careers or can anticipate doing so. May their infectious enthusiasm continue to flourish.

35 I must pay particular tribute to my executive assistant, Deborah Edmonds. She alone has the capacity to read what I self-delusionally describe as my writing. She does so as efficiently as she also helpfully reads my mind. The miracle that has enabled me to be in so many different places on time over the years and with accommodation, is entirely attributable to her.

40 Deb has generally been available to assist well beyond working hours and days, a willingness which I have tried not to exploit, but a rule which I have occasionally transgressed. Her knowledge of the day-to-day workings of the court is second to none, having been here for over 20 years. We have shared many experiences since I started, few more energetically than the kick by kick text exchanges during West  
45 Coast Eagles matches. And the wise armchair appraisals of their performance. No

doubt that will continue next season, hopefully with considerably improved effect.  
Thank you for your many years of entirely consistent dedication and proficiency.

5 It is only appropriate that I acknowledge on an occasion such as this the great fortune  
I have had in life as a result of the opportunities provided and sacrifices made by my  
own late parents and their unerring support. Fortunately, they were alive when I was  
appointed and they attended my welcome. In similar vein, I express my great  
appreciation to all of the other members of my extended family, older, but mostly  
10 younger, who are here and with particular mention to those who I know would love  
to be here, but who are excluded by COVID rules and are watching online. I know  
how much you wish you were here.

I conclude by thanking you all for sharing my journey to date and for very kindly  
15 taking the time to be here in person or online today. Thank you, Chief Justice.

ALLSOP CJ: Thank you, McKerracher J. The Court will now adjourn.

**ADJOURNED**

**[4.26 pm]**