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TRANSCRIPT OF PROCEEDINGS

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FAMILY COURT OF AUSTRALIA

CEREMONIAL SITTING OF THE FULL COURT

TO FAREWELL

THE HONOURABLE JUSTICE THACKRAY

**THE HONOURABLE JUSTICE THACKRAY
THE HONOURABLE JUSTICE AINSLIE-WALLACE
THE HONOURABLE JUSTICE MURPHY
THE HONOURABLE JUSTICE ALDRIDGE**

SYDNEY

1.18 PM, FRIDAY, 23 MARCH 2018

AINSLIE-WALLACE J: Welcome, everybody.

I extend our welcome to the Judges of the Family Court of Australia, the Judges of the Federal Circuit Court, Judges of other Courts, retired Judges of both Courts, members of the profession, and the friend of Justice Thackray. [Some laughter] You're going to have to do better than that. [More laughter]

Many people have written to Justice Thackray, saying they were sorry they couldn't be here. Judge Peter Boshier, formerly Principal Judge of the Family Court of New Zealand, wrote this:

I would be most grateful to say a word or two about Chief Judge Stephen Thackray and, as well, family law in Australia. In many ways, our respective countries have been the leaders in this field. Historically, the Family Court of Australia has been one of the most respected family court jurisdictions in the common law world. But I also have a special knowledge and regard for the Family Court of Western Australia, because of its outreach work in the Pacific and because of its distinct part in the Australian family court system.

It has been a privilege to work with Chief Justice Diana Bryant and Chief Judge Stephen Thackray. Sadly, our own family law system does not have the resourcing and special place in justice that it once did. I sincerely hope that, for Australia, your international standing and service to the adults and children of Australia are able to be maintained with excellence.

As I said, a number of people have written saying they were sorry they couldn't be here. As we walked into Court, I thought Justice Thackray had brought with him a volume of appeal books. On closer inspection, I see that it's his speech!! I wonder, then, whether those who are not here would, in fact, be sorry! Those of you who are here, may I suggest that you make yourself comfortable, and if your shoes are tight, slip them off? Mr Kearney.

MR M. KEARNEY SC: Thanks, your Honours.

May it please the Court, it is my honour and privilege to speak on behalf of the New South Wales Bar and the broader legal profession on the occasion of your Honour Justice Thackray's last sitting as a member of the Appeal Division of the Full Court of the Family Court of Australia. Whilst we mark this occasion here in Sydney, such is the respect in which your Honour is held by the legal profession I acknowledge the presence of members of the Court and of the profession in registries around Australia who participate today by video link.

It is only proper that, before your Honour is dispatched to the west coast from whence you came, and left to a life of cheering the West Coast Eagles and relentlessly sledging the Fremantle Dockers, that we take this opportunity to recognise your Honour's contribution to the Full Court and, through that Court, to the Australian community that it serves and to the legal profession.

As I prepared today's remarks, it occurred to me that this is not the more common situation where one can speak with impunity, safe in the knowledge that I will not be appearing before your Honour. If nothing else your Honour is, and is to remain, Chief Judge of the Family Court of Western Australia, where I have the privilege of appearing from time to time. So I'm not safe. No doubt one consequence of your Honour's departure from the Appeal Division will be a greater availability to that Court. The Full Court's loss will be very much to the gain of the people of Western Australia.

Your Honour is, of course, one of us. In the words of Justice Rosalie Abella of the Supreme Court of Canada:

Family Law is very much, and necessarily very much, the preserve of judicial discretion, and judicial discretion is very much a breeding ground for controversy. A Judge who understands Family Law offers the greatest likelihood of institutional sensitivity to the complexity of Family Law issues.

One of the first accredited Family Law Specialists in Western Australia, your Honour practised as a member of the firm of Paterson & Dowding and was President of the Family Law Practitioners' Association of Western Australia in 1994 and 1995, before being appointed Principal Registrar of the Family Court of Western Australia in 1997. From there, your Honour served as an acting Judge of that Court in 1999 and 2003, before accepting a permanent appointment to the Court in December of 2004. I'm sure none of these appointments had anything to do with the often referred to assertion that your Honour topped the west's first specialist accreditation exam with a perfect score, something that frankly sounds to me like it involved far too much wasted effort, but I digress.

Your Honour was assigned to this Court, the Appeal Division of the Family Court of Australia, on 16 November 2006, and, in more recent times, have served with distinction as the Administrative Manager or Head of the Appeal Division. Your Honour is presently the longest-serving member of the Appeal Division and will be missed alike by judicial colleagues and the dedicated staff who have supported you in your various roles. Both as a member of the Full Court and in Perth, your Honour is known for stepping up as a leader of the Court, ensuring that you take at least, if not more than, your fair share of the difficult cases, but some examples are the baby Gammy case and that of Oshin Kiszko.

Your Honour's appointment to and success as a member of the Full Court is not, however, without some irony. Upon the occasion of your appointment to the Family Court of Western Australia, you recounted your first and only appearance as an Advocate before the Full Court. Your Honour was unsuccessful for the appellant and remarked that:

I there and then decided that Full Court appeals were matters for experts, and I never conducted another.

Notwithstanding that rather inauspicious start, which I'm sure cannot be entirely explained by having had Dowding QC as your opponent, the Full Court and, through it the legal profession and Australian community, have benefited considerably from the depth of experience and knowledge in the practice of Family Law that your Honour has brought to the Court. It is a knowledge and experience that will not readily be replaced. There are two particular aspects of your Honour's service to the Full Court upon which I would like to remark today.

Firstly, your Honour has brought a remarkable set of legal talents to the Court. I apologise for returning to the words of Justice Abella, but her Honour has remarked that a Family Law Lawyer needs a unique set of characteristics, which she identified as curiosity, open-mindedness, creativity, empathy and wisdom. In sitting as a member of the Full Court, presiding over the Court, managing the Court and in its judgments, your Honour has exhibited each of these characteristics.

A review of the judgments of the Full Court in which your Honour has participated demonstrate these characteristics in abundance, from the intellectual rigour of your separate judgment in *Hoult* regarding financial agreements, to your evident compassion in addressing Indigenous issues, for which your own history provides a particular affinity, in parenting proceedings in *Donnell & Dovey*, and, whilst not a Full Court judgment, the decision in *Western Australian Newspapers & Cuzens*.¹

Whilst the latter judgment is perhaps not as well known outside Western Australia, it is no exaggeration to adopt Paul Doolan's description of the judgment as a work of art, and I urge those who have not read it to do so. I note however that the profession is probably not as thankful for the decision in *Ruane*, where the Court concluded that professional negligence claims against lawyers could come within the jurisdiction of the Court, but we can't have everything.

Your Honour, of course, also played a role in the *Bevan* saga, following from the High Court decision in *Stanford*, and, notwithstanding some success at first instance, Mr Bevan had the misfortune to encounter a Full Court which included your Honour for his appeal. Whilst I'm not sure that the outcome can properly be considered as adding to the traditional jurisprudence of the Court, the loss by Mr Bevan of that which he had been awarded at trial put paid to the old adage that, in Family Law, '*everyone wins a prize*'.

Your Honour leaves the Court a legacy akin to that of some of our most notable jurists, including Justices Nygh, Fogarty, Lindenmeyer, Finn, your predecessor in Western Australia, Holden, and Justice O'Ryan.

Secondly, your Honour was a skilled administrator. Whilst no doubt building upon the significant contribution of your predecessors, most recently the Honourable Michelle May QC, and as part of a team comprising the other members of the Full Court, in more recent times you have been responsible for a series of marked improvements in the operation of the Full Court, most notably a significant reduction in the time between the filing of appeals and determinations, which, in the Sydney Registry, had increased to a period of some two years but has now reduced to six to 12 months; the reduction of the number of pending appeals by more than 50 per cent in the 18 months since June 2016; a significant increase in the number of appeals determined at hearing by the delivery of ex tempore judgments; and the introduction of electronic management of appeals, including in particular the use of electronic transcripts.

¹ [2016] FCWA 6 accessible at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/wa/FCWA/2016/6.html>

Your Honour has left the Full Court in a strong position and there can be no doubt that the remaining members will strive to continue the work of the Court in that tradition.

On a penultimate note, it is with great regret that I feel it is necessary to pass comment on articles that have appeared in today's press. From the perspective of the profession, including those who like myself regularly appear before this Court, it is as scandalous as it is inaccurate to suggest that there could be any suggestion that the work of any Judge, including that of the members of the Full Court, is undertaken other than so as to do right by all persons without *'fear or favour, affection or ill will'*.

We will all, Court and profession alike, disagree from time to time and, on occasion, strongly and passionately. Such is the importance of the issues with which the profession and the Court are engaged on a day-to-day basis, and such is the fundamental commitment that we all have to the maintenance of a world-leading judicial system for the assistance of those in need in the Australian community. It is, however, incumbent upon all of us to express our disagreements, advance our points of view and engage in debate in an appropriate manner, respectful of both the institution of the Court, to which we all contribute so much, and respectful of each other.

Finally, and on a personal note, I have had the privilege to appear before your Honour on numerous occasions, including being thoroughly run back out of Perth in *Bevan*; in the delightful conditions in Broome in a late November; and as recently as on two occasions this week. I have always looked forward to the humour, honesty and intellectual rigour, although perhaps not the lack of success, that has marked each of those exchanges. In fact it has rather unkindly been suggested that, at least in financial agreement cases before your Honour, I should simply announce my appearance as *'Senior Counsel for the loser'*.

On behalf of the New South Wales Bar and the broader legal profession and all those here present, whether in person or by other means, we thank your Honour for your service and wish you a long and most enjoyable retirement to the post of Chief Judge of the Family Court of Western Australia.

May it please the Court.

THACKRAY J: Well, thank you, Mr Kearney. I sincerely thank you and all of those who you represent for what were overly generous remarks. I appreciate them rather more than you might think.

This proceeding is looking rather like a ceremonial, and so without further ado I would like pay my sincere respects to the traditional custodians of the land on which we are gathered today, and I pay my sincere respects to their elders both past, present and emerging. I would like particularly to pay my respects to the Martu people of the Pilbara region of North Western Australia.

Ladies and gentlemen, I was lucky enough to grow up on a small wheat farm north of Perth. The Honourable Ian Coleman SC, who I'm told these days is one of your less distinguished members, would be pleased to hear that I still regard myself as a boy from the bush. It was therefore with some trepidation that I stepped into this courtroom for the first time, 11 years

ago, having heard a little of the reputation of the great New South Wales Bar. I need not have been fearful, as I have been treated here with nothing other than the utmost courtesy and respect, and I have received much needed help in coming to the decisions that I have often found very difficult.

I hope, though, to make my exit today with somewhat more dignity than I managed on one occasion in this Court, when my robes became stuck in the mechanism of the chair on which I am now perched. I wiggled, and I waggled, hoping nobody was looking, trying to extract my robes from the chair. All efforts failed, and then the presiding judge decided it was a good idea to adjourn. My options were to drag the chair out behind me or to elegantly slip out of my robes and walk off in my business suit. That was one of the easiest decisions I had to make here.

I've had the privilege of sitting on appeal all around this country, and each city has its own legal culture. I remember the first time I had to walk onto this bench alone in order to deliver a judgment prior to the main business of the day. The first thing that happened, as usual, was that the court officer banged on the door as if he wanted to knock it down rather than to open it. I am curious why practitioners in this state, more so than in other states, are presumed to be stone deaf. Perhaps it is because guidance from the bench sometimes falls on deaf ears. I have often thought that a quieter knock would not scare the pants off me and everyone else on the other side of the door, especially the poor old self-represented litigants.

And as some of you know, I'm rather attracted to modern technology. My first piece of technology was an Olympia portable typewriter my mother purchased when I was at primary school on the farm. I had no interest whatsoever in farm work, (I'm sorry, Ian. I pretended to the contrary!) so I decided to teach myself to type, and my ability to type has been an enormous advantage to me. And as those of you who have appeared before me would know, I always bring my laptop onto the bench.

Now, I learned a little while back that the more savvy members of your Bar, instead of following the judge's pen, were instead following the judge's keyboard, and apparently the word around Sydney was that when I stopped typing, you were going down screaming. So after that, I used to stop typing, just for fun, to see the look of horror that came across your faces.

Now, as Justice Ainslie-Wallace, my dear friend, has suggested, I've got quite a lot to say today, but I do make one promise, and it's the same one I am told was made by the late and delightful John Purdy at his ceremonial farewell. I promise not to go part heard.

First and most importantly, can I thank the staff of this Court and the staff of each of the other registries around Australia? While some people seem to think of courts as consisting only of Judges, that is like believing that the tip above the water is the only part of the iceberg. Without the ice below the water, the tip would rapidly melt and become nothing at all.

I'm not sure whether it is widely known, but the staff in this registry and all the other registries around the country have not had a pay rise for four years and eight months. And yet, everywhere I go, I see loyal public servants putting their heart and their soul into their work and desperately caring about the reputation of their judges and magistrates and their

courts. Despite the issues with their pay, they happily go the extra mile to look after judges who keep getting pay rises, that is, of course, except state judges in Western Australia, where we have run out of money because you guys are taking all our GST.

In any event, while there are good reasons why judges get paid a lot and have excellent conditions and almost complete security of tenure, our staff have not been so lucky. I was glad for our wonderful staff here that they recently reached an *'in principle'* agreement about a pay rise and were, until yesterday, waiting for that agreement to be approved by the Public Service Commissioner. I was devastated this morning when I was informed, admittedly on the grapevine, that that approval has been denied. I thank the staff of this Court from the bottom of my heart for being prepared to continue to come to work without complaint, with happy dispositions, and for continuing to perform at the level that they do. Without you, there would be no court.

I thank in particular Susan Brennan and Maryrose Portelli and all the other people around Australia who have worked tirelessly, I am now told, to arrange this rather complicated hearing which is being telecast to at least Melbourne, Brisbane, Parramatta and last but not least, Perth.² You are the forgotten people of this court, along with people like the pocket rocket, Cathy Jordan, who I can just see over the table there, who has been working in this institution for 34 years and who I ran into on the street this morning and invited to sit up the front there as a representative of all of our magnificent staff.

And I've also just heard – and I'm very sad to hear this, and I direct these remarks to my wonderful people in Perth – that our fantastic Eileen Smith is today very, very quietly leaving our court after 36 years of service to the people of Western Australia. So today, I have this wonderful opportunity to say thank you to all the Cathys and all the Eileens of the family courts across Australia.

Next, I want to thank the Appeals Registrars and their small staff in each of our registries. The Appeal Division is now running as efficiently as it ever has in the history of this Court, and much of that credit is due to them, and particularly to the National Appeals Registrar, Teresa Kane, who is one of the most exceptional people I have ever had the good fortune to meet. Thank you, Teresa, very much, if you are watching up there in Brisbane.

Closer to home, it will probably come as a great surprise for you to learn that the Sydney registry was long regarded as the problem child of the Appeal Division. However, the number of pending appeals in Sydney has reduced by more than half, and appeals are coming on more quickly than they have at least in recent memory.

Indeed, Paul Doolan came over to Perth last weekend to speak at a conference, and he said he knew from personal experience that things were moving along very quickly here in Sydney because all of his appeals were now being dismissed with costs in record time!

All of the improvements made here have largely been due to the efforts of your fantastic coordinating Registrar Philip Cameron, and the wonderful Registrar Sally McNamara and their people, ably supported by the three very, very busy Sydney judges. Thanks also to our

² The proceedings were also being telecast to Adelaide and Newcastle.

terrific new Registrar in Melbourne, Katherine Sudholz, and to her predecessor, Pia Marrone, and to my old friend Tom Kuurstra, who runs the appeal work in Perth. I thank you from the bottom of my heart. You are all terrific people.

Next, I would like to acknowledge the very talented Legal Associates who have stopped me and, I suspect, some of my colleagues from making many, many errors and who have willingly traipsed around this country, like the Appeal Judges, giving up their Sundays routinely to be at their station first thing on the Monday morning of a Full Court.

I thank in particular all of my exceptionally talented Legal Associates: Benn, Michelle, Alison, Kelly, Kate and, last but not least, my current Legal Associate, Emilie Adlide, who I will single out, to her enormous embarrassment, as an example of the sort of talent we have amongst this elite group. Having graduated from ANU with first class honours, in her spare time, when not looking after me magnificently, Emilie is also the National Chair of CanTeen, the organisation for young people living with cancer. I particularly appreciated her wise counsel and support in the last week or two and especially yesterday when the lift got stuck – with me inside it!

I turn next to the retired judges of the Appeal Division, almost all of whom, I think, are either in this or other courtrooms around Australia or who have sent me messages. Mr Kearney, you mentioned my name in the same breath as people who I revered as a young lawyer reading far too many law reports. Had you said I was half as good as them, I would have left here today greatly honoured.

But, as a representative of all of those Appeal Judges, because I could say a lot about them, I would like to single out my very dear friend, the Honourable Mary Finn. I do this because for most of my time on the Full Court, Justice Finn was the Head of the Appeal Division. She ran the Appeal Division single-handedly with no more support than what she had in her own office. I, on the other hand, have had the benefit of the exceptional National Appeals Registrar I mentioned earlier.

Apart from administering the Appeal Division single-handedly, Mary, as you will know, wrote some of the most exquisitely beautiful and learned judgments that anyone will ever have the privilege to read. The fact my name appears on some of the judgments she wrote, when all I did was to make some suggestions about commas, is, of course, of great satisfaction to me. She led us by the brilliance of her jurisprudence, by her unfailing courtesy to counsel and self-represented litigants alike and by her diplomacy in managing her devoted group of disciples, otherwise known as the Appeal Judges. Mary was always there when I took over from Justice May, who in her time as the Head of the Appeal Division showed the same qualities as Mary had demonstrated for us over such a long period of time.

I made a speech to the Perth family lawyers last Saturday, and there is a possibility I departed from my script, but I was pleased with the impromptu bit when I said, *“people should stop saying what a good job I had done on the Appeal Division, because for me it felt like I had been standing on the shoulders of giantesses.”*

By the way, this Court has, of course, been led for 26 of its 42 proud years by Chief Justices who happen to be women. Although my own court in Perth has not yet had a woman Chief

Judge, we were the first court in Australia in which the majority of judges were women, and over half of our current judicial officers across all levels are women – and every single one of our senior managers and administrators is a woman. I'm very proud of that record.

The task of the head of the Appeal Division of this Court is an interesting one. It is not a statutory position, and the role is not defined. I had some appreciation of the work from watching Justices Finn and May, but when the time came for me to do the work, I greatly appreciated their support. In performing the role I was always most grateful that I had the full confidence of Chief Justice Bryant and I am grateful to Chief Justice Pascoe for so regularly expressing to me his great confidence in the work that I was doing.

I next thank this extraordinary group of people who sit supporting me on the bench today and who have been a source of pleasure and inspiration over many years. I regret that Justice Ryan is unable to join us today, but her mother sadly passed away on Monday. I also regret that Justice Strickland is only able to appear by video link, but he is busily, as always, holding the fort not only in Adelaide where he lives but in Melbourne as well. I do not regret that Justice Kent is not here. I see him by video, sitting on the bench in Brisbane. I wanted to be the best looking man on the bench today! By the way, Justice Kent is not here because he is taking some well-deserved annual leave. The fact that, like other judges of this Court, he has spent most of that leave writing a very difficult judgment is neither here nor there, but it would have been pushing things to ask him to tell his family that on top of all that he was flying to Sydney today, even though I would dearly have liked him to be here.

Now, as you may be getting the impression, I could speak for quite a long time about the qualities of each of the individuals of the Appeal Division. I will content myself by saying that I regard each and every one of them as a friend. If we are remembered for nothing else, I hope that this group is remembered as those who brought the Appeal Division into the position it occupies today, that is, being a very efficient Full Court, which is not to criticise our predecessors, who are amongst our country's finest jurists and who worked their fingers to the bone without proper support.

It's an unfortunate fact that people look for easy answers and easy explanations when dealing with complex issues, and there is a tendency to confuse cause with association, but can I assure you that a very large number of converging factors have led us to today where the stocks of the Appeal Division are at an all-time high. If I had to attribute that to one single factor other than the work ethic of the judges and their staff, I would say it was the very wise decision to create the position of National Appeals Registrar. Were it not for the creation of that position, not one of the technical innovations that were introduced in the last 12 months would have been possible. It's all very well having ideas, but getting them implemented requires skill, time and effort, and I did not have the time to devote to that task.

If I have one attribute that I think has served me well in my leadership roles, it's that I recognise the merit and importance of every single member of my organisations. I like to think that my staff feel appreciated, even if my effort to remember everyone's name gets harder by the year. I also hope I foster a work environment where I can be easily challenged when I have yet another cock-a-mamie idea. In my view, surrounding yourself as a leader with people who will always agree with you is not the best approach. Good leaders surround

themselves with people who are strong and independent and prepared to take them on, by speaking truth to power.

There were, however, many other forces at play that have led to the improvements which you have kindly recognised today, Mr Kearney. There's no need for me to go into the detail, but I certainly can say the personnel we now have in place in each registry around Australia deserve a great deal of credit, as do my predecessors.

I would like to think that what has happened in the Appeal Division over the last little while is an example of what could be achieved in the larger family law system if it was properly resourced and supported. For example, the very modest cost of a National Appeals Registrar has, in my view, probably saved millions of dollars to the Australian economy when one looks at the bigger picture, rather than focusing on one budget item in isolation.

There is a huge social and broader economic cost in having thousands of citizens of this country tied up in litigation while their mental and physical health deteriorates. The modest cost of one Appeals Registrar, itself only a part-time position, led to greatly increased productivity of an entire Appeal Division of one of the major courts in this country, which in turn led to massive reductions in delay in litigation, which leads to savings in wasted legal costs and improvement in health and quality of life for Australian families.

Finding the funds to create this one job in the whole of the country was not a cost. It was a spectacularly good investment, and it will pay a dividend in perpetuity.

The other most important factor at play in the improvements was the willingness of the Appeal Judges to march together toward a more efficient environment where as many judgments as possible are given *ex tempore*, where costs are fixed on the spot without having to be taxed and where we take every advantage of modern technology. We have also collectively embraced a philosophical approach to judgment writing introduced to us in Brisbane by one of the greatest legal philosophers this Court has ever produced, Bernie Warnick, alongside an outstanding and pragmatic jurist, who has since gone on, I'm told, to become the first woman Chief Justice of our country – and whose conversation with us as respected judicial officers left us feeling supported, understood and truly inspired.

Now, as I'm on a roll, I want to turn to make some brief observations, if you will forgive me, on the wider family law system in this country. As some of you already know, I have held on either a permanent or acting basis every possible different judicial office in the family law arena, with only one exception. From, as you've heard, a registrar of the Family Court of WA, right through to a few scary couple of occasions acting as the Chief Justice of the Family Court of Australia, which I happen to think is one of the most difficult and important roles in the country. I therefore wish Chief Justice Pascoe all the very best in that role, and I also extend best wishes to Deputy Chief Justice Alstergren in his work both in this Court and in the Federal Circuit Court and now as the new Head of the Appeal Division.

The only role in the Australian family law system I have not had the honour of filling – so far – is that of a judge of the Federal Circuit Court, but I can assure you that some of my best friends are Federal Circuit Court judges! I hold those judges in particularly high regard and I always have. I know from long personal experience how hard they have to work, and I am

pleased to see so many of you here today and around the country, including some of you who have retired.

There is no judicial officer in either my home court or in this Court here on the East Coast who is able to say, “*but you don’t know what my job is like.*” Although it is very easy to quickly forget how life was in the trenches, I **do** know what every judicial job in the family law system is like. And I therefore know how very important every cog in the system is – judicial officers, family consultants, administrative, clerical, cleaning and security staff all make a vital contribution to the efficient operation of this system.

So, accordingly, if, ladies and gentlemen, I continue to detain you from your very important business for a little longer this afternoon, I hope at least that I can speak to you – and perhaps to others outside this room – with at least as much authority as anybody else who has observed the family law system and, in my case, loved the family law system, for the last 40 years.

Now, I hear and I read a lot of criticism of the family law system in this country, and the criticism has been growing stronger over the years. And the funny thing is that almost all of the criticism has been directed at the Family Court and the Federal Circuit Court and the judges of those courts. And I haven’t been hearing too many people standing up to defend those courts and those judges – and I didn’t think that was very fair. So I thought today, speaking perhaps from my unique vantage point, I might tell you just a little about the history of this great Court, the Family Court of Australia.

The full history would occupy a book, but it’s a tragedy, in my view, that the people of Australia do not know just how highly regarded this Court really is in every place in the world other than in Australia. So it’s perhaps sad that most people don’t know, for starters, that our original Family Law Act has been plagiarised in many places around the world. I know a good deal about the family law system in Fiji, for example, and I know that after careful study they decided to adopt the Australian law and the Western Australian method of applying it. As another exotic example, Barbados adopted our Family Law in 1983 and hopefully they have been sensible enough to leave it in the original form.

The Australian family law system is revered in the United Kingdom. Just ask any visiting judge from that part of the world. And the international high regard for this Court continues to the present day with delegations from around the world beating a path to our door to study our system and transport ideas back to their own countries.

I might release some of this a little later because I realise I’m taking longer than I should. I was going to mention our ground breaking less adversarial trial system, the way our family consultant system is being applied in Japan, the regard in which this country is held in The Hague, where we were led by one of the greatest jurists perhaps the world has ever seen, our own Justice Peter Nygh.

I wanted to talk about the judicial education of this Court, which has been ground breaking in areas of domestic violence, in gender discrimination, in cultural diversity. I was going to tell you about how every one of these three people on this bench are leaders in judicial education in this country and in advocacy training and how each one of the members of my Appeal

Division – I’m sorry to say “my Appeal Division” but, frankly, that’s how I feel about it – how every one of them has made a major contribution to the legal life of this country and has put their heart and soul into this Australian family law system. And, as I say, I may release further detail later for anyone who is interested in having a read.

And I was then going to go on to say that all of those matters that I was going to refer to are a matter of record, and I could go on further than what is in the written material I have here. But there are some things that only people with a close intimate involvement with this Court know. And although I am – or at least I was until this week – the Senior Judge of this Court, that was only because of my role as the Head of the Appeal Division. And my substantive job, as you’ve said Mr Kearney, is as the Chief Judge of the Family Court of Western Australia.

Now, it was in that capacity and while I held all of these other many jobs in the Australian family law system that I had the good fortune to be able to visit this Court and others around the country and observe at close hand the work of the judges of the Family Court of Australia and also, albeit not quite as closely, the work of the judges of the Federal Circuit Court, some of whose offices I always try to visit when I am sitting on a Full Court. Now, given that I have been administering judges and magistrates for more than two decades, I’ve got a fairly good idea of how hard I think judges should work and how hard they do, in fact, work.

Like any group, performance differs from individual to individual and some people, through their superior intellect or efficient working practices, are able to get through their work much more quickly than others. I’m a bit of a plonker, as Ainslie-Wallace tells me, and I don’t work as quickly as some other people like Coleman, like Jenny Boland, who was always keen to go and find some more work to do. But what I’ve observed over 20 years of close observation is that with, I guess, just a handful of exceptions, the judges of this Court work very much harder than I think the Australian taxpayer would consider reasonable or fair. They work so hard that I worry for their health. They work so hard that I worry for their families. They agonise so much over their decisions that sometimes I feel they might crack. And then I see how much younger they all look when they come back from a holiday, and I see exactly the same in their chambers Associates.

So why, with all of this innovation, with all of this world-best practice, with all of this hard work and commitment, are the judges of this Court and the judges of the Circuit Court blamed for what is the undoubted current inefficiency of the Australian family law system?

I think there are a lot of reasons, but I haven’t got time, so I will single out just three.

First, there are not enough judges and registrars. And those judges that we do have are either not replaced or they are replaced after inordinate delay.

Second, we have what I consider to be a bizarre structure where two courts share an almost identical jurisdiction. Instead of working together, almost everywhere they work in isolation, confusing the hell out of everyone with separate forms, rules and processes.

Third, we have been lumbered with the most extraordinary legislation that has grown like topsy and appears to have been drafted by a committee of people charged with the

responsibility for making things as difficult as possible for judges and the poor old self-represented litigants.

Our current law is completely misunderstood by even well-educated Australians, and I am, indeed, sorry to say that it is often misunderstood by lawyers. And, worse still, it is misunderstood by some judges, particularly those very unfortunate ones who are appointed to sit in family law matters with no family law experience. I know. I was the Head of the Appeal Division until Monday!

During my 40 years in this system, I have not only studied the system itself, but I have studied the way successive governments handle the hot potato it represents, since our family law system is front and centre in the gender wars – in which the men’s groups say we favour the women and the women’s groups say we favour the men. If there is any winner in that war, it sure isn’t the Family Court and it sure isn’t the children of Australia.

There’s a lot more I could say about how successive governments have dealt with this Court, but as I am a judge, not a politician, I won’t.

All I will say is that I entirely agree with Chief Justice Pascoe in what he said in the newspaper this week. I would be very, very careful before taking decision-making away from expert decision-makers and giving that responsibility to social workers and psychologists, notwithstanding that some of my best friends are social workers and psychologists! In my very long experience of working with social workers and psychologists, they prefer not to make decisions about other people’s lives. They help them and support them once the decision has been made, as well as providing advice to the decision-maker.

There are many good things that have been done by governments for our family law system. It’s not all doom and gloom. Look, for starters, at the magnificent Family Relationship Centres that are now populated all around this country. And I sincerely believe that every Australian Government does want a strong and effective family law system. But unfortunately, along the way there has been a misguided attempt to save what, in the overall scheme of things, is a very modest amount of money, and in the process, these two great courts have been brought almost to their knees.

You have already heard what we have done on the Appeal Division in a very short space of time, and in particular, I have highlighted how just a tiny amount of money ends up saving the Australian people millions of dollars. We need a much better resourced family law system, and we desperately need a bipartisan attempt to reconstruct our federal family law system into a coherent model.

I’m afraid it has not made a splash in the press, but earlier this week there was finally a glimmer of hope from our Parliament, which warmed my heart. A whole bunch of senators from a range of parties got together to support our two great courts and our great family law system and passed, by a very large majority, a motion in the Australian Senate. Time does not permit me to read out the entire motion, but it’s a cracker.

Now, I'm not getting any younger, and I've been burning to say these things for years, and an opportunity has just presented itself, for which I will be forever grateful. I'm not sure how grateful you are going to be, of course.

When I wrote this speech last night, I was going to conclude by telling you that I had a dream in which I found myself in a place with my dream Family Court. In my dream I was typing up the details of my dream Family Court for my speech today – and it would not surprise you to learn that by the time I had finished clacking away, driving my darling wife berserk, I had 20 dot points describing my dream Family Court. And then, after quickly reciting my 20 dot points, I was going to go on to say in my speech that in fact, I then realised I was not dreaming. I was wide awake, and I was just reflecting on how happy I am that tomorrow morning, for the last time from here, I get on a plane to Perth and I return to my dream Family Court.

You are all welcome to come visit us in WA any time. We not only have a nifty little Family Court. We have wonderful wines. We have wonderful beaches. Our sharks don't eat lawyers. We now even have electricity, and we have the best footy team in Australia, and I'm going to the Eagles' first game in our magnificent new stadium with my best mates and my wife – also my best mate – on Sunday!

I would offer for you to come and visit me personally in my rather lovely office in Perth, but my plan over the next year or so is to be spending a lot of time in the Pilbara area, where the Martu people live and struggle with the effects of colonisation. I have been working, over the last months, on a new model of delivering family law justice to our Aboriginal people, and I have become very excited about it. The Martu elders have become quite excited about it too, and the only problem was that I realised I had too many jobs and I didn't have time to do what I wanted to do. Then the wonderful God of Fate looked down upon me recently, and I now find myself with a great deal of time to do something really useful.

I was going to end with some thanks to the most important people in my life: my wonderful wife, my terrific kids, my Legal Associate Emilie, my totally amazing Associate at home, Kathy, and my incredible Court Officer, Lex, who is a Level 1 Public Servant who works a 12 hour day every day, including when he's sick, not because he has to but because he loves coming to work and because we love him.

Finally, I was going to thank each and every one of you for coming here today, and all the others who have turned up, I am told, in such extraordinary numbers around this country. I know you are not here to acknowledge me, although I'm feeling pretty acknowledged. You are here to acknowledge the great Family Court of Australia and the great family law system. And I know it has warmed the hearts of my loyal colleagues and friends in both the Family Court and the Federal Circuit Court to see you here and in every other Australian city gathered in unity to support your family law system and your Family Court judges.

Ladies and gentlemen, that was where I was going to finish – until I walked past a coffee shop in Elizabeth Street this morning and, to my complete horror, saw my photograph on the front page of the national newspaper, something that I hoped I would never see in my life. And it may not surprise you to know that I have just a few final words to say about what I read in that newspaper when I got to the office this morning. What I would say about this

morning's press – I have a lot to say – I have a great deal to say – and I know so do all of you, but you can talk to other people. I'm talking to you.

There are five things I want to say.

First, as a very experienced judicial administrator of what I think has universally been regarded as the most successful family court in the country, can I ask you to resist the temptation to believe in quick-fix solutions?

Secondly, in 21 years on the bench, I have never spoken to a journalist other than through the Court's media officer – and I never will.

Thirdly, in 21 years of judicial administration, I have never spoken to a politician, other than at a professional function, unless they are the Attorney-General or the Minister for Child Protection – and I never will.

Fourthly, in my very long history of association with the judges of this Court, I have found them to be the friendliest and most collegiate of people, who go about their work fairly, respectfully and with utmost integrity.

And finally, during my time on the Appeal Division, I enjoyed the unanimous support of the Appeal Judges. I leave the Appeal Division in very good shape, not due to my efforts but due to theirs. I have every confidence in them, and I would stake my life on their integrity.

I've been inundated, in the last two weeks, with messages from around Australia and around the world. I have been touched by every one of them, but the one that touched and humbled me most was the one sent by a Federal Circuit Court judge whose work I know better than the work of some of the other Federal Circuit Court judges. I give that judge credit for being appealed fairly often, because quite clearly, for one, he's working! He's working his backside off in an effort to get through the work because he cares passionately about what he does and he is trying his best to reach good outcomes for Australian families and Australian children.

And I've had to say some tough things in one of my judgments about one of his judgments, and so it was because of that, I think, that it was his message that touched me the most of any message that I received. And were it not for what I read in the national newspaper this morning, I would never have dreamt of reading this out in public, but I am going to – because I think it says something about that man and about our Australian family law system – and what an extraordinary group of people we have that have made this system and have made it so great for the last 40 plus years:

Dear –

I forget what he called me because I didn't write it down here, but I'm sure it was respectful:

Please excuse my uninvited email. However, I just received notice of the special sitting this Friday. I am unable to participate, as I will be in transit ... Otherwise, I most assuredly would have attended, if only by video.

I wish to express my admiration and thanks to you for your service to the community and to the jurisprudence of family law. I've always, both prior to and post-appointment, found your judgments instructive and abundantly infused by your clear knowledge and intellect and demonstrating a human decency and respect for others. This has been so even when, post-appointment, I have been the subject of such judgments. I and, I am sure, the court and the community, will miss your contribution to appellate jurisprudence.

Ladies and gentlemen, I don't consider that was praise for me. I consider that was praise for the group of judges that I have had the singular good fortune and privilege to lead for the last year. I thank you very much for your attention today.

[His Honour's address was followed by a standing ovation during which his Honour embraced his colleagues on the bench and then left the Court.]
