

## Chief Justice Patrick Keane

On Monday 29 March 2010, a ceremony was held in the Federal Court's refurbished No 1 Court to welcome formally to Sydney the Honourable Patrick Keane following his swearing in as the Federal Court's third chief justice earlier that month.

Justice Arthur Emmett, speaking on behalf of the judges of the Sydney Registry of the court, made the following brief remarks:

Chief Justice, today marks the first time that you have sat in Sydney, the seat of the court's largest registry. In the absence of Justice Moore, Sydney Senior Judge, may I, on behalf of the Sydney judges, welcome you publicly and express our immense pleasure at your appointment. As our third Chief Justice, you have inherited the Federal Court's tradition, established by Sir Nigel Bowen, and maintained by Michael Black, dispensing justice in deciding cases innovatively, efficiently and courteously. You may be assured of the support of your Sydney judges in maintaining and furthering that tradition in the exercise of the extensive and varied jurisdiction that is vested in the court. We look forward to exercising that jurisdiction under your leadership.

Mr Bathurst QC, on behalf of the NSW Bar, observed that the new chief justice was ranked amongst the finest solicitors-general over the 15 year period in which he held the office of solicitor general for Queensland which was:

all the more remarkable, as you combined that role with the most successful private practice of the Queensland Bar. As Solicitor-General, you appeared with distinction in most of the major Constitutional cases of the decade, significant cases in administrative law, such as *Ainsworth v the Criminal Justice*

*Commission*, and major commercial cases, both in Queensland and the High Court. As a judge of appeal in Queensland, your Honour followed that court's tradition of intellectual quality and clarity established by judges such as Justice Bruce McPherson, one of the finest Australian judges not to have been appointed to the High Court.

The breadth and depth of experience acquired by your Honour in these capacities makes you an ideal person to be appointed to this very important office which you now hold. Unfortunately, your Honour did not appear very much in Sydney. It was far more common for you to fly over this city, en route to Canberra, than to come and terrify the Bar in this state by your forensic ability and intellectual skill. We hope you rectify this as Chief Justice.

If this magnificent courtroom and the highly-intelligent, diligent, and, dare I say, convivial Federal Court judges sitting in this state, coupled with the attractions of Sydney, are not enough to tempt you, can I just remind you that the Bar in this state has been invaded in recent years by Queenslanders. You will certainly find many friends here. On behalf of all members of the Bar of New South Wales, can I again extend my warmest congratulations and best wishes on your appointment.

The brief address delivered by Keane CJ appears below.

Colleagues, ladies and gentlemen, Mr Bathurst, Ms Macken, I am very grateful for, and much encouraged by this welcome from the two branches of the legal profession in New South Wales. It's been as warm as the welcome I have received from my colleagues in Sydney. It is a particular pleasure for me today to see at the bar table my old sparring partner, Mr Bennett, queen's counsel for the solicitor-general for the Commonwealth, and Mr Sexton SC, the solicitor-general for the State of New South Wales.

It's a happy coincidence that the portrait of Sir Nigel Bowen, which is seen to my right, has recently been returned to this courtroom after its refurbishment, because it gives me the opportunity to pay tribute, albeit an inadequate one, to him, as the court's first chief justice. Sir Nigel Bowen was a great lawyer and advocate. The summaries of his arguments in the High Court, which appear in the *Commonwealth Law Reports*, still bear close study. The compelling elegance of his arguments stands in stark and instructive contrast with so much of the cluttered and convoluted advocacy that was then in vogue. But it was as the first chief justice of the court



that Sir Nigel made his greatest contribution to the law in our national life.

Sir Nigel Bowen's stated vision, as mentioned by Justice Emmett in his remarks, when Sir Nigel oversaw the establishment of this court, was that it should be a court of excellence, innovation and courtesy. Now, more than three decades later, no one would, I think, doubt that Sir Nigel's ambition has been achieved, at least to this time. What might be thought, however, is that there was little that was especially visionary in his stated ambition for the court; but that would be wrong.

To those who think that it is trite that a court should, as a matter of deliberate policy, strive for excellence, I would say that 35 years ago the authority of the courts derived very much from the fact that they were an organ of government, and governmental authority was then attended by a universal expectation of obedience. Government, even in Australia, was still conceived of as something which those in power did to those who were not. That is certainly no longer the case. The authority of the courts is now, more than ever, seen by our well-educated and rights-conscious community, to rest upon the quality of the reasoning on which the judgments of the courts are based. Excellence is now essential to the maintenance of the authority of the courts.

Sir Nigel saw that this was indeed the future, and 35 years ago, innovation – that is to say, openness to different ways of doing things – was not regarded as the virtue that it is today. New South Wales, at that time, had only just made the great leap forward to 1873 in terms of the adoption of the Judicature Act reforms, and some lawyers and judges in New South Wales thought that this was an act of dangerous radicalism. Some still do. Today, we recognise that new ways of doing things, such as active, and, perhaps it might seem at times, unduly aggressive case management are not only capable of improving the processes of the administration of justice, but are actually essential to enable them to cope with the needs of the community and to ensure access to justice and to prevent the courts becoming the playthings of the rich.

But it was in relation to the idea that a court should actively strive to be courteous that Sir Nigel's vision was truly somewhat different. In New South Wales, as in my own state, a judge who behaved as a hectoring bully was not regarded as particularly unusual. The tone on the bench often seemed to be set by angry old men.



As a young barrister, I had the great good fortune to appear before Sir Nigel on several occasions, mostly, I must say, in Brisbane. He was a pleasure to appear before, but he was no pushover. He simply believed that the advocates contributed more to the just determination of the case if they were not harried and hectored, and were allowed to develop their arguments in their own way in order to show their merit. That approach did not commend itself to all of Sir Nigel's contemporaries. Many of them were very great lawyers and judges in their own way, but they could not be accused of being a pleasure to appear before.

Of course, it is possible to stretch the friendship. Courtesy on the part of the court assumes an irreducible minimum of professionalism on the part of both branches of the profession, particularly the bar, but there is, I think, every reason for confidence in the high professionalism of the solicitors and barristers of New South Wales. To the extent that this court has lived up to Sir Nigel's vision – and I believe that it has – that has been, in very large part, due to the high standard of the assistance always afforded to the court by the solicitors and barristers of New South Wales.

I am confident that the profession in New South Wales and the judges of this court will not slacken in their combined efforts to ensure the continued success of Sir Nigel Bowen's vision for this court as one of excellence, innovation and courtesy. I am very grateful to you all for this morning's expression of the dedication of the legal profession in this state to that task.