

## chief justice's farewell

# Chief Justice Brian Martin retires

During October, the Northern Territory Supreme Court held ceremonial sittings to mark the retirement of Chief Justice Brian Martin MBE AO (in Alice Springs on Wednesday 29 October and in Darwin on Friday 31 October).

Both sittings were well attended by the local legal profession and many familiar faces took the opportunity to reflect on Chief Justice Martin's time at the helm. Dr Peter Toyne (Attorney-General), John Reeves QC (President of the NT Bar Association), Merran Short (President of the LSNT), Rex Wild QC (Director of Public Prosecutions), Tom Pauling QC (Solicitor-General), Ian Barker QC, Tony Whitelum (LSNT), Dr Nanette Rogers (DPP), David Bamber (Central Australian Aboriginal Legal Aid Service) and Russell Goldflam (NT Legal Aid Commission) all spoke at the ceremonies.

The Chief Justice also had a few words to say. Here are some excerpts from his speech in Alice Springs: "These occasions are quite remarkable for a number of reasons, not the least being the apparent furious agreement between a number of senior counsel at the Bar table in open court. It's a rare spectacle indeed. I anticipated it would be likely that you'd be kindly in



*The legal profession was out in force to mark the retirement of Chief Justice Martin*

your remarks, after all it's the traditional thing to bring to bear the good on an occasion such as this, bit like a eulogy really, but you get to hear it."

"Now although this function has directed special attention to my time on the Bench and imminent departure as Chief Justice, this is a sitting of the Supreme Court, and by your attendance you honour it, and importantly to me, you affirm its good standing.

"I guess you'd not be here if you didn't

respect the court, and that makes me feel good. During my term as Chief Justice I've striven to testify that the court maintains the reputation in the community as the institution on which it can rely to administer justice according to law.

"That it's not open to criticism based upon perception that it lacks independence, or that any of its member are paritsan, in any respect, and that they act fairly in the discharge of their judicial duties. These ends are

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*The Full Supreme Court met for ceremonial sittings to mark the retirement of Chief Justice Brian Martin MBE AO*

# Incoming Chief Justice Brian Martin

On 14 October 2003, Attorney-General Dr Peter Toyne announced that South Australian Supreme Court Judge Brian Martin will be the Territory's next Chief Justice.

The Law Society welcomed the appointment of Justice Brian Ross Martin, who has been a South Australian Supreme Court Judge since 1999 and recently presided over the infamous Snowtown 'bodies in the barrels' case.

"Justice Martin is highly regarded and very well-respected throughout the legal profession," LSNT President Merran Short said.

"Justice Martin is an excellent appointee and will bring a wealth of legal experience to the position," Ms Short said.

"We look forward to working with Justice Martin and believe that he will continue the tradition of strong leadership in the Northern Territory courts."

Justice Martin's long and established legal career includes a number of highlights. In January 1974, after four years in private practice, he took

up a position as an Assistant Crown Prosecutor in the Crown Prosecutions Section of the Adelaide Crown Law Office. He was appointed Deputy Crown Prosecutor in August 1979 and became Crown Prosecutor for the State of South Australia on 23 December 1982. On 4 October 1984 he was appointed a Queen's Counsel.

During his time as a Crown Prosecutor Justice Martin appeared in many complex criminal trials and his latter years involved an extensive appellate practice in the Court of Criminal Appeal and High Court. Trials of some notoriety included the prosecutions of Emily Perry and Bevan von Einem.

In May 1985 Justice Martin resigned and commenced private practice as a barrister. He practised in all jurisdictions until accepting a position as Senior Counsel assisting the West Australian Royal Commission into *Commercial Activities of Government and Other Matters*. The Commission occupied his time for almost two years during 1991 and 1992. Following the completion of the Royal Commission he resumed his practice as a barrister appearing in both criminal and civil

jurisdictions in Adelaide and Perth. His retainers in Perth included the prosecution of Alan Bond.

In 1994 Justice Martin reviewed the operation of the South Australian Equal Opportunity Act 1984 at the request of the Attorney-General for South Australia. He delivered a report in October 1994.

In March 1997 Justice Martin was appointed to the position of Commonwealth Director of Public Prosecutions. He resigned in February 1999 upon his appointment as a Judge of the Supreme Court of South Australia.

"His breadth of experience and calibre will be a welcome addition to the Territory's bench," Dr Toyne said.

"Justice Brian Martin has an outstanding reputation both as a barrister and for his leadership skills," he said.

Justice Martin will commence his appointment in January 2004. Justice David Angel will sit as Acting Chief Justice for the interim period since Chief Justice Brian Frank Martin MBE AO retired from his ten-year tenure at the end of October. ①

## Chief Justice Brian Martin retires cont...

only met through strict adherence to principle. It's been my privilege, for the time being, to be entrusted with the office of Chief Justice, and I trust I leave it in good stead."

Chief Justice Martin also touched on the perception that judges and magistrates are aloof and removed from the community.

"Judicial officers, as you know, do not, as expected by many, live in ivory towers remote from the community.

"We all live in the real world, we all partake in the same types of activities which you do, but the proper discharge of our judicial functions means that we may not engage in the community in a way in which we might wish or might even enjoy or as some members of the community might expect.

"Maintaining the reputation of impartiality requires judicial officers refraining from public debate on issues, unless sorely pressed, as sometimes occurs. In so doing, the judge is not being aloof or unsympathetic, but simply properly detached. That is not to say that judges are not entirely isolated from the wider world, because many are very actively involved in a variety of community based activities, often as leaders in those organisations."

The Chief Justice also touched on the issue of media criticism of the court.

"... the criticism can be put up with a long time, sometimes, with some justification. The court's prepared to put up with that, and look at their ways and means to see if they can't resolve it and do better. But you get to a stage

where they really are quite outrageous, based on no foundation of fact.

"It's suggested that those who participate in talk back radio are those who govern the general public opinion throughout the Territory, and that their views are those which ought to influence the court. Well what's often overlooked, is the sub-editorial headline in the five second grab, is that the court has a duty to do and it must do it regardless of those sorts of pressures and criticism, many of which, as I say, are quite unfair.

"The courts have to apply the law, as it is, to the facts as they've been found upon the issues which have been joined between the parties and the evidence that they produce. The

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# Chief Justice Martin retires **cont...**

courts don't make the case, the parties do. They define the issues. They define who's going to be called to give evidence, and present the matter for the judge to decide.

"Of course, we must realise that in practically every case, there are going to be winners and losers, and that it is quite often those whose case does not find favour that make the most ruckus. If the judge is wrong, it can be easily remedied within the established judicial system.

"We're open to fair criticism from any quarter, and after all, usually diametrically opposed arguments are advanced on behalf of parties and the trial judge must make up his or her mind as to which of them is to be preferred and to give judgment accordingly, and the appellat courts are there to correct errors where they occur.

"There's something the parliament feels that in the way the court has interpreted statues, it wasn't what the parliament intended, then the parliament has it in its hands to fix it. The combative nature of political debate in the Territory, and I must state elsewhere, seems to engender an atmosphere in which like means are employed in order to criticise the judiciary."

Chief Justice Martin also touched on the current problems faced by the local Indigenous population.

"The most serious criminal cases in this court involve accusations against Aboriginal people, normally relating to crimes of violence committed whilst alleged offender and more often the victim and those in the vicinity are plainly drunk. It's a fact of life.

"It's well documented in courts the distinction recognised by many who are concerned about these things. The public purse and this court will continue to have much of its resources devoted to dealing with cases of that nature until the root cause of the offending is overcome.

I do not profess to have the answers to all that, but what I know is that the court sees the result, and it's ill equipped to deal with the cause.

"Punishment, even punishment by imprisonment for many years, plainly does not act as a deterrrent to many other Aboriginal people. It goes on and on and on. What is undoubtedly a personal tragedy often involving death and serious injuries, one must (sic) become mundane.

Chief Justice Martin also brought up his displeasure with attempts by the Commonwealth, State and Territory governments to apply commerical management techniques to the administration of justice.

"Performance indicators are the in thing and an annual report is produced under the auspices of the Commonwealth Productivity Commission, purporting to show how each superior court compares with the others, for example, in time taken to finalise cases.

"Who knows what the cost to the public is of compiling, producing and comparing the statistics which in the result, are frankly quite meaningless. Court structures, even at the same level, vary significantly. The range of jurisdiction of any court can be quite different from another.

"The figures for this court appear to show that we're a bit slack in regard to the percentage of civil cases finalised in a given period, but my investigations showed that a significant category of cases dealt with were simply not included in the count. They comprise appeals from lower courts and tribunals. They're numerous, they're very time consuming but are normally dealt with fairly promptly.

"Whether the same position applies in other jurisdictions, I don't know, but what I do know is that the statistics published for this court are incomplete and misleading. In any event, counting numbers is not a true reflection of the administration of

justice. Quality is the primary yardstick, not quantity."

Chief Justice Martin also paid tribute to the magistrty.

"For many years the Territory has been well served by the magistrty, both in major communities and in bush courts, deal with the vast majority of cases coming before the judicial arm of government.

"Theirs is no easy job, bearing in mind not only the quantity of work with which they must deal, but also the range of it. The Supreme Court must, from time to time, deal with appeals from decisions of magistrates in exercising their various jurisdictions, does not reflect badly upon them in any way, notwithstanding that their decisions may be overturned every now and again.

"It must be remembered that the vast majority of decision made in that court are not subjected to review, and those that do are not all found to have erred in some respect. I wish to publicly thank them, that is, all the magistrates for their services to the territory. They work long and hard hours, not just in the comfy, cosy places like Darwin and Alice Springs, but in many remote places in the Territory, which no doubt involves considerable hardship." ①