

## Address by the Chief Justice of the NT

### OPENING OF THE LEGAL YEAR DARWIN

It's become a tradition that was started by Merran Short, thank you Merran, in the year 2004, for the Chief Justice to say something on this occasion. Every year, I look for something different to mention, but the problem is that the standard was set too high when that bare-breasted stripper removed her G-string at the mention of Dean Mildren's name. That comes but once in a lifetime.

But I did find something in the *Herald Sun* - Tuesday 22 January this year. It is Marilyn Warren the Chief Justice with the headline 'Sex and the Supreme Court'. I thought, "You beauty".

Very disappointing, there are two regrets. First, the headline talks of the Victorian Supreme Court and not the Northern Territory Supreme Court, and, secondly, as you might expect, the content of the article does not match the headline. It concerns the intention of the court to hear some of the more serious sexual offence trials, and the Chief Justice took the opportunity of explaining the sentencing process. If those remarks were on the net, they would be well worth reading.

Returning to 2007. It saw a change in the Attorney-General. I would like to record publicly my thanks to Syd Stirling for his genuine interest and concern for matters within the portfolio, and to congratulate and welcome Dr Chris Burns into the position. Chris, I am sure you will continue the tradition of supporting the judiciary, and our system of justice. From my perspective, and I'm sure the perspective of all Judges and Magistrates, it has indeed been refreshing for the judiciary as a whole to receive the support from the Territory Attorney-General. This support stands in stark contrast to a number of other jurisdictions in



*Chief Justice Brian Martin addressing the Darwin ecumenical service*

this country.

During 2007, both Judges and Magistrates undertook what was variously described as Continuing Judicial Education or Continuing Judicial Professional Development. You see, the CPDs are not limited to just you who are practicing in the law. But as yet we have not been given a prescriptive standard – we will fight that like hell!

As you are aware, with the approval of the Council of Chief Justices, and the support of the Judicial Conference of Australia, the National Judicial College has produced a national standard for professional development for judicial officers. The college conducts wide-ranging programs throughout the year, across a broad spectrum of topics which are designed to cater for the most inexperienced judges through to senior judges. I'm sure Justice Reeves would agree that what we call the 'Kiddy Judge's School' is very helpful indeed when you start out. There was a particularly helpful program conducted in Darwin in November for Judges and Magistrates concerning child witnesses. And I say this is an area

of critical importance, not only for Judges and Magistrates, but for all legal practitioners. There is an ever-increasing awareness of the difficulties faced by children and other vulnerable witnesses within our system of justice, particularly within the criminal justice system.

Our collective lack of knowledge and understanding was, in the past (in retrospect) quite alarming. Assumptions were made without legitimate foundation, and too much reliance was placed upon the adversarial nature of our proceedings. This is not to deny that the adversarial system remains, in most respects, a very good system for resolving disputes at the trial stage. But we must recognise that there are people drawn into the processes about whom we have to be vigilant, and for whom special assistance and protections are required.

A proper balance must be achieved which provides the necessary protections and assistance while not detracting from the fundamental propositions - that every accused person is entitled to a fair trial, and

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a trial in which the presumption of innocence is given full cause and effect. The question of child witnesses is a topic that will be addressed later this year in a seminar or mini-conference in which I, and Justices Riley and Reeves, will engage with members of the Bar Association. I look forward to that opportunity.

On the topic of professional development, there was one innovation that occurred in 2007. For the first time every Chief Justice, Chief Judge of Accounting and District Courts and Chief Magistrate (and that's only bar one Magistrate), met in Hobart in April for a judicial leadership program. It was a remarkable occasion, which involved exceptionally frank discussion and assessment. I'm sure you all appreciate that we have come to the positions in Chief Justice, Judge or Magistrate without any training whatsoever, and from the Chief Justice of the High Court down, we all crowned the intensive working sessions and the privilege of being addressed by Chief Justice Scott of the Court of Appeal and Mr James Strong, of great value indeed.

Can I say, that the lot of our Magistrates continues to be difficult. The facilities in Darwin and Alice Springs, and I'm sorry about this Dr Burns, they are far from satisfactory, I'm sure you've been told that already. Their daily lists are very demanding. The substantial amount of the work undertaken by Magistrates is undoubtedly of a nature that is both depressing and distressing, and our Magistrates deserve every assistance possible. I had the pleasure of joining the Magistrates for their annual conference, and in discussing a number of issues of relevance to both courts. Hopefully, with the Federal Intervention, and

increased attention on the problems to which the Intervention is directed, improved facilities and resources will follow. As for the Supreme Court, we conducted through my Chief 'Head Kicker', for whom I am very grateful – Justice Riley, a review of the civil files. And I think it is appropriate to tell you that, in the space of six months, Justice Riley reviewed files that were instigated from 1995 to 2006, and of the 44 files he reviewed, in the space of less than six months, 29 of them were finalised. That might tell you something. So, we appreciate the work you undertake, and your efforts to assist in this regard, and I thank you for all of that.

But I make one plea. In addition to trying to resolve those old matters, particularly the second half of 2007 seemed to produce an epidemic of late settlements in both civil and criminal matters. Settlements obviously have positive benefits, but when they are continually occurring on the eve of the trial, they do create enormous difficulties to the efficient operation of the Court. Notwithstanding the pressures under which you all work, your assistance in this area would be greatly appreciated.

Having mentioned the pressures under which the profession works, I add the following observation. The Territory community is exceptionally well served by its legal profession and judiciary. If media reports are correct (and we appreciate that often they can convey the incorrect impression) Chief Justice Spigelman of New South Wales, recently suggested that Sydney is the centre of legal excellence, particularly in the area of commercial law. That observation, if accurately reported, can not pass unchallenged. Sydney obviously contains legal excellences, but it is not the centre of such

excellences. The Territory, and all other Australian jurisdictions, produce legal excellence across all fields and we must strive, each of us, to reach and maintain that standard. We should constantly remind ourselves of our roles in upholding the rule of law, and in serving the community through the administration of justice. And that is what we do, we serve the community. In that process, we need regularly to pause and reflect upon our duties to the courts, clients and wider community, and to take the necessary time for preparation and execution of our respective functions, to ensure that we provide service of the appropriate standard of excellence. And so, next time, when one of the less patient Judges say to you, "Get on with it", you will be able to quote those remarks back to them.

So, to our guest speaker.

He hardly needs any introduction.

Born in 1946, and studied at Sydney University of course, Sydney Public Solicitors Office from 1964 – 1970, came to Darwin, practiced as a Solicitor from 1970 – 1974. I am told by Justice Mildren, with considerable pride, that he and our ex-Solicitor General, now our Administrator, were admitted on the same occasion in February 1970. I'm not sure what that tells you about either of them.

*Who's Who* lists one of the qualifications of our Administrator as 'Actor', and the date is given as 1974. Also listed in 1974, and again through to 1977 is 'Practiced at the Bar', obviously the two came together very conveniently. Magistrate from 1977 to 1980, at the Bar from 1980 to 1988. Solicitor-General, giving exceptional service for so many years, from 1988 to 2007. Would you please welcome our guest speaker.