

The Hon Justice Nye Perram

On 8 August 2008 the Hon Justice Nye Perram was sworn in as a judge of the Federal Court of Australia.

Born in 1969, and elevated to judicial office at the tender age of thirty-nine, Justice Perram is one of the youngest ever appointments to the Federal Court of Australia. His Honour is a product of Sydney Boys High and the University of Sydney where in 1989 he obtained a Bachelor of Arts, and in 1991 a Bachelor of Laws (Honours). His Honour later completed a Bachelor of Civil Laws at the University of Oxford, specialising in European and comparative law. His Honour was admitted to practice in 1992 and worked briefly for a period with Mallesons Stephen Jaques before being called to the bar. His Honour took silk in 2006.

His Honour's practice at the New South Wales Bar was exceptional. At the time of his appointment his Honour was a member of the New South Wales Bar Council. He had also served on the board of the Law and Justice Foundation and was in 2005 a director of the Public Interest Law Clearing House. Perram J contributed to the *Oxford Companion to the High Court of Australia* on various topics and whilst at the bar appeared in many significant cases including *Re: Wakim Ex Parte McNally* (1999) 198 CLR 511; *Australian Competition and Consumer Commission v CG Berbatis Holdings* (2003) 214 CLR 51; *New South Wales v Commonwealth* (2006) 229 CLR 1; *Telstra v The Commonwealth* (2008) 243 ALR 1. Not long prior to his Honour's appointment his Honour also travelled to Fiji to represent the deposed prime minister against the government of Prime Minister Bainimarama, which was recently handed down by the Fiji High Court: *Qarase & Ors v Bainimarama & Ors*.

At the bar his Honour was also known for his diligence, commitment and great fearlessness as an advocate - and for his respectful and courteous approach, not only as an advocate but also to his colleagues.

Attorney-General Robert McClelland described the appointment of his Honour as the appointment to the Federal Court of 'one of the Sydney Bar's best and brightest'. The attorney noted that:

Your Honour's appointment is, in fact, one of the first under the government's new, more transparent appointments process. These appointments were made on merit from an extensive field of serving judicial officers, barristers, solicitors and academics and I appreciated your words of encouragement about that process. I would like to thank the court and, in particular, the chief justice and members of the Advisory Panel for their role. As a matter of fact, it is their hard work that has brought me accolades for making such an excellent appointment.

The president of the New South Wales Bar Association spoke on behalf of the Bar. Katzmann SC noted the hoards of people pouring out of each door and standing up both inside and outside the court, reflective of the respect with which his Honour is held by colleagues and friends at the bar and beyond.

Katzmann SC referred to a continuing theme throughout the speeches - that of his Honour's formidable intellect and his youth. Katzmann SC observed that his Honour was reputed to be the first judicial officer 'federal or state' known to own a Sony Play Station, his Honour's favourite game understood to be *Grand Theft Auto*.



On more serious matters, Katzmann SC noted:

In the more complex cases, your Honour soon became known among senior counsel as the 'junior of choice'. Your Honour was the architect of the challenges to the cross-vesting laws that culminated in the High Court declaring that the cross-vesting scheme was constitutionally invalid. The Federal Court duty judge was said to be so sceptical about the merits of the case that he was more reluctant to issue the s78B notices to the attorneys-general. The Law Council issued a press release after the decision expressing its alarm at the ramifications of it. The then ASIC chairman complained that the impact of the decision 'in terms of delay, disruption, uncertainty and sterile debate about technicalities has been all too real and expensive.' The High Court's decision led to a flurry of legislative activity across the country to validate all the earlier decisions. Ironically, it stripped this court of most of its jurisdiction in Corporations Law matters. It was probably a direct cause of the collapse of the national corporations law and the passage of the Corporations Act in 2001. And in the long term, it has probably had a much wider effect on our Constitutional arrangements.

It was quite a case for a junior barrister of roughly three years standing to have undertaken. It showed, as one of your former colleagues put it, that 'you had the courage to take an unorthodox position and [the talent to] be vindicated.'

Another remarked that the case typified your Honour's constitutional practice: 'entirely self-developed and powered by intense intellectual curiosity, rather than years of experience accumulated in government service.' The then attorney-general was not so generous in his praise.

He is said to have referred to your Honour as ‘a constitutional vandal’.

Your Honour has given back to the bar in spades. On the Bar Council, you have served with distinction. You have always been calm and measured, logical and persuasive and tremendously helpful. The attorney has referred to your pro bono work and your stint in Fiji last year. That case well illustrates your forensic skills, your generosity and all those other qualities of which the attorney has spoken.

Katzmann SC also spoke of his Honour’s interests outside the law – mathematics, English literature and classical music. In concluding remarks, Katzmann SC described his Honour as a clever, warm, funny, generous, loyal and honourable person.

Mr S Westgarth spoke on behalf of the solicitors of New South Wales, again highlighting his Honour’s considerable intellectual and academic achievements and his plethora of additional extra-curricular activities and interests outside the law. Referring to his Honour’s recent appearance representing the ousted Fijian prime minister Mr Westgarth said:

Your Honour’s performance in court was so impressive that members of the Fijian community went online to commend you on your performance, one saying, and I quote:

His arguments in front of the Court in the case brought by Laisenia Qarase against the state were simply magnificent. His preparation and delivery is simply outstanding. They – referring to the state’s defence – are very scared of being ripped to shreds by Nye Perram.

In reply, Perram J noted the role of a judge was to look at what had been said in the past and apply the past to the present set of facts. His Honour noted that had he taken this approach and surveyed a number of speeches given by new judges on the occasion of their swearing in ceremonies. He noted that a ‘dour afternoon’s reading presented five emerging principles’:

First, by and large, new judges, at their swearing in, are a very thankful bunch. That seems to me to be a sound principle and one to which, despite some of Ms Katzmann’s remarks, I will return in due course.

Secondly, many, but by no means all, give a brief exposition of their proposed judicial method, usually intertwined with the expression of a generalised hope that they will not be as horrible as some of the ogres they recalled as practitioners. Judicial ogres are not as common as they once were, having been largely ousted by an era of judicial politeness, ushered in I think by Justice Kirby when he was the president of the New South Wales Court of Appeal. Since that time, the notion of an appellate hearing being a blood sport, similar perhaps, to fox hunting, had faded in most courts, although as Justice French, who I am pleased to have sitting here today, may soon discover, the hounds are still running in some parts.

Your Honour was the architect of the challenges to the cross-vesting laws that culminated in the High Court declaring that the cross-vesting scheme was constitutionally invalid...

The High Court’s decision led to a flurry of legislative activity across the country to validate all the earlier decisions.

Ironically, it stripped this court of most of its jurisdiction in Corporations Law matters.

Thirdly, many new judges are often moved to speak in favour of the rule of law. It is always a relief, no doubt, for the court and the public to find, often after some no little anxiety that the new judge is, in fact, in favour of the concept. I will not be speaking in favour of the rule of law but I would not want it thought that by omission I was against it. I am not. It is merely that I do not think that in the 36 minutes that I have been a judge I have yet become equipped with any particularly new or especially interesting insights into the concept.

Fourthly, some new judges look forward to the challenge and responsibility of the office and hope to discharge its onerous burdens. You may be assured that is most certainly my position.

Fifthly, many are often forced to respond to some of the calumnies heaped upon them by the speakers at the bar table. In this case, there are probably too many to do that properly but I will just say one thing about *Grand Theft Auto*. I am not very good at it. In a recent game I was mugged by an accountant, which is, I think the game’s way of telling you that it thinks you are truly hopeless.

His Honour thanked his family, friends and partner, Ross. In paying respects to those with whom he read His Honour said as follows:

I had the distinct advantage of reading with David Higgs and also Michael Pembroke. I effectively also read with Justice Rares, who is here today, although not in a formal sense. From Mr Pembroke I learnt the benefits of calm and order, from Mr Rares I learnt the benefits of off-piste advocacy and from Mr Higgs I learnt the value of the strategic deployment of drama. I thank all of them. I also thank the Twelfth Floor, which has provided me with the most warm and intellectually stimulating environment since I was young, or I should say since I was a younger man. I will greatly miss it.