

The Hon Justice Malcolm Craig

On Tuesday 2 March 2010 the Hon Justice Malcolm Craig was sworn in as a judge of the NSW Land and Environment Court. The president of the New South Wales Bar Association, Tom Bathurst QC, spoke on behalf of the bar and the president of the Law Society of NSW, Ms Macken, spoke on behalf of the solicitors of the state.

Like many distinguished judges before him, his Honour completed secondary schooling at Fort Street Boys' High, and went on to study law at the University of Sydney on a Commonwealth scholarship, graduating in 1967. His Honour then practised as a solicitor, both in Sydney and in Mudgee, for about ten years before he was called to the bar in July 1977.

At the bar, his Honour read with Mr Tamberlin QC (as he then was) and rapidly established a practice primarily centred on local government and environmental law, but including administrative law, equity and property law. His Honour's extensive knowledge of the law in those areas made him a formidable advocate in the Land and Environment Court, as well as elsewhere. His Honour took silk in 1989, after only 12 years at the bar, which was a remarkable achievement at the time, as Mr Bathurst QC noted.

As a silk, his Honour's practice continued to expand and his reputation continued to grow. Of his Honour's practice and skill, Mr Bathurst QC said:

The important cases on which your Honour appears are far too numerous to mention but your ingenuity when encountering almost insuperable difficulties can be demonstrated by one of your submissions in a case, *Broken Head Protection Committee v Byron Shire Council*.

Your Honour appeared for a mining company on a challenge to approval of a quarry. The objectors claimed the land was inhabited by numerous threatened species of fauna and in particular a mammal ... known as the long-nosed potoroo ... It was established apparently that a potoroo had been sighted in the area surrounding the quarry but undeterred or in desperation your Honour suggested that one would be forgiven for thinking there was only one potoroo in New South Wales which travelled from quarry to quarry when appeals to the Land and Environment Court were commenced.

In the course of his career, a broad spectrum of clients benefited from his Honour's ingenuity – establishments of all kinds, as well as the councils, agencies and other interest groups seeking to close them down or prevent them being built.

In the course of his career, his Honour also served his colleagues at the bar in numerous and voluntary capacities. In 2003, his Honour established Martin Place Chambers, and continued to exercise a 'benevolent dictatorship' over the floor thereafter. From 2003 to 2008, his Honour convened the Environmental and Local Government section of the Bar Association. And for a number of years, his Honour was also president of the Environment and Planning Law Association, and a part time Commissioner of the New South Wales Law Reform Commission. Significantly for barristers, for the two

decades from 1989 to 2009, his Honour was a director of the Barristers' Sickness and Accident Fund, and for fifteen of those years, his Honour was also the chairman of that fund. Many barristers owe his Honour their gratitude for that dedicated work.

His Honour's personal qualities, together with his knowledge and experience, will be a great asset to the court and the community in his new role. As Mr Bathurst QC noted:

The Land and Environment Court plays an increasingly important role in the life of the community at the present time. The Court and the community are fortunate that a person of your skill and experience is prepared to join it.

In his reply, his Honour referred to the fact that when he commenced practice at the bar in 1977, the term 'environmental law' was generally foreign to practitioners. Noting the changes wrought by the enactment of the *Land and Environment Court Act* in 1979, his Honour continued, saying:

I am proud to join a court which since 1980 has had the function as a court of first instance to develop the jurisprudence appropriate to the administration and application of environmental laws in this state. As a relatively young statutory court, it has already taken significant steps in that regard. However the ever changing provisions of environmental legislation coupled, importantly, with the heightened awareness in the community of the fragility of our environment, have meant and continue to mean that the development of the law in this area remains dynamic. I trust that I have the capacity to make a contribution to this important area of the law which is at least complimentary to that which has already been made by present members of this court as well as by those who have served it in the past.

His Honour then paid tribute to his family, colleagues, solicitors and others for their personal and professional support. His Honour acknowledged his indebtedness to the state, for the public education that was provided to him both at school and university, and welcomed the opportunity to repay it by service to the community in his role on the court.

In closing, his Honour indicated that the following words of Lord Bowen, writing in 1884, resonated with him:

As for the law, it is no use following it, unless you acquire a passion for it. ... I don't mean a passion for its archaisms, or for books, or for conveyancing; but a passion for the way business is done, a liking to be in Court and watch the contest, a passion to know which side is right, how a point ought to be decided.

As he embarked upon his duties as a judge, his Honour acknowledged that same passion and motivating force.