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THE JUDGES
OF THE
SUPREME COURT OF TASMANIA
AS AT DECEMBER 2004

The Hon WILLIAM JOHN ELLIS COX, AC, RFD, ED
Chief Justice (resigned 1 December 2004)

The Hon PETER GEORGE UNDERWOOD, AO
Chief Justice (appointed 2 December 2004)

The Hon EWAN CHARLES CRAWFORD

The Hon PIERRE WILLIAM SLICER

The Hon PETER ETHRINGTON EVANS

The Hon ALAN MICHAEL BLOW, OAM

ATTORNEY-GENERAL

The Hon JUDY JACKSON MHA

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MEMORANDA

On 12 November 2004 the Honourable WILLIAM JOHN ELLIS COX AC, RFD, ED, Chief Justice of Tasmania resigned his office, effective from 1 December 2004, to become Governor of Tasmania.

On Friday 26 November 2004, at a special sitting of the Full Court before the Full Bench, UNDERWOOD J said:

"On 4 September 1995, Chief Justice William John Ellis Cox was appointed Chief Justice of this Court, the oldest Supreme Court in Australia. He has just advised us that at the close of business on 1 December this year he will resign from that office in order to take up the office of Governor of this State. It is a great tribute to him and his tenure in that office that so many have gathered here this afternoon at this special Sitting to mark the occasion of his Honour's retirement from the Bench. In that respect I would like to especially welcome the chief Justice of the Federal Court, Justice Michael Black, a former Chief Justice of this Court Sir Guy Green, a former judge of this Court, and Justice Hannon of the Family Court.

On the first Monday in March exactly fifty years ago, three fresh-cheeked young men sat down together for the first time in Room P in that building on the Domain which I think is now used by TAFE, but which was then the Law School of the University of Tasmania. All three graduated on the same day five years later and thus began the legal careers of the former Chief Justice and former Governor, Sir Guy Green, Chief Justice and Governor-to-be Bill Cox and Peter Underwood. Two of the three were very good students, although I can say with confidence that neither of those two were adverse to a few extra-curricular activities. However, prudence dictates that I not pursue this aspect of the learned Chief Justice's history, notwithstanding section 11 of the Defamation Act, which provides that a person does not incur any liability for publishing defamatory matter in the course of a proceeding held under the authority of a court of justice. For myself, suffice to say that if the Old Nick Company had been a degree course, I would have graduated with first class honours!

Chief Justice, in the pursuit of your career in the law, you have served the State of Tasmania well. Following your admission to the Bar in 1960 you practiced law at Messrs Dobson Mitchell and Allport for some fifteen years, first as an employee and then as a partner. Early on, it was clear that you were suited to life on the Bench, for you were appointed a magistrate in 1976 and held that judicial office until you became Crown Advocate, the precursor of the Office of the Director of Public Prosecutions. You took silk in 1978 and were sworn in as a judge of this Court in 1982. In so doing you followed in the footsteps of your father, who was a respected judge of this Court in the 1960s.

Throughout your long and distinguished time on the Bench, your judicial demeanour has always been an exemplar for all judicial officers to follow. You are noted for the patience, courtesy and respect that you consistently extended to all who appeared before you. As Chief Justice you led the Full Court and Court of Criminal Appeal, frequently writing the leading judgment. Those judgments, and those that you wrote when sitting alone, will stand for many years as models of good judgment writing. They exposed your reasoning on matters of fact and law with an admirable clarity that I always thought was a tribute to the enviable classical education you received at school. Importantly, you always confined your judgments to that which was necessary to decide the justiciable issues that were raised for your determination and never succumbed to the temptation to use the judgment as a platform for expressing some personal point of view about a matter.

The Chief Justice of Australia has said that it is the duty of all judges to uphold the independence of the judiciary. You have discharged that duty in full measure. As Chief Justice, you never forgot the significance of fundamental principle – that the Court is a constitutional arm of government and that it must exercise its functions free from interference and influence from the other arms of government. It is easy for this important principle to be eroded, usually by neglect rather than by malevolence, to the cost of a free democratic society. As leader of this Court you made sure that all those in the other arms of government were aware of, and accepted, this basic principle. The importance of your contribution in this respect cannot be underestimated and on behalf of our community I thank you for that contribution.

You have, of course, served your State and your country well in many other respects. I have no doubt that others will refer to these diverse aspects of your career, both in and outside the law, so I will not dwell on them myself, but on this occasion I would like to refer to the fact that you gave your country faithful service as a member of the Army Reserve from 1954 – 1975. During that time you saw active service in Vietnam with the 4 Field Regiment, Royal Australian Artillery based at Nui Dat. You later became honorary military ADC to the Governor and ultimately reached the rank of Lieutenant Colonel and were appointed commanding officer of the Sixth Field Regiment Royal Australian Artillery.

It is fitting that you should go on to the highest office in the State. All those who know you are confident that you will discharge the duties of that office with the same integrity and impartiality that attended your duties as Chief Justice of this Court. Although I have to declare a personal interest in your vacation of the office of Chief Justice, any regrets or sadness that may arise by reason of your departure from the institution to which you have contributed so much for more than twenty-

two years, is more than offset by your appointment to the highest office in the State. You follow in illustrious footsteps, for you are the third Chief Justice to become Governor of Tasmania.

Your brother judges thank you for the dedicated service that you have given this Court over the years that each has shared this Bench with you and wish you well in your new duties."

W C R BALE S-G QC said:

"In the unavoidable absence of the Attorney-General, for which she asks me to apologise, it is my privilege to recognise, on behalf of the Crown as representing the people of Tasmania, your contribution, for thirteen and a half years as a puisne judge of this Court and most recently for nine years as its Chief Justice, to the law generally and more particularly to the enhancement of the fact and reputation of the Court as a strong, competent and independent institution.

Your career in the law has, as his Honour Justice Underwood has says, been a long, distinguished one. You were admitted as a practitioner of the Court in 1960 and in 1961 became a partner in the Hobart legal firm Dobson, Mitchell and Allport. I wish on this occasion, however, to specifically recognise not so much your work in the private sector, but rather the contribution which you have made in the public sphere of the law. His Honour Justice Underwood has identified those particular positions that you have held in the service of the Crown in right of the State of Tasmania, and I will not repeat that list. But you have held a number of other eminent legal positions, including, in particular, that of Deputy President of the Defence Force Disciplinary Appeal Tribunal from 1988 until your appointment as Chief Justice of this Court in 1995. You have as well made an important contribution to legal education in this State, having been a member of the Tasmanian Board of Legal Education from 1988 to 1998, and thereafter served as Director of the Centre for Legal Studies.

During the time that you have served as a justice of this Court there have been great pressures on all organisations to adapt to changing times and changing social attitudes. In addressing, as Chief Justice, the need for such change, you have always sought to maintain a balance between reform and the best traditions of the Court, and in so doing, have presided over many significant changes in the Court's processes, including the development of its present case management system, the promulgation of the new Rules of Court developed largely by the late Justice Zeeman, and the development of mediation as a real alternative to the adversarial method of resolving disputes.

You have throughout demonstrated a strong sense of community through your involvement with a number of community organisations, in particular as Director of the Winston Churchill Memorial Trust (and its

National Chairman since 2000) and through your involvement with St John Ambulance Australia, which you served as national President and of which you were awarded the Knight of Grace in the Order of St John in recognition of your contribution. The Attorney-General has asked me to specifically recognise on behalf of the State the thoughtful and incisive input which you have frequently provided upon request, in relation to the formulation of proposed legislation with the potential to impact upon the business of the Court.

The significance of your contribution to the community at large was recognised by your appointment as a Companion of the Order of Australia in 1999.

Others here will no doubt speak of your achievements and contributions more generally, both to the law and to this State. I close by saying simply that the strength of this Court lies, as always, in the quality of those who make it up, and as only its eleventh Chief Justice, you have consistently maintained the very best traditions of the Court. The esteem that you have generated by the quality of your contribution to the State and to the law, especially as a member of this Court, is reflected by the warmth of the public's reception of your new appointment as Governor of Tasmania, an Office which you will doubtless enhance by the qualities which you have demonstrated whilst occupying this bench.

May it please the Court."

D J GUNSON SC said:

"Your Honour, the Chief Justice, I have the honour and the pleasure today to address you on behalf of the Law Society of Tasmania and on behalf of all the members of that Society. The great respect in which the legal profession holds your Honour is today demonstrated by the attendance of so many of the profession here to farewell you as Chief Justice of the Supreme Court.

Your Honour has held office as a judge of this Court since February 1982 when you were appointed to the Bench following the retirement of Sir George Crawford. You were appointed the eleventh Chief Justice of the Supreme Court in September 1995, following the retirement of Sir Guy Green who retired from the Court upon his appointment to the Office of Governor of Tasmania, the same Office to which your Honour has recently been appointed.

Prior to your appointment your Honour had served the State of Tasmania in a number of roles, particularly as the Crown Advocate for five years, and prior to that as a magistrate. Throughout your time on the Supreme Court Bench, you have occupied that office with dignity and distinction. You have, with justification, earned the reputation as being a

judge who is the model of politeness to counsel and witnesses, and who was regarded by all who appeared before you as a model of impartiality.

Several years ago, the then Attorney-General determined that when a vacancy on the Bench arose, it would be appropriate to call for expressions of interest from those practitioners who wished to be considered for appointment as a judge of this Court. The desirable attributes of the candidates for judicial appointment, which were then identified by the Attorney-General, were extensive and wide-ranging. They do not bear repeating here today for the essential attributes of a judge have long been regarded as the ability to listen courteously, to answer wisely, to consider soberly, and decide impartially. Despite the passage of years since Socrates first identified those essential criteria, nothing has really changed, for they are truly the attributes of a good judge. Your Honour has consistently satisfied all of those criteria in your twenty-two years of service to Tasmania as a judge of this Court.

As has been observed already, not only has your Honour served the State in the field of law, but you have also served in many other capacities. You have held the appointments of Lieutenant-Governor, Deputy President of the Defence Force Disciplinary Appeals Tribunal, National Chairman of the Sir Winston Churchill Memorial Trust, and the State President of St John's Ambulance, to mention but a few.

You have had a long and distinguished career with the Australian Army Reserve, serving for a number of years with the Royal Australian Artillery Corp and eventually being appointed to command the 6th Field Regiment. After your retirement as an active member of the Army Reserve, you were appointed Colonel Commandant of Artillery for the Tasmania Defence Region, a position you held until 1997.

Your Honour's contribution to the development of the law in Tasmania has been significant. Your judgments have always reflected your Honour's careful consideration of the factual and legal issues that were before you to be determined. You have overseen the development and implementation of the new Supreme Court Rules which were many years in their gestation. Your contribution to the continued development of the law in Tasmania will be sorely missed.

However your Honour does not leave this Court to commence a well-deserved period of retirement for your Honour has, as I have already observed, accepted the distinguished appointment as Governor of Tasmania. Some years ago when Sir Stanley Burbury retired as Chief Justice, your Honour, as the then President of the Tasmanian Bar Association, said at his Honour's formal farewell "While we regret your leaving us, we take pride in knowing that your talents will be exhibited in another field of high distinction". Today I can only echo what your

Honour said on that occasion some thirty-one years ago and thank your Honour on behalf of the profession for the many years of service which you have given to this Court and finally to wish your Honour success and fulfilment in your new appointment."

M W WILKINS said:

"Your Honour, the Chief Justice, your Honours, Master, distinguished guests.

I rise on behalf of the Bar Association and on this occasion, also on behalf of the Independent Bar and in consequence on behalf of those practitioners who have had the honour of regularly appearing before your Honour, the Chief Justice.

Today is a day on which we farewell you after twenty-three years of distinguished service to the administration of justice in this State, including the last nine years as Chief Justice. In less than three weeks, the State will welcome you as its twenty-sixth Governor.

It is, therefore, not yet time to eulogise your service to this State. The next three weeks are but a hiatus in your very long and distinguished service to the people of Tasmania.

It is, however, appropriate to briefly recall your Honour's particular service to this Court.

Your Honour will be remembered for your courtesy and goodwill to all who appeared before you perhaps, at times when that courtesy was more easily given than earned.

Your unswerving support towards the Association of which I have the honour of being President, both as a Judge and as Chief Justice, is worthy of particular thanks. Your life membership of the Association is some evidence of the esteem in which you are held by the Association, of which you are a past President.

Your Honour has overseen the smooth transition of this Court to new Rules of Court in the civil sphere, and the dramatic cutting of listing queues in civil litigation together with the development of compulsory mediation, saving not only the State, but parties' significant cost and expense. This is a legacy of which you and your fellow Judges can be proud.

I doubt whether when Mr Read rose to his feet on 3 February 1982 in *Cleaver v Bourke*, to address your Honour that you could have envisaged the challenging, rich and rewarding journey ahead of you. A journey that has brought you into contact with both good and with evil, but it is a journey you have completed with unflinching honour to the oath you took in 1982.

I am sure that the tasks which lie ahead will be tackled with the same enthusiasm and equanimity."

The Hon Senator E ABETZ said:

"It is my honour to represent the Commonwealth Attorney in today's proceedings. Can I say from a personal point of view as a former practitioner of this Court that it was always a delight to appear in your Court. Your courtesy and professional approach was something that I know that as a young practitioner who conducted his first criminal trial before you was greatly appreciated. But I have changed professions. I am no longer paid by the hour and I will therefore be brief. Suffice to say that the comments that I will be reading out from the Federal Attorney are comments that my Federal colleague, the Honourable Duncan Kerr SC, would want to be associated with as well.

On behalf of the Commonwealth Government, I congratulate you upon your appointment as Tasmania's next Governor.

I also acknowledge your distinguished career in the law. In particular, I recognise the significant contribution you have made to Australia's system of justice since your appointment as a Justice of the Supreme Court of Tasmania in 1982, and as Chief Justice of that Court since 1995. I pay tribute to your services to legal education, demonstrated by your directorship of the Board of the Centre for Legal Studies and as a member of the Tasmanian Board of Legal Education. Your contribution in this area has helped to increase the level of professionalism displayed by Australian legal practitioners. While working as a Justice of the Supreme Court of Tasmania, you also made a valuable contribution as a Commonwealth officer, Deputy President of the Defence Force Discipline Appeals Tribunal, from 1988 to 1995.

I understand you are a sixth generation Tasmanian and you and your family's long association with Tasmania is a matter of great pride for you; understandably, the announcement of your appointment has received wide support.

Please accept my congratulations to you and your family and I wish you all the best for the future."

COX CJ said:

A little over thirty years ago, when Sir Stanley Burbury retired as Chief Justice to become Governor of Tasmania, I penned a bit of doggerel which we sang to him at a farewell dinner to the tune of *Botany Bay*.

The lines of the first verse were:

*Farewell Supreme Court of Tasmania
My life here has been extra grouse
Farewell brother judges and barristers
For I'm off to Government House.*

*Singing top hats and clothing sartorial,
Singing dinners & luncheons & teas,
Singing other things gubernatorial,
Like Investitures, Balls & Levees.*

I little thought then that that was to be my swan song.

I am most grateful for the kind things that have been said about me this afternoon. It is a little bit like being at your own funeral – no one is allowed to say anything but good about you and the corpse even has a right of reply.

I am deeply honoured by the presence of the distinguished guests in the body of the Court whom Mr Justice Underwood has already acknowledged and of all of you who have come here this afternoon.

I am delighted to welcome Chief Justice Black, who has made a special trip here for this occasion. His readiness to make available to this Court the more commodious facilities of the Federal Court complex when we have had trials involving large numbers of counsel has been greatly appreciated. I am also honoured by the presence on the Bench with me of my predecessor as Chief Justice and as Governor, the Honourable Sir Guy Green and the presence also of Mr Justice Hannon of the Family Court.

Well, I can truly say that my life here has been extra grouse – twenty-three stimulating and rewarding years have passed all too quickly and I have seen many changes. But the one constant which I see in the collegiate work of the Court and in the conduct of the legal practitioners who appear before it day by day is the sheer professionalism of their endeavours and the dedication with which they strive to do justice according to law between the parties who seek it from this Court.

When I first took my seat on the Bench, I spoke of the sense of integrity and duty to the Court in its efforts to dispense justice which the legal profession traditionally had, and I expressed confidence that I could rely on it in the fulfilment of my responsibilities as a judge. That confidence has not been misplaced and I express my gratitude to all who have been involved in any way in the disposition of my judicial workload. If there is one thing I have learnt about the administration of justice it is the wisdom of the old maxim *audi alterem partem* – *listen to the other side*. There are two sides to every story and I think the most important task of a judge is to listen to both sides before determining the issue according to law.

I thank the Bar for so ably and honestly presenting both sides. It has been an enormous privilege to have been a part of the process of doing right to all manner of people after the laws and usages of this State and to have had the opportunity of making suggestions to government over

the years for some improvements to those laws which changing times make appropriate.

As I said before, my life here has been extra grouse. I can say that, not only of my life here, but of my life generally. I have indeed been most fortunate in my parents and sisters, in my daughter and sons, in my teachers at St Virgil's College and Xavier College and at the University, and in my friends from a variety of areas of professional and community involvement, including the Army Reserve. Mr Justice Underwood has touched upon my heroic war service. I suspect the Viet Cong heard that I was coming, as they laid low while I was there and launched their TET offensive when I was safely out of the country. In truth, my most hazardous enterprise was getting back to my tent from the Officers' Mess after lights out.

I wish to pay tribute also to my colleagues on the Bench, both present and former and likewise to the Masters. I have appreciated their friendship, loyalty and support. I have had a different Associate each year and so I have twenty-four friends in them. They have all been congenial and helpful companions.

To my former Attendants, Bill Mace and Barry Lathey, and to my present Mr Tipstaff Ed Fry, I express my deep thanks, as I do to Rosemary McHugh, my long-suffering secretary of fourteen years. To the Registrar and the Registry staff, the transcribers and the staff within Judges' Chambers, I also extend my sincere gratitude.

Lastly, I thank my wife, without whose constant and unstinting love and support I could not have undertaken the offices which providence has put my way, nor have any expectation of meeting the challenges of my next assignment as Governor.

Thank you all for coming.

The Court will now adjourn."

THE COURT ADJOURNED

On 2 December 2004 The Honourable Justice PETER GEORGE UNDERWOOD AO was appointed as Chief Justice of the Supreme Court in place of the Honourable WILLIAM JOHN ELLIS COX AC, RFD, ED.