

Honourable Frank Marks - Farewell

The Honourable Greg Smith SC MLA, Attorney General for NSW, the Honourable Paul Lynch MLA, shadow Attorney General, the Honourable Sophie Cotsis MLC, shadow Minister for Industrial Relations, my fellow judges and non-judicial members of the Industrial Relations Commission of NSW, former members of the Commission both judicial and non-judicial, other members of the judiciary, Mr Bernie Coles QC, President of the Bar Association, Mr Justin Dowd, President of the Law Society, Mr Chris Christodoulou, Assistant Secretary of Unions NSW, Ms Sue Walsh, President of the Public Service Association, Mr Wayne Forno, General Secretary of the TWU, Mr Nigel Ward, CEO of Australian Business Lawyers and Advisors, Mr Dick Grozier Director of Industrial Relations for the NSW Business Chamber, Mrs Rose Marks and other members of the Marks family, members of the legal profession, ladies and gentlemen. Welcome to this morning's function.

There are a number of apologies from individuals who were unable to attend. Amongst the apologies are those of the Vice-President of the Commission, Justice Walton, who is away on leave, Tricia Kavanagh, recently retired judge of the Commission, the Honourable Greg Pearce MLC, Minister responsible for Industrial Relations, Acting Chief Justice and President of the Court of Appeal, Justice Allsop, Mark Lennon of Unions NSW, former judge of the Commission the Honourable Barrie Hungerford, former Senior Commissioner, Sid Wells and John Cahill, Secretary of the PSA. I thank them for the courtesy of tendering their apologies.

- 1 The purpose of this morning's function is to pay tribute to the Honourable Frank Marks, who retired as the most senior puisne judge of the Commission last Friday.
- 2 Before his decision to retire, Frank had arranged to take overseas leave and so it was not possible to hold the traditional swearing out ceremony last week whilst he was still a judge. But I could not allow his retirement after nearly 20 years on the bench to pass by without marking the occasion. Thus, this less formal farewell function.
- 3 I propose to say a few words, then I will ask Mr Jeffrey Phillips SC, who has known Frank Marks for many years, to speak on behalf of all those who have known Frank and those who have appeared before him in his years on the bench. I will then invite Frank to address you.
- 4 The Commission has lost a fine industrial practitioner and judge of superior court rank who has applied his considerable judicial, arbitral and conciliation skills across the wide variety of matters that have come before him over the past 19 years.
- 5 Before his elevation to the Bench, Frank Marks was a highly regarded solicitor specialising in the fields of industrial relations, workers compensation, insurance law and occupational health and safety, an author and university lecturer and one of those rare solicitors who was also an advocate, making good use of that rich, bass voice honed through years of singing in barber

shop quartets. Perhaps in his retirement Frank and the Attorney could stage a gig together.

- 6 Frank had a somewhat eclectic practice and his clients included unions, employers and governments. Frank appeared in dramatically different forums, ranging from the High Court to the Australian Industrial Relations Commission in national wage cases. His contemporaries included the Honourable Michael Kirby, both of them having served together as articled clerks with M A Simon and Co.

- 7 Frank Marks was appointed as a Deputy President of the Industrial Relations Commission and a judge of the Industrial Court on 15 February 1993. That was quite a different era. The Commission operated under the 1991 *Industrial Relations Act*, an Act of the Greiner Government, Bill Fisher was the President and there were 23 members of the Commission - 11 judges and 12 Commissioners. Except for the fact Justice Monika Schmidt transferred to the Supreme Court in 2009, Frank Marks is the last of the judges of that era but not the last of the members. That honour remains with Deputy President Harrison and Commissioner Tabbaa, still serving members of the Commission each with more than 20 years' service and still doing an outstanding job under increasingly difficult and uncertain circumstances.

- 8 With the retirement of Frank Marks, the recent retirement of Justice Tricia Kavanagh and retirement of two Commissioners within the next six months, the Commission will be reduced to

five judges and one Commissioner in Sydney, with Deputy President Harrison and Commissioner Stanton in Newcastle spending half their time as members of Fair Work Australia. What the future holds is, of course, in the hands of the Parliament, and whilst this may not be the occasion for it, one is entitled to reflect on the extraordinary contribution this institution has made over the past 110 years to stable industrial relations in this State and is still able to make.

- 9 In 1996, the Carr Government introduced the *Industrial Relations Act* of that year. Frank Marks continued under that legislative regime as a Presidential Member and judge until his retirement last Friday. In that time Frank has served with two other Presidents, the Honourable Lance Wright and since 2008, with myself.
- 10 In addition to his work on the Commission and the Industrial Court, Frank was an integral part of the management of the business of the Commission through his roles as a Panel Head and, importantly, through his case management of the once busy unfair contracts list for many years. More recently, in addition to his work with the Commission, Frank also chaired proceedings before the Medical Tribunal.
- 11 Frank has conciliated and arbitrated countless disputes in his time at the Commission. Notably, in the highly charged area of correctional services, he used his expertise and vast knowledge of the prison system to ensure that disputes were resolved quickly and fairly with the minimum of disruption. He had also

been heavily involved in the transport area for many years; his work and decision in connection with the Cash-in-Transit industry was a most significant contribution.

- 12 As a judicial member, Frank Marks dealt, many times over, with the full gamut of matters that come before the Court and has been a valued member of numerous Full Benches. He has had to deal with complex jurisdictional questions that arose, particularly in the unfair contract and occupational health and safety areas of the Court's work. Frank developed, in his time with the Court, a first-rate reputation as a judicial officer: learned, fair, courteous, forthright and fiercely independent. The high principle "without fear or favour" is entirely apt where Frank Marks is concerned.
- 13 An area where his Honour particularly excelled and where his skills proved so valuable was in conciliation. As Michael Kirby once described Frank, he is a patient and diligent man, attributes so important to a conciliator. Frank had an uncanny ability to identify the real issues in dispute and to communicate with disputants and litigants at all levels so that they understood clearly the pros and cons of their respective positions and the choices they had in settling their differences or proceeding to litigation. More often than not matters settled.
- 14 It is often misunderstood or underestimated what value a good conciliator is in a tribunal such as this. Most matters that come before the Commission - upwards of 80 to 90 per cent - are resolved at the conciliation stage, fairly and to the satisfaction of

the parties, thereby avoiding the disruptive effects of industrial action and damage to relationships. Frank Marks was a master of the conciliation process.

- 15 It is a testament to the character of his Honour that he expressed to me at the time of advising he would be retiring early, that he was most concerned this step may cause inconvenience to some parties and will increase pressure on the remaining members of the Court and Commission. It has been a hallmark of his service that this was something he strove to avoid at all times.
- 16 As I mentioned earlier, Tricia Kavanagh, a judge of the Commission for 14 years, also recently retired. Tricia was unable to be present this morning. However, she asked me to convey her best to Frank and his wife in retirement.
- 17 I wish to thank the Honourable Frank Marks for his support and loyalty during my term as President and for his good humour and willingness to undertake any and all work that was allocated to him and more.
- 18 Frank Marks has made a significant contribution to the work of the Court and the Commission and he will be missed.
- 19 On behalf of my colleagues I thank him for his dedicated service and friendship and sincerely wish he and his lovely wife Rose all that is good, interesting and rewarding in the years ahead.
