Your Honours,

Ladies and Gentlemen,

We acknowledge that the building in which we meet stands on the traditional lands of the Gadigal people of the Eora nation, who have lived in and cared for this, their country for millennia prior to the arrival of British settlers in 1788. We warmly welcome all Aboriginal Australians who have joined us this morning.

We have gathered here today to celebrate the centenary of the commencement of the Workers' Compensation Act 1926, Act No 15 of that year. That Act received the Royal Assent on 18th March, 1926 and, by Proclamation published in the Government Gazette on 31st May 1926 was proclaimed to commence on this day, 100 years ago. The New South Wales legislature had passed a Workmen's Compensation Act in 1916, but this statute had little effect on the current law. The 1926 Statute, however, has proved to be a seminal enactment of the New South Wales Parliament. The Statute book will tell you that it has been repealed. However, if you are injured whilst working in or about a coal mine, your entitlement to weekly payments is still governed by sections 9, 11 and 15 of the Act, sections dealing with total incapacity, partial incapacity and partial incapacity deemed to be total, as well as redemption of the employer's liability to pay compensation by the payment of a lump sum which the injured worker wishes to accept and the Court determines to be appropriate. Of greater moment is the fact that many provisions of the 1926 Act live on in our current legislation, the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

For example, the word "Injury" was originally defined to mean "personal injury, and includes a disease which is contracted by the worker in the course of his employment,

whether at or away from his place of employment, and to which the employment was a contributing factor…" In short, the injury need only to be received in the course of employment, a temporal connection only, but if the injury were a disease the worker was required to establish that his employment was a "contributing factor". In the first reported decision of the original WCC, Judge Perdriau decided that "a contributing factor" was equivalent to "arising out of the employment" i.e. a causal connection with the employment: *McCooey v Blackwell* (1926) 1 WCR 1. An amendment made in 1929 required that an injury arise out of and in the course of employment, but in 1942 an amendment made the test disjunctive: arising out of or in the course of employment. The 1916 Act had required that the injury occur "by accident" a requirement of the British legislation, but since 1926 not part of the law of this State. In our current law, injury is still defined as "personal injury arising out of or in the course of employment" and employment must still be a contributing factor to a disease, albeit that relatively recently the noun "factor" has been qualified by some "interesting" adjectives: "main" and "substantial".

The 1926 Act required that death or injury "result from" an injury, and that remains the test of causation in present law.

The 1926 Act distinguished between persons who were wholly, mainly or partially dependent upon a worker, in different circumstances. These distinctions are still applicable in respect of the death of a worker and until relatively recently were applicable in respect of an injured worker.

The 1926 Act extended its provisions to certain members of the workforce who were not "workers" at Common Law, generally referred to as "deemed workers". Most of these provisions still apply and are now found in Schedule 1 of the 1998 Act.

A person called upon to decide whether a person claiming compensation is entitled to it still applies tests found originally in the 1926 Act:

1. Is the claimant a "worker" or "deemed worker"?
2. did he or she suffer an "injury" as defined?
3. is he or she totally or partially incapacitated?
4. does the incapacity result from the injury?
5. if partially incapacitated what is the extent of it?

There is another centenary which we celebrate today. On this day, one hundred years ago, Mr Ralph Joseph Perdriau, Barrister-at-Law swore the oaths of Allegiance and of Office as the first judge of the Workers Compensation Commission of New South Wales, established by the 1926 Act. His Honour was the first Chairman of the Commission. His Honour commenced doing the work which all of us on this Bench still do. We are all his heirs.

Some of you may wonder who is this motley mob on the Bench this morning. I was originally appointed as a judge of the Compensation Court of New South Wales in 1994. When that Court was abolished on 1 January 2004 I was given the management of the Special Statutory Compensation List and, in 2014, I was also given management of the Coal Miners Workers Compensation List. In those two lists are decided matters in the District Court's Compensation Jurisdiction, the jurisdiction that the Compensation Court still had at the time of its abolition. On my left is Judge Strathdee, who is also a

Judge of the Dust Diseases Tribunal, and on her left is Judge Catsanos. Both Judge Strathdee and Judge Catsanos sit from time to time in the Compensation Jurisdiction. Unfortunately, Acting Judge Quirk could not be with us today. Her Honour was originally appointed to the Compensation Court and became a Judge of the District Court in 2004. Her Honour took an early retirement, but has sat regularly since then in the Compensation Jurisdiction as an Acting Judge; often in Newcastle hearing Coal Miners' cases, If she were with us today she would be sitting on my far left, where Mr John Harris sits today. I shall return to Mr Harris shortly.

On my right is Judge Phillips, the President of the Personal Injury Commission. On his right is Deputy President Mr Michael Snell, and, on his right, Deputy President the Honourable Adam Searle, and, on his right, Mr Glenn Capel, Head of the Workers Compensation Division of the Tribunal and, back on my far left, Mr John Harris the Principal Member of the Tribunal. As I said earlier, we all continue to do the work initially undertaken by Judge Perdriau, one hundred years ago.

We thank you all for joining us this morning either in this Court Room or by AVL. There are present some eminent members of our community whose presence must be acknowledged. We have been joined by:

- the Honourable Julie Ward, President of the Court of Appeal, and
- the Honourable Sarah Huggett, a judge of the Supreme Court and Chief Judge of the District Court who has graciously permitted us to use her Court for this ceremony.

The Supreme Court has always been important in the compensation jurisdiction of this State. There has always been a right of appeal in point of law to the Supreme Court from

a judge hearing a compensation case and, since 2002 from a Presidential Member of the Second WCC, now the PIC. Appeals lead to coherence in the law, the settling of controversies as to what is the correct state of the law.

However, the Supreme Court does not always get it right! There has always been a right of further appeal to the High Court of Australia. We have been joined today by the Honourable Michael Kirby, one of our Nation's most distinguished jurists, a retired Justice of the High Court of Australia. Mr Kirby has always been a friend to those of us sitting at first instance in the compensation jurisdiction. Mr Kirby commenced his legal career as a clerk articled to a solicitor with a busy workers' compensation practice. You will first find Mr Kirby's name not in the Commonwealth Law Reports, but in the Workers Compensation Reports as Counsel appearing before the original Workers Compensation Commission or on appeal in the Supreme Court. When he was President of our Court of Appeal he heard many appeals from the Compensation Court. The solicitor to whom he had been articled was Mr Ramon Francis Burke who eventually became Judge Burke. He held judicial office until the Compensation Court was abolished on 1 January 2004. In my estimate, an estimate which I know Judge Phillips shares, Judge Ray Burke was the finest workers compensation jurist that this State has produced. Perhaps some of Judge Burke's diligence influenced in a subtle way a very young Mr Michael Kirby.

We have also been joined by the Honourable Ingmar Taylor, President of the Industrial Relations Commission of NSW and of the Industrial Court.

Unfortunately, the Honourable Michael Campbell, one of His Majesty's Counsel learned in the Law, a retired judge of the Supreme Court, is not able to be physically present

today, but attends by way of the live stream broadcast of this ceremony. Mr Campbell was appointed a Judge of the original WCC in 1975. In 1986 he was appointed to the Supreme Court, where he sat in the Common Law Division. In 1994, Justice Campbell was appointed Chief Judge of the Compensation Court which appointment he held until the Court's abolition on 1 January 2004. He then sat as an Acting Judge of Appeal until 2006. Justice Campbell, as I have always called him, is our oldest link to the original WCC established by the 1926 Act.

We have been joined by the Honourable Terry Sheahan, a retired Judge of the Land and Environment Court, and a former Attorney General of this State. Justice Sheahan was also appointed as the first President of the second Workers Compensation Commission. When Justice Sheahan relinquished that post, he was succeeded by Judge Greg Keating. His Honour Mr Greg Keating is also present today. When Judge Keating retired, he was succeeded by Judge Phillips.

Unfortunately, the Attorney General is not able to join us but his colleague, the Honourable Jihad Dib, Minister for Customer Service, Digital Government, Emergency Services and Youth Justice has. He has administrative oversight of the PIC.

In the absence of the Attorney General, I now call upon Mr Dominic Toomey of Senior Counsel, President of the Bar Association of NSW, to speak on behalf of the Bar.

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I now call upon Mr Ronan MacSweeney, President of the Law Society of NSW, to speak on behalf of the Solicitors of this State.

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Judge Phillips will speak on our behalf in reply or, perhaps, more appropriately, sum-up.

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We invite all present to join us in the Judges Common Room, the entrance to which is immediately opposite to that of this court room, across the foyer, for morning tea.

We shall adjourn.