COPYRIGHT RESERVED
NOTE: ©The Crown in Right of the State of New South Wales. The reproduction, or communication of the contents of this transcript, in full or in part, to any person other than a party's legal representatives and for any purpose other than the conduct of court proceedings, may constitute an infringement of copyright and is prohibited.

RSB:SND

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CIVIL JURISDICTION

JUDGE NEILSON
AND THE JUDGES OF THE DISTRICT COURT COMPENSATION JURISDICTION
PRESIDENT JUDGE PHILLIPS
AND MEMBERS OF THE PERSONAL INJURY COMMISSION

WEDNESDAY 1 JULY 2026

CENTENARY OF THE COMMENCEMENT OF THE WORKERS' COMPENSATION ACT 1926 (NEW SOUTH WALES)

Mr Dominic Toomey SC on behalf of the Bar Association of New South Wales
Mr Ronan MacSweeney, Law Society of New South Wales

NEILSON DCJ: 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 their country for millennia prior to arrival of British settlers in 1788. We warmly welcome all Aboriginal Australians who have joined us this morning.

We have gathered here to celebrate the centenary of the commencement of the Workers' Compensation Act 1926, Act number 15 of that year. That Act received the royal assent on 18 March 1926 and by proclamation published in the government gazette on 31 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 statue 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The statute book would tell you that it has been repealed however, if you are injured whilst working in or about a coalmine your entitlement to weekly

payments is still governed by s 9, 11 and 15 of that 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 however, 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 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 Workers' Compensation Commission Judge Perdriau decided that a contributing factor was equivalent to arising out of the employment, that is, 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 the 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 the 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, such as main and substantial.

The 1926 Act required that a death or injury result from an injury, and that remains the test of causation in the 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 worker". 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. Firstly, is the claimant a worker or deemed worker. Secondly, if he or she suffered an injury as defined. Thirdly, is he or she totally or partially incapacitated. Fourthly, does the incapacity result from the injury. Fifthly, if partially incapacitated what is the extent of it.

There is another centenary which we celebrate today. On this day 100 years ago Mr Ralph Joseph Perdriau, barrister at law, swore the oath 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 in some way 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 coalminers workers' compensation list. In those two lists I decided matters in the District Court 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 in 2014, but has sat regularly since then in the compensation jurisdiction as an acting judge, often in Newcastle, hearing coalminers cases. If she were with us today she would be sitting on my far left where Mr John Harris sits today. I shall soon turn to Mr Harris.

On my right is Judge Phillips, the President of the Personal Injury Commission, and prior to that the third president of the second Workers Compensation 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 PIC.

As I have said, we all continue to do the work initially undertaken by Judge Perdriau. Sitting in front of us this morning is, on my associate's left,

Assistant Registrar Mary O'Connell of the District Court, who is also the conciliator for all coalminer claims. On Judge Phillips' associate's right, is the Principal Registrar of the PIC, Marianne Christmann.

We thank you all for joining us this morning, either by being present in this courtroom or by the livestream broadcast. There are present some eminent members of our community whose presence must be acknowledged. We are being 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 compensation cases and, since 2002, from a presidential member of the second Workers Compensation Commission, now the Personal Injury Commission. Appeals lead to the settling of controversies as to what is the correct state of the law, and to coherence in that law.

However, the Supreme Court does not always get it right. There has always been a right of further appeal the High Court of Australia. We have been joined today by the Honourable Michael Kirby, one of our nation's most distinguished jurists, 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.

We will first find Mr Kirby's name not in the Commonwealth Law Reports nor in the New South Wales Law Reports, but in the Workers' Compensation

Reports as counsel appearing before the original Workers' Compensation Commission or an appeal in the Supreme Court. When he was President of the 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 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 some subtle way, a very young Michael Kirby.

We have also been joined by the Honourable Justice Ingmar Taylor, President of the Industrial Relations Commission of New South Wales and 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 livestream broadcast. Mr Campbell was appointed a judge of the original Workers' Compensation Commission 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 when Judge Frank McGrath retired. Judge McGrath was the last chairman of the original Workers' Compensation Commission, and the first Chief Judge of the Compensation Court.

Justice Campbell held the office of Chief Judge until the Court's abolition in 2004. He then sat as an acting judge of appeal until 2006.
Justice Campbell, as I have always called him, is our longest link to the original Workers' Compensation Commission established by the 1926 Act.

We are being joined by the Honourable Terry Sheahan, a retired judge of the Land and Environment Court, and a former Attorney General of the State. Justice Sheahan was appointed as the first president of the second Workers Compensation Commission in 2002.

When Mr 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 has not been able to join us but his colleague, the Honourable Jihad Dib, Minister for Customer Service and Digital Government, Emergency Services and Youth Justice has joined us. He has administrative oversight for the Personal Injury Commission.

In the absence of the Attorney General, I now call upon Mr Dominic Toomey SC, President of the Bar Association of New South Wales, to speak on behalf of the Bar. Mr Toomey.

TOOMEY: May it please the Court. May I, respectfully, adopt your Honour Judge Neilson's acknowledgment of country.

It is a privilege to be invited to speak at today's ceremonial sitting. I thank the Chief Judge, Justice Huggett, and the President of the Personal Injury Commission, Judge Phillips, for hosting today's celebration and inviting me to speak for the Bar.

I will start, if I may, at the beginning.

Workers compensation legislation was first introduced in New South Wales in 1910 with the Workmen's Compensation Act of that year. That Act marked the introduction of no-fault workers compensation in this State but its scope was confined to a limited number of dangerous occupations.

From these earliest stages, the very concept of workers compensation was a contested idea. An advertisement, as we might now understand it, was run in newspapers across New South Wales espousing the moral foundation of this new scheme It read:

> "The toll of death and injury in connection with industry, with and without carelessness or misconduct, is, unhappily, heavy, notwithstanding the adoption of modern safeguards and closest supervision on the part of the employer. In this connection employers have always felt a great moral responsibility. Now, under new legislation, they are charged with a material responsibility".

Not all of New South Wales shared in the vision of these new reforms, however, with criticisms from both the right and left of politics. In an open column published in The International Socialist in August 1910, a Mr Ray wrote that:

> "If the New South Wales Bill is allowed to pass in its present form, great injustice will be done to hundreds of thousands of New South Wales workers. Moreover, small employers would have difficulty in retaining the services of their employees because of the latter not being covered against accidents".

The same Mr Ray took particular umbrage at the resemblance that the New South Wales Bill had to the equivalent legislation in Queensland. He noted that the only substantive difference was that a Queensland employer could be liable for up to 400 pounds for an accident at work, while the upper limit in New South Wales was only 100 pounds. Mr Ray, rather uncharitably, wrote that:

> "I wonder, Mr Editor, if Mr Wade (the then minister) simply instructed his office boy to copy out the Queensland Act and the latter made a clerical error in the figure".

Another criticism published in the now defunct periodical for the building industry was that:

> "This Act is long and involved. It is hard to understand, tortuous, complex. I am inclined to believe that a great deal of money must

be expended in costs before some of the mists are cleared away."

It seems that some things never change.

Despite the misgivings of some, it was exactly 100 years ago today, as your Honour Judge Neilson has observed, that the Workers' Compensation Act of 1926 came into effect marking a critical turning point in the development of workers' rights in Australia. The Workers' Compensation Act created our State's first comprehensive Workes Compensation Scheme. It established a broader no-fault scheme covering a much wider range of workplace injuries and diseases than the 1910 Act had done.

During his second reading speech, the Honourable A C Willis provided his rationale for the need for such a scheme. He said:

> "You have to picture the position of a man who has been unable to carry on his work for several years. The amount that he has drawn as compensation is, admittedly, a very meagre allowance. You have to picture the position of his wife, possibly with several children, struggling to exist on that meagre allowance which has been gradually eaten up. It goes from 500 pounds to 600 pounds and possibly to the limit of 750 pounds. Then if the breadwinner dies as the result of the accident, those who for several years had a hard struggle to exist find there is not a fraction to be drawn, just when something for the family may be wanted most. I think that side of the question will appeal to honourable members".

While the language and the currency may have changed, the underlying justification for the scheme has scarcely done so in the one hundred years since its comprehensive inception.

Germane to our celebration today, of course, as your Honour Judge Neilson has already observed, is that the Workers' Compensation Act also established the first iteration the Workers' Compensation Commission, the first specialist tribunal of its particular kind in Australia. From its earliest days there was a clear rationale for the establishment of a standalone Commission, namely removing lawyers from the decision-making process.

In comparing the new Workers' Compensation Commission with our neighbours to the north, the formerly mentioned Mr Willis spoke favourably in his Second Reading Speech of how in Queensland an enormous sum of money has been saved that would otherwise have gone to lawyers thanks to the establishment of a not dissimilar tribunal. Here, again, some of the debate around the 2025 amendments to the Workers Compensation Act suggest that history may well be repeating itself.

As had been the case in 1910, however, not all sectors of society welcomed the introduction of the 1926 Act. It was characterised in various circles as government overreach and an attack on industry. During the Parliamentary debate, the Honourable E H Farah said that:

> "These are limits beyond which we should not go in placing impositions on industries in this State while industries in other States are not carrying such burdens. We are now at about the breaking point, and if the government persists in passing this legislation we shall in many industries get over the breaking point and workers whom this kind of legislation is supposed to benefit will be the very persons who by losing their employment will suffer".

This view was colourfully described in an article published in The Bulletin in July 1926:

> "If Premier Lang and Minister Baddeley had wanted to create a scare and frighten employers into sacking men wholesale, they couldn't have improved much on their Workers' Compensation Act".

The Bulletin went on to describe the reforms as a calamity and Lang's supreme piece of folly which was designed to "round up these capitalist ruffians".

In September 1926, that great masthead, the Gundagai Independent and Pastoral Agricultural and Mining Advocate, bemoaned the impact the new Act was having on local businesses. Fruit growers in Batlow had been hit by the increasing price of timber and staffing costs had skyrocketed for Adelong

Creek Dredging Company.

Despite these initial concerns, history has told a very different story. The 1926 Act and the new Commission ushered in a model for what many would agree provides a fair go for injured workers. Its influence spread across the country and to jurisdictions overseas. It was the 1926 Act that established the foundational principle that the cost of workplace injury should be shared and not simply borne by the individual and his, and it invariably was his, family. It established that workers compensation is and should always be a hallmark of civilised society and that it is integral to such a society that it protect and provide for its most valuable members.

Of course everyone here today will have their own stories about the Workers' Compensation Commission and its various successors in the decades that followed, but if you will indulge me I would like to make some brief observations of the Compensation Court in the late 1980s when I first came to instruct there as a callow, wide-eyed youth who had just got a job at McCaw Johnson, which was a well-respected mid-sized insurance firm led by Clifford Boyd-Boland.

I, and another employed clerk - they call them paralegals now - would lump our files and a bag of 20 cent pieces, for the phone to ring back to the office for orders, down to Citra House on Macquarie Street where we would be required to instruct counsel. I could not, for the life of me, understand what I could possibly instruct them in, I did not know a thing.

Otherwise, we would be appearing before the former military man, Registrar Cross, who ran the Court with military efficiency and might be said to have been an early example of nominative determinism, though in hindsight I think he actually had the patience of Job. The legal profession room would

often be thick with smoke as all assembled to try and resolve the many cases each seemed to be briefed in on any given day.

The regular characters included Horrie Millar, who I more than once heard tell his worker client that if he ran his case he would get duck eggs, master.

Jim Poulos, Vaughn Jurisich, whose nickname was Gladesville because he was always halfway between the Sydney and Parramatta courts; Michael Newton whose nickname cannot here be explained; Annie Quirk, later to become a judge of this Court; Paul Rickard, Paul Sweeney. Steve Campbell, now a judge of the Supreme Court. Steve Flett, Ian Firm but Fair McFarlan. Stuart Grant; Terry Rowles; John Sharpe; Deborah Moore and Michael Cranitch, who was the first person, I knew, to own one of the mobile phones we fondly referred to as bricks and that is just to name a few of the characters.

Sharpe conducted one of the shortest cross-examinations in history in a case in which he appeared for an employer. The worker had given his evidence and it is fair to say, had laid it on pretty thick. Sharpe was invited at the end of his evidence-in-chief to cross-examine. He slowly rose to his feet and looked across at the worker and he said, “You’re bunging it on, aren’t ya?” To which the worker responded, “Maybe a little bit.” “That is the cross-examination, your Honour.”

Counsel and judges all knew each other well. Poulos QC and Judge O’Meally had a particularly mischievous relationship. In one case, Poulos acting for the employer was cross-examining a doctor who had been qualified by the worker. This was in the time of the rise of RSI, the symptoms of which often included what we as lay people might describe as pins and needles but which the medical profession like to describe as formication, with an M.

The worker had worked at a chicken factory early on in the processing line where she had been required to perform a process which the doctor, himself, had described as necking. Poulos plainly, having taken the view that the case was already lost for his client, decided to have some fun. The cross-examination went something like this:

> "Q. Doctor, he said, You describe this process that the worker was undertaking as necking, do you?
> A. Yes, yes, that's how I describe it, that's how I understand her to describe it.
>
> Q. And you say that arising out of the repetitive process she was undertaking that she now suffers from pins and needles, do you?
> A. Well, yes, that's one of the symptoms of which she complains."

And Poulos said:

> "Q. So really what you're saying is that too much necking leads to formication?"

In 1996, I took up employment at Mcclelland's of which Greg Keating, who is here today, was the senior partner and, of course, as your Honour Judge Nielson has mentioned, he became the second president of the second iteration of the Workers Compensation Commission. Greg interviewed me for the job. He asked me and I had been expecting this question, "Well," he said, "you've worked for you know the employer and insurer side," he said, "what makes you want to come and work for us?" And I gave him my prepared answer, "Well, you know, I think, Mr Keating, that you know it's probably a good thing to, you know, introduce some balance into your work experience." There was a pause and he said, "You got sick of losing, did ya?"

I remained at Mcclelland's from 1996 to 1999 when I went to the bar. When I did so, the Honourable Michael Campbell KC was then Chief Judge of the Court. I did quite a bit of work in the court in my first couple of years at the bar. It was, it has to be said, a wonderful training ground where young

barristers could learn general courtcraft and importantly, how to cross-examine experts. It is a matter of great regret that a similar forum does not exist for the new barristers today, who can struggle to build courtroom experience in their early years. Chief Judge Campbell was, if I may say so, a very fine judge. He had a perfect court temperament and a calm authority.

I also appeared on numerous occasions before Judge O'Meally and I will share one more anecdote if I may. I was acting for the worker, I had called the worker and Judge O'Meally said to him, "Sir, I am required to enquire of you whether you wish to make affirmation or take an oath." To which my man responded, "What's the difference?" "The difference, sir, is simple," he said, "If you make affirmation and tell a lie, you will go to gaol. If you take an oath and tell a lie, not only will you go to gaol but also to hell." To his great credit, he took an oath.

I conclude by observing that as we look ahead, it would be naïve to expect that the scheme will not continue to face challenges. No doubt, those challenges will evolve. What I sincerely hope will remain, however, is a role for courts and independent specialist tribunals in its administration and with that for the independent bar. As we mark this centenary, we recognise the considerable contributions of those who have served on and in the courts and tribunals that have administered the scheme, many of whom join us here today. May it please the Court.

NEILSON DCJ: Thank you, Mr Toomey. I now call upon Mr Ronan MacSweeney, the president of the Law Society of NSW to speak on behalf of the solicitors of this State.

MACSWEENEY: May it please the Court. I thank President Phillips for inviting me on behalf of the Law Society of NSW and the 45,000 solicitors of

this State to address this sitting on the occasion of the hundredth anniversary of the Workers' Compensation Act.

> "It might be thought that the lawyers have said all that can be said about Workers' Compensation Acts."

Judge Perdriau, the first chairman of the Workers' Compensation Commission, as we have heard, wrote this in 1946. Although I am the third speaker today, neither he nor I really believe that to be true.

100 years ago, no bridge stood over the harbour. And down the road from where we now meet, Sydneysiders bought gloves and corsets at Mark Foys, now the Downing Centre, the busiest court in the country.
Milk carriers still delivered to households each morning and newspapers across the country ran workmen's risk sections, stories of workers falling from cranes and similarly tragic incidents appeared in the newspapers as part of a national conversation about what the protection of workers should look like and what they should be entitled to.

The Federated Ironworkers' Union anticipated 80 worker deaths across the expected 18 month construction of the Harbour Bridge arch. As it turned out, 16 died although several or more were injured due to poor safety standards and many later went deaf.

Progress can seem inevitable in hindsight because we cannot imagine living without the values and protections which predate us. Progress is never inevitable. The Workers' Compensation Act did not just appear in legislation one day in 1926 and nor did any subsequent amendments to it.

The first case recorded in the Workers' Compensation Reports of 1926-27 as we have heard, McCooey v Blackwell. Edgar Patrick McCooey, a milkman, contracted bronchitis while delivering milk around Rose Bay and

Vaucluse during those cold dark mornings on his milk round. Unfortunately for Mr McCooey, the link between his illness and his occupation was not accepted by the Commission. Perhaps this was an inauspicious start but in the 274 matters before the Commission in its first six months, 171 resulted in an award for the applicant.

More recently between 1 July 2024 and 30 June 2025 the Personal Injury Commission finalised nearly 11,000 workers compensation dispute applications. 98% were brought by legally represented workers and 1.9% by legally represented insurers.

Firms we know today appear in the pages of the earliest Workers' Compensation Reports, Mallesons, Sparke Helmore, Norton White and Ashurst Perkins Coie in their previous forms of course. The firms we do not remember are no less important in this history. That is because the public's experience of the law is mediated mostly through the solicitor profession. A profession which itself looked significantly different in 1926.

Only two years earlier The Sun ran the headline First Lady Solicitor regarding Marie Byles who had just passed her legal examination. This was another major hard-won milestone for the law in New South Wales. Today more than half of all solicitors in this State are women, indeed many of them have appeared before this Commission.

As the Honourable Keith Mason AC KC once wrote, "Justice is not self-activating. Litigants require unhampered access to courts. They also need the skilled and disinterested assistance of lawyers."

To lose one's ability to work, even temporarily, can turn someone's world and the worlds of all who depend upon their income upside-down. This is no less true today than it was at the genesis of the Commission. Though through

the next century, the Act would go through many evolutions just as the world around it did too.

Of course, the Workers Compensation Act 1987 was a radical reimagining of the scheme when introduced, and, as an aside for grammarians, this was also a particularly difficult time as the apostrophe for the possessive plural was dropped from the title of the Act. In the July edition of the Law Society Journal that year Nigel Mannering called the WorkCover reforms as an exercise in lawyer bashing, but soon afterwards a 1989 amendment saw common law rights reestablished with the establishment of the Compensation Court of New South Wales, which would be abolished in 2003.

In a related way 1989 was also the year of the Dust Diseases Tribunal Act. As we know, Sydney has a long history of dust diseases. Sadly, as many as 70% of workers who cut the sandstone in the construction of this city died of silicosis within two years of commencing work. I mention it as the Dust Diseases Tribunal is part of the broader trend the Workers' Compensation Act has sought to establish protecting people at work. Changes in the early 2000s also sought greater competition and choice for employers, and in 2015 icare, SafeWork New South Wales and the State Insurance Regulatory Authority came into being.

As the voice of the legal profession the Law Society has actively consulted with Government on these developments through the Act's history, a role which we continue to take seriously today.

Work today in many ways is better and safer than it was before the Workers' Compensation Act but not in all ways. Last year the New South Wales Government introduced, in their words, "the most significant reforms to

workers compensation in a generation". The Law Society's recent submission to the State Insurance Regulatory Authority outlined our concerns with these reforms, these include increased difficulty added to the process of making a compensation claim in relation to psychological injury. Striking a balance between the legitimate needs of people who rely on workers compensation schemes and the limits of our resources is not an easy task. The Law Society has consistently acknowledged the pressure the system is under and the urgency of reform. It is a complex problem and any solution will necessarily be complex too. But it is worth remembering that the Workmen's Compensation Act 1910 was limited by its narrow focus. Today, action to reduce workers' entitlements to compensation must not be taken lightly.

A few weeks ago I found myself walking across the Harbour Bridge. There were construction workers decked out in Hi-Viz on one of the ante-ramps. They were carrying out maintenance work. Workers in Hi-Viz are a ubiquitous sight across our city these days, indeed one that is barely remarkable. Reflecting on that scene today, however, there is a certain poetry to it and to the Hi-Viz vest that one sees everywhere. I do not want to overstate this and it may not stop all poor practices, but the fluoro vest just might make a fork lift or delivery truck driver slow down, and if you pay attention, if you count, that poetry of protection dances around thousands of people in this city. It is in the suburbs, it springs up like shoots across regional areas throughout our State. This is not just a utilitarian piece of clothing, it is a brilliant realisation of the value of protecting workers that the Workers' Compensation Act has strived to introduce to society. And if it is not stretching the metaphor too much, both offer a cloak of protection for workers that one could barely have visualised over 100 years ago.

However, this is still a reminder of the significant work health and safety challenges that face so many daily and sadly many solicitors still see the tragic side of this in their practices. But Hi-Viz vests on the Harbour Bridge and elsewhere recall the deeper changes that have been achieved for workers in this past century, changes that make our society better, real compensation for workers is a change worth protecting and therefore this notable milestone is truly one worth celebrating. 100 years hence, one wonders if Hi-Viz uniforms will be replaced with something even more smart tech, perhaps AI enabled protective clothing to warn you of an impending accident that might even file a statement of claim whenever it does. But whatever innovation the next century brings I would confidently wager that the scheme as heralded by the 1926 Act will be as fundamental to society into the future as it is today. As the Court pleases.

NEILSON J: Thank you, Mr MacSweeney. I now invite Judge Phillips, I was going to say to reply but it might be more appropriate to say, to sum-up.

PHILLIPS J: Thank you. Distinguished guests, former judges of the Commission and the Compensation Court current and former staff members, mediators and medical assessors of the Commission, practitioners and friends of the Commission. On this day 100 years ago the 1926 Act commenced. Now its passage through the Parliament was by no means certain. It had been the product of over 40 years of argument and indeed four Bills had been introduced into the Parliament before 1910 only for each one to fail. In the meantime some employees insured themselves with friendly societies, some employers took out insurance but this was not common and the problem continued.

The 1910 Act of which the Bar has spoken was modelled on the 1897

English Act and was imperfect but it was a start. It was followed by a further Act in 1916 but neither provided a comprehensive or acceptable solution.

In 1918, the then Minister for Labour and Industry the Honourable G S Beeby visited Great Britain and the United States of America to report upon their approach to industrial conditions. The Minister was most taken with the approach in some American States where the system was administered by dedicated industrial accident tribunals which dealt with all aspects of claims and disputes. In some States these commissions owned and operated the insurance funds, made the investments decisions and licensed the insurers, and to the Minister these systems looked like they worked, so the seed of an idea had been planted.

1925 saw the First Lang Government elected and in keeping with the character of the premier, reform was on the agenda and workers compensation was high on that list. The incremental advances of the 1910 and 1916 Acts were to be replayed by the more ambitious 1926 Act. Interestingly, the Public Service lawyer who drafted the Bill was one Ralph Perdriau, a Boer War veteran who was later appointed as the inaugural chairman and first judge of the Commission. He is little-known, but is actually quite a giant character in this history and about whom I will shortly return.

I am sorry the Minister is not here - he has had to go to a meeting - but it might surprise everyone here this morning to learn that the Parliamentary debates which commenced in 1925 and which went into 1926 were quite vigorous and heated. Threats were hurled across the chamber. Needless to say, this has been a tradition which has endured this 100 years, but eventually agreement was struck and a Bill was passed in March 1926. But it is interesting to note that between the passage of the Bill in March and its

commencement on 1 July the general strike took place in Great Britain. Now, this is a centenary in the UK which has not been particularly celebrated, although some books are being published this year, but the contrast is stark. At the time when working conditions in the former colony in New South Wales were being substantially improved by the 1926 Act the workers of Great Britain were comprehensively defeated by a well-prepared Government and determined employers. The irony is that in the many years before 1926 New South Wales looked to the English approach for workers compensation and sought to emulate it here, but in the 1926 Act Government employees and labour worked out their differences to embark upon a new era which went beyond what the old Mother Country had done.

The 1926 Act can then be seen to be a very Australian solution to what had been an insoluble problem, compensating injured workers on the one hand while endeavouring not to harm the economic growth of the State and its enterprises on the other. This has been the conflict in workers compensation for this last 100 years and, as the French say, the more things change the more they stay the same.

Australia does not have a welfare state, and this legislation was an attempt to care for those unfortunate citizens who were injured while building out the great State of New South Wales, which is very much an Australian solution. But the framers of the 1926 Act were at pains to ensure that business and economic development were not hampered and this was made clear in the Parliamentary debates and in a number of speeches made after the Commission's commencement in July and August 1926. Its terms relied upon aspects of the British and North American approaches modified to Australian conditions. It is based upon three pillars which have endured for

this whole century: firstly, the scheme was to be no-fault; secondly, employers were obliged to insure their workers against injury; lastly, a dedicated Tribunal was to be formed to hear and determine all disputes. The policy aim here was to remove these cases from the strict legalism of the common-law courts, but the head was to be a judge, which was to give the community confidence in its independence from the competing interests and to invest the Commission with the impartiality attaching to judicial office. So what was controversial in 1925/26 is entirely uncontroversial today, and is very much a part of the legal architecture of New South Wales.

Immediately the Act was passed in March its author, Ralph Perdriau, was appointed the head of the new Commission. The new Commission was an interesting creation: it was a Tribunal headed by a District Court judge with two lay members, it had medical referees and medical boards, it published decisions like any other judicial body, but it also owned the scheme money. The Commission struck the premiums and licensed the insurers; it collected and reported upon injury data. Incredibly, Judge Perdriau was for the first nine to ten years the only judge sitting in the Commission, so in 1926 the Commission received 688 applications in its first year with 551 being finalised in public hearings. All the principal precedents in the new jurisdiction were Judge Perdriau's decisions, most of which were upheld in the higher courts, including the Privy Council. Indeed, all of the member decisions were drafted by the judge, with the lay members' contribution being the accompanying words "I concur". His work ethic and output was prodigious, and so if there is a founder or father of workers compensation in New South Wales it was Judge Perdriau.

It is hard not to imagine the pressure he was under to make the scheme

work after the years of debate, controversy and conflict leading to the ultimate passage of the 1926 Act. He drafted the Act, he would watch the heated parliamentary debate, and heard all the dire concerns expressed by the parliamentarians and in the press. The new Act needed to work and it was down to him to make it work. He remained head of jurisdiction for an incredible 24 years, which is an enormous period of time to occupy such a role, retiring in late 1950. And so his influence on this area of the law, which lasts until today, cannot be understated.

But reading his retirement speech in the 1950 Workers Compensation Reports, it is absolutely apparent that that role for him was more than a job. It was a vocation. He said this on his retirement:

> "Workers' compensation has always been more than a job to me. It is practical Christianity. For the injured and their dependants it is the Atlantic charter's freedom from want."

Now, like most judges when they retire they retire into obscurity, fading from notice, and so one of the tasks that I wanted to make sure we undertook this year was to give Judge Perdriau his space in this system and to commemorate his huge role in the establishment and the life of the commission in the New South Wales workers compensation scheme. He was a fellow, a soldier, a barrister, a public servant and a Judge. He created a new institution and ran it for a quarter of a century.

To this day his name adorns a number of prizes at the University of Sydney and University of New South Wales Law schools. I cannot find out how the money got there or how they were named, but his name adorns about half a dozen prizes which are given to law students each year. If you look at his life it was characterised by, you know, remarkable charity, public service and concern for his fellow citizens. And so, when you leave this Court today

you will see his 1950 portrait outside this courtroom, which was presented to him by the then-Attorney General. He has left a tremendous legacy for the people of this State and deserves to be remembered.

And so here we are 100 years later celebrating this achievement, which was built upon by everyone who came after this remarkable fellow. But the Commission's story is really a story of the people who were part of it over that century in its various iterations. It is the Judges and other decision-makers, medical and legal, who every day upheld and applied the rule of law to the cases before them. It is the mediators and conciliators who skilfully assisted the parties to take control of their lives by resolving disputes. It is the doctors who have provided their expert opinions and the public servants who have kept the commission's doors opened through thick and thin, the great depression, wars and most recently during the COVID-19 pandemic.

And of all of the solicitors and barristers who have appeared here every day since 1926, as we heard this morning from the presidents of the Bar and the Law Society. Indeed, many of these practitioners were larger than life characters and have added to the colour of the commission's story. And as Mr Toomey said, the commission was a wonderful training ground for lawyers. The art of cross-examination was learnt. The ability to master often dense expert medical evidence and the all-important lesson for a lawyer that one's word to a fellow practitioner had to be kept.

Statutory construction had to be learnt and learnt well because all rights derived from the statute. The way law was practised in the commission in its early iterations was very much in the oral tradition of the law as opposed to a written tradition. Ex tempore decisions were commonplace, and former Chief Judge McGrath would often give an ex tempore decision, so anyone

knowing that they were appearing before him would be pretty confident they would get their decision that day. If one observes the legal profession over this century, work in the commission launched a number of high-profile careers, ending with appointments to the Supreme Court and High Court benches or appointments to senior counsel.

It's wonderful to see present here today a number of practitioners, some of whom have been part of this story for over 50 years. Work in the commission though is different from the more commercial aspects of the law. While every client is important, the case in the commission may be the only contact that the citizen will have with our legal system. The result of the case will mean everything to them and may be the only thing keeping the worker and his or her family from poverty. This is not like the situation of a corporation where a win or loss in Court will simply be reflected in end of year results. It is a very human experience which can be daunting for the injured citizen. The humanity of everyone involved in cases meant that each person could exercise their rights in a calm and respectful way. For that reason, longevity of institutions like the commission is important.

It is important because, over time, public trust and confidence will grow and attach to the institution. It is important because citizens will know that in their hour of need, an independent tribunal exists to rule upon their rights providing a straightforward dignified process to achieve this end. It is important because public institutions like the Commission are part of the glue which binds our community together. It is important because institutions such as the Commission develop through their members a collective approach to cases and adherence to precedent both decided in the Commission and in the appellate courts which means that the rule of law is upheld in all that we do.

Within about a ten-minute drive from this courtroom, you will find a number of venerable institutions without which life in New South Wales would be unrecognisable.

The Supreme Court celebrated its bicentenary in 2024. The New South Wales Parliament was formed as an advisory body in 1824 before ultimately becoming the self-governing body we know in 1956 which, incidentally, was the same year the New South Wales Sheffield Shield cricket team came into existence.

The University of Sydney was founded in 1850 and I could go on.

But as you can see from these examples, the great public institutions of this State have helped create the ethos of the society we enjoy which is secured by the rule of law. We, therefore, need to preserve and protect them knowing that we, the current occupants are but stewards of the institution to be passed on to our successors for the benefit of the citizens of this State.

It is for this reason that today, we celebrate the centenary of the Commission's service to the people of New South Wales. Institutions are important and milestones like this need to be acknowledged and celebrated if only to restate the public need that the institution was created to serve.

The current Commission as the latest iteration of the original Workers' Compensation Commission stands as a result of the hard work and foresight of everyone involved who established and worked in it over the past century.

In the reporting year which ended yesterday, the current Commission received slightly under 14,000 workers compensation applications. So if you think of that, that is a lot of citizens requiring the Commission's attention and all can be confident they will receive the same adherence to swift and effective justice which has been the hallmark of the past century.

Later this year, we will publish a history chronicling this century of service. But one thing that has struck me while writing this history is the feeling that has been confirmed not only in everyone I have spoken to but looking around the room here today, is the very real affection that the Commission is held in by a vast number of people. This is a rare circumstance for a public institution and I think it speaks volumes for everyone who has been connected or worked with the Commission over the years. It is an existence which has touched not only citizens but everyone who has been a part of the story.

So to all of you here today, thank you for your attendance and the honour that you are according the Commission's history and its place in the New South Wales legal system. I thank you for being part of the story.

Finally, I thank Chief Judge Huggett for allowing us to celebrate this milestone here in the District Court today. Thank you.

NEILSON DCJ: Thank you, judge. We invite all present to join us in the judges' common room, the entrance to which is immediately opposite the entrance to this courtroom across the foyer for morning tea.

ADJOURNED