

# *The Hon Justice Jane Mathews AO*

OCTOBER 14 2015 - 4:00PM

## Justice Jane a real pioneer

Greg Ellis

Local News



Scenes from Justice Jane Mathews presentation during The Illawarra Connection's annual Hargrave Lecture. Pictures by Greg Ellis.

Novotel Wollongong Northbeach

## Woman tips the scales of justice



Judge Mathews . . . breaking legal ground



Picture by RICK STEVENS

Justice Mathews after her swearing-in yesterday as NSW's first woman Supreme Court judge.

## New judge seeks justice for women in law

By JENNY COOKE

It's been too long in coming, but Justice Jane Hamilton Mathews is gratified to be the first female to be appointed to the NSW Supreme Court bench, and only the second in Australia.

At her swearing-in at the Banco Court in Queens Square yesterday, Justice Mathews, 46, told her new fellow judges, barristers, lawyers, friends and relatives that it was the most significant day in her 27-year legal career.

"I would like to think that significance goes to some extent beyond me, personally, and attaches to women practitioners generally," she said.

Justice Mathews said that she did not see herself as a trailblazer of the ilk of Dame Roma Mitchell, who became a Supreme Court judge in South Australia in 1965.

But she said: "I think that a woman who is seen to achieve prominence in a field is,

hopefully, helping other women coming up the ranks."

Justice Mathews's career has been dotted with firsts. A solicitor with various firms for 11 years, she was admitted to the Bar in 1968, was appointed the first female NSW Crown Prosecutor eight years later and, in 1980, became the first woman NSW District Court judge.

She married the retired Supreme Court judge Hal Wootten 11 years ago, and is now the first woman in Australia — if not the English-speaking world — to sit on the same court as her husband had.

"I cannot thank him enough for the support he has given me over the years," she said.

Justice Mathews worked on the Human Relations Commission in the mid-1970s, the Royal Commission into Prisons, was a member of the Aboriginal Legal Service and the Council of Civil Liberties, and was a part-time member of the Law Reform Commission.

She adjudicated on some significant cases during her time as judicial head of the Equal Opportunity Tribunal — an area of law with complex issues and important social significance which she considers the most important with which she has been involved.

Although about half all Australian law students are women, Justice Mathews said it was unfortunate that they were not coming through the Bar proportionately.

That showed, she said, the continued existence of "powerful disincentives" to women trying to achieve prominence at the Bar in a male-dominated profession.

"Although we have a long way to go, there is one thing of which we can be absolutely confident. It will be nothing like 22 years before we see the next appointment of a woman to the Supreme Court."

Her advice to aspiring female lawyers? "Simply plug at it and do your best."



*Chief Judge Stantton Q.C. and Justice Matthews*



EQUAL OPPORTUNITY TRIBUNAL

1 July 1986

Her Honour Judge Mathews

Judicial Member

Ms. T. Mallos

Member

Mr. J. Nothdurft

Member

MELINDA KAREN LEVES

(Complainant)

v.

MINISTER FOR EDUCATION  
DIRECTOR-GENERAL OF EDUCATION  
YVONNE CARTER  
TREVOR WILLIAM HAINES

(First Respondent)  
(Second Respondent)  
(Third Respondent)  
(Fourth Respondent)

NO. 20 OF 1985

DECISION





# Former Officers of the University

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Wallace Charles Wurth, CMG, LLB Hon.LLD FSTC 1949–1955

*\*Before the title Chancellor was introduced in 1955 by Act of Parliament, the position was entitled President.*

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The Hon. Gordon Jacob Samuels, AC, QC, MA Hon.DSc 1976–1994

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Catherine Mary Rossi Harris, PSM, BCom, FAICD, 2000–2003

John Henry Pascoe, AO, BA, LLB ANU, AICD, 2004–2005

Gabrielle Cecelia Upton, BA LLB MBA, GAICD, 2006–2009

# Legal identities receive honorary awards

Justice of the Supreme Court of NSW, Justice Jane Mathews, and local solicitor and long-time supporter of the University, Mr Peter Kell, received honorary awards at a graduation ceremony on Friday 8 October.

On her admission to the degree of Doctor of Laws, *Honoris Causa*, the Vice-Chancellor, Professor Ken McKinnon said that Justice Mathews was worthy of the highest accolade and 'is an example of the importance of loyalty, commitment and intellectual honesty in making our society and its institutions more tolerant and open to change.

'Her career is, especially, an exemplary one for any woman aspiring to a profession,' he said.

'Her achievements, at a time when real barriers to the professional advancement of women were still unashamedly in place, are outstanding.'

Justice Mathews was born in Wollongong in 1940 and educated at Frensham School, Mittagong.

She graduated from Sydney University in 1961 with an honours degree in Law. She was called to the bar in 1969 and was appointed Crown Prosecutor in 1977.

In 1980, she was appointed to the bench of the NSW District Court, thus becoming the first woman to be appointed to judicial office in this state.

She became a member of the NSW Law Reform Commission and also the Senior Judicial Member of the Equal Opportunity Tribunal, presiding over the making of 'ground-breaking' decisions in the new field of discrimination law.

In 1987, she rose to become a Justice of the Supreme Court of NSW. She was



*From left: Justice Jane Mathews, Dean of the Faculty of Law, Professor John Goldring and Mr Peter Kell*

the second woman in Australia to hold such a position and remained, until 1992, the only woman judge in NSW.

Justice Mathews' father, Mr F M Mathews, was instrumental in the establishment of Wollongong TAFE and the Wollongong University College.

His daughter was one of the first to teach law on the campus that he helped set aside for the development of the University.

She was a key member of the committee that planned the formation of our Faculty of Law and has chaired the Faculty Visiting Committee since its inception in 1990.

At the same ceremony, Senior partner of Kell, Heard, McEwan, Mr Peter Kell was made a Fellow of the University.

The citation read by the Vice-Chancellor paid tribute to his enthusiastic support to the University's Faculty of Law.

Mr Kell has been invaluable in helping the Faculty to establish and, subsequently, excel in, a national client interviewing competition.

He has been involved in the University's Co-operative Education Scheme since its inception and has sponsored a full-time student scholarship in Law.

His firm has also provided work experience for scholarship holders during the summer vacation.

In all, he has acted as an effective 'advocate' for the Faculty among the legal profession in the region.

Mr Kell's long commitment to the Anglican Church is also very much one of deeds and action.

He is a member of the St Michael's Parish Council and the Diocesan Synod and a former member of the General Synod of the Anglican Church in Australia.

The University has benefited from Mr Kell's involvement in church affairs.

# POWER WOMEN

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Sydney is home to some of the country's strongest figures in politics, business, religion and media. Today The Sunday Telegraph looks at 10 of the most influential women in the State and how their views have influenced the way people think. Now more than ever before, the ladies are coming out of waiting and into action. MICHAEL WILKINS reports

Justice JANE MATHEWS is the only female Supreme Court judge in NSW, a role that has helped her work on anti-discrimination and equal-opportunity issues in legal circles.

Apart from her judicial role, Justice Mathews has held posts on the Equal Opportunity Tribunal, the Law Reform Commission and the NSW Bar Association.

Educated at Frensham school for girls and Sydney University, 42-year-old Justice Mathews has championed the cause for female judges since her appointment to the bench in 1987.

Women in law . . . Carolyn  
Simpson, QC, (left), Justice  
Jane Mathews and Jill Segal.



# THE INVISIBLE BAR

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## HOW WOMEN LAWYERS ARE KEPT OUT IN THE COLD



# Change on Bench 'a priority'

MORE women should be appointed Crown prosecutors in rape cases. Justice Jane Mathews, of the Supreme Court of NSW, said yesterday.

Justice Mathews told the Women and the Law conference that when she was a Crown prosecutor, female complainants "literally fell upon me" when they learned a woman was to represent them in court.

"We should put women Crown prosecutors into sexual assault cases. It is important that the complainant feel some degree of empathy with that person," she said.

Justice Mathews said she had

presided over innumerable sexual assault cases in which she noticed the "relief" on the faces of the female complainants and the "horror" on the faces of the male accused.

She said getting more women on the Bench was a high priority.

"The male domination of Supreme Court benches in this country obviously causes a serious problem for women who come before the courts and consider they are not being properly represented," she said.

She said that even after 13 years as a judge, even she was a victim of male bias and was still mistakenly called "His Honor"

by senior barristers. She noted that at a recent swearing-in ceremony, the new member was told one of the primary attributes of a judge was to be "gentlemanly".

Although 50 per cent of law graduates are women, only 15 per cent go to the Bar.

"I see no difficulty in going beyond the Bar providing we offer a system of induction training for judges," she said.

"We could introduce them to gender awareness. There are a lot of strong arguments for judicial education."

Justice Mathews said gender bias was "alive and well" in Australia's legal system, and this

had been proved at the Women and the Law conference.

But she said some judges did not accept its existence and there had been something of a "judicial backlash".

"Judges in Australia cover the whole spectrum. You get those who have always appreciated that gender bias does exist, those who are incapable of accepting the possibility of it and the vast majority in between.

"It is those in the middle we should be aiming for (with education) and gradually moving towards the ones at the rejecting edge, or at worst isolating them," Justice Mathews said.

# Judge urges court role for women's groups

By VIRGINIA TRIOLI

The judicial rules on who has standing before a court should be broadened to include women's interest groups to tackle gender bias against women, a Supreme Court judge said yesterday.

Justice Jane Mathews, the only woman judge on the New South Wales Supreme Court, told the Women and the Law conference yesterday that the rules on standing — the legal rules covering who the court will recognise as having a special interest in a court case — should be enlarged.

This, she said, would enable people from interest groups such as sexual assault centres to make submissions and call evidence in cases involving violence against women.

"If we could address the issue of standing in our court then we would have achieved a great deal," Justice Mathews said.

She hit out at the legal system's failure to deal sensitively and fairly with complaints of sexual assault. "It is clear that we have simply failed to appreciate the damage done to the victims of sexual assault," she said.

Justice Mathews said the failure of the legal system to protect or achieve justice for the female victims of violent crime and sexual abuse was no longer a gender issue. "It's an issue of the system failing to achieve its supposed aims of fairness and impartiality."

Justice Mathews said entrenched inequality in the courts was reinforced by the way judges apply the laws. "When judicial discretion exists, there is a

danger that there it will be exercised by judges who have not been educated about gender issues.

"One thing we can do about that now, and it doesn't involve money, is putting women Crown prosecutors in sexual assault cases."

Justice Mathews told the conference that when she was a Crown prosecutor acting in sexual assault cases the female victims "almost fell upon me with relief that there was a woman representing her in court".

"Now, the Crown prosecutor doesn't really represent the complainant (in court), but the prosecutor is the closest thing the complainant has to representation in court," Justice Mathews said.

She called for comprehensive education for judges on gender issues and how judicial decisions affected women and disadvantaged groups.

She said judges should be educated as they came to the bench.

Justice Mathews criticised the notion of the impartial judge, saying that even the impartial application of laws perpetuated inequality against women and minority groups because the society in which the laws were applied was still unequal.

She cautioned the conference against feeling complacent over the public's awareness of gender bias in the law because "we are the converted".

"We must realise that those who are most likely to perpetrate the problems are those who are most resistant to the message."

PAGE 6: More reports.

PAGE 11: Editorial.

## THE LAW PAGE

EDITED BY NATALIE YOUNG

# Inequality still stands as a bar to women

A male dominated Bar is still the main obstacle to women lawyers playing more senior roles in the legal profession, according to Federal Court Justice Jane Mathews.

Justice Mathews, who sits as head of the Commonwealth's Administrative Appeals Tribunal and deputy president of the National Native Title Tribunal, is well versed in what it takes for a woman to be elevated above her more numerous male peers.

In a career spanning over 30 years, the judge has been "lucky", she says, to be appointed the first female crown prosecutor in NSW, the first female District Court judge in NSW and the first female NSW Supreme Court judge.

But her appointments have not been without controversy. When "Ms Mathews" first became "Her Honour" in 1980 there were those amongst her peers who were ready to see her fall.

"The law was then considerably more male dominated than it is now, and I was conscious of a degree of

resistance and questioning of my appointment, and questioning whether the bench was really a place for a woman."

The resistance and questioning came, Justice Mathews said, mostly from the NSW Bar.

**“They treated me after a while like an honorary chap.”**

"I was conscious of the fact that people were waiting for me to make those mistakes that a woman judge was inevitably going to have to make because the bench was not a place for a woman," Justice Mathews said.

"But after a while we all settled down . . . and I think they treated me after a while like an honorary chap."

Eighteen years later the judge admits it is easier for women lawyers to succeed but

denies there is yet any equality.

"It is undoubtedly easier, there are more [women lawyers] and the process of getting through is easier but that by no means means that it is yet easy or equal, because it is clearly not."

According to Justice Mathews, the problem is not in how judges are selected but in broadening the pool of people they are selected from.

"The problem is not in judicial appointments . . . the problem lies behind that in the fact that most judicial appointments are taken from the Bar, and when you go to the Bar you've got a heavily male dominated organisation."

"You need a critical mass of about 30 per cent to change the culture of an organisation, and women are a long way off 30 per cent of the Bar," Justice Mathews said.

"The other reason is that it is terribly demanding, and that's difficult for women with domestic responsibilities."

Justice Mathews admits that not having to divide her time between career and family has

made the task of achieving recognition and success easier than it is for some.

"Because I don't have the responsibility of family to look after at home I don't think it's very much more difficult for me than it is for any male judge," she said.

**“Women suffer inequalities in and under the law.”**

"But there is no doubt that for those who do have families at home there are huge difficulties . . . no matter how successful a woman might be in her career, she's going to be the one who has to look after the home."

At 57, divorced and with no children, Justice Mathews gives her time and support to other women in the profession.

She says women's networks play an important role in giving

support to overcome inequality.

At a Women Lawyers' Association breakfast on Wednesday, the judge spoke of "the great wall" dividing the profession, and looked forward to a time when women's associations were not needed.

"The goal to work for is that where you don't need an association based on gender. We only need a women lawyers' association because women still suffer inequalities both in and under the law," Justice Mathews said.

Although she says there is no discrimination against women once they are appointed as judges, women judges do have a network of their own.

Since 1989 the International Women Judges' Association has had an Australian chapter, albeit 10 years after their American contemporaries.

■ *Justice Mathews will retire next week from her position on the Native Title Tribunal after a five-year term. Denying that the appointment has been controversial, she says she has "some regret" for not having had more time to devote to her role there.*



# NSW judge for Federal Court

A JUDGE of the NSW Supreme Court, Justice Jane Mathews, will be appointed to the Federal Court of Australia

Attorney-General Michael Lavarch will recommend Justice Mathews, 53, be appointed president of the Administrative Appeals Tribunal during Justice Deirdre O'Connor's term as president of the Australian Industrial Relations Commission.

Justice Mathews will take up her position on July 4.



# Changes a bureaucratic nightmare: judge

**Chris Merritt**  
**Law Correspondent**

A second senior member of the judiciary has raised serious concerns about the Federal Government's planned changes to the legal system.

Justice Jane Mathews, who is President of the Administrative Appeals Tribunal (AAT), says the Government's planned changes to her tribunal would create "a bureaucratic nightmare" that could "barely be imagined".

Her criticism has come to light just one week after Chief Justice Alastair Nicholson of the Family Court raised separate concerns about changes that are being considered for his court [see report on page opposite].

Justice Mathews outlined her concerns in a previously unpublished paper that was delivered on August 5 during a seminar at the NSW Bar Association.

She is understood to have delivered the paper in the belief that the seminar was closed to the public and the press, that her audience consisted of lawyers with an academic interest in administrative law, and that her views would not become widely known.

While changes to the AAT have been severely criticised by the Law Council and leading administrative lawyers, Justice Mathews has until now maintained a public silence.



**Justice Jane Mathews has criticised planned changes to the Administrative Appeals Tribunal.** Picture: PETER MORRIS

the Administrative Review Tribunal (ART) "displays a worrying lack of understanding as to the practical operation of the tribunal".

involvement at all in the operation of administration of tribunals".

The paper contains a detailed

In order order to account for its expenditure to those agencies, the tribunal will need to keep seven

bureaucracy and notes that the interdepartmental committee that was working on the scheme consisted of "an unlikely lot of bedfellows if ever there was one".

While the committee operated in secret, she said leaks to the press had indicated that the committee

**Justice Mathews said there was a worrying lack of practical understanding.**

had at one stage been "commandeered" by the head of Department of Prime Minister and Cabinet, "a gentleman who was not particularly sympathetic to the causes of administrative review".

Even after the Attorney-General's Department took over the running of the interdepartmental committee she said that this had not led to further consultation.

While statistics and other information had been sought, tribunals such as the AAT "were at no time consulted about the viability or workability of the proposals" until a consultation paper was issued in March seeking submissions by the end of April.

"We were frankly told by officers in the Attorney-General's Department that the major features of the proposal, having already been





# NEWS RELEASE

ATTORNEY-GENERAL

THE HON. MICHAEL LAVARCH MP

MATHEWS, JANE  
(HON) (J)

27 July 1994  
72/94

Plc 69  
X5

## APPOINTMENT OF DEPUTY PRESIDENTS AND MEMBERS OF THE NATIONAL NATIVE TITLE TRIBUNAL

X

Attorney-General, Michael Lavarch, today announced the appointment of two Deputy Presidents and three Members of the National Native Title Tribunal.

The Honourable Justice Jane Mathews and the Honourable Hal Wootten AC have been appointed as part-time Deputy Presidents of the Tribunal. Both Justice Mathews and Mr Wootten will be based in New South Wales and will take up their appointments immediately.

Justice Mathews is a judge of the Federal Court of Australia and is President of the Administrative Appeals Tribunal. Prior to her appointment to the Federal Court she was a judge of the Supreme Court of New South Wales.

The Honourable Hal Wootten AC is a former judge of the Supreme Court of New South Wales and a former Royal Commissioner of the Royal Commission into Aboriginal Deaths in Custody.

Sean Flood has been appointed as a full-time member of the Tribunal and will be based in New South Wales. Mr Flood will take up his appointment on 1 August 1994. He is currently a Public Defender in New South Wales.

The Honourable Frederick Chaney and Anthony Lee have been appointed as part-time members of the Tribunal. They will be based in Western Australia and will take up their appointments immediately.

Mr Chaney is a lawyer and former federal Minister for Aboriginal Affairs from 1978 to 1980. He is also a member of the Western Australian Deaths in Custody Watch Committee. Mr Lee is a consultant working exclusively in the area of Aboriginal affairs.

Justice Mathews, Mr Flood, Mr Chaney and Mr Lee have been appointed for five years. Mr Wootten has been appointed for three years.

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# Judge to head new inquiry on SA bridge

By KATHERINE TOWERS

A CONTROVERSIAL second federal inquiry has been called into the Hindmarsh Island bridge saga, quelling speculation that it had been started illegally and throwing the bridge project into further turmoil.

The Minister for Family Services, Senator Crowley, yesterday announced the president of the Administrative Appeals Tribunal, Justice Jane Mathews, would head the inquiry into a fresh application for heritage protection of sacred sites on Hindmarsh Island.

Senator Crowley said the procedures adopted in the new inquiry and the time frame would be matters for Justice Mathews to determine.

Justice Mathews will inquire into the fresh application for federal government protection of "burial sites, middens and cultural beliefs" which the Government received on December 19 last year.

But the decision was immediately slammed by the federal Opposition, the South Australian Liberal Premier, Mr Brown, and the developers, Tom and Wendy Chapman.

The Coalition spokesperson on Aboriginal affairs, Ms Chris Gallus, said yesterday Senator Crowley's failure to set terms of reference or a time frame was an attempt to avoid any embarrassing result before a federal election.

She said it could also invite further legal challenges.

"If the procedure isn't correct then there is a danger that the findings will again be appealed and overturned by the Federal Court," Ms Gallus said.

Mr Brown yesterday declared the State Government would proceed with the building of the controversial bridge, despite the second inquiry.

At this stage, it is understood that the Federal Government has not received any appli-

cation for an emergency declaration to stop construction.

Mr Brown said the Government had contractual obligations to build the bridge and claimed there were "a number" of parties who could sue the State Government if the bridge didn't proceed.

The announcement of the inquiry followed allegations by the federal Opposition that a secret inquiry had been established in Adelaide after Justice Mathews had spent up to three days a week in the city and senior lawyers began preliminary work in a secure Adelaide office. The claim was rejected by Senator Crowley, who said all were involved in preparatory work.

The second inquiry follows a full Federal Court decision on December 8 which confirmed an earlier Federal Court decision that the Federal Minister for Aboriginal Affairs, Mr Tickner, had not followed due process when banning the Hindmarsh Island bridge project for 25 years because of alleged Ngarrindjeri "secret women's business".

It also follows the South Australian royal commission into the affair, which found the business had been fabricated to stop construction of the \$6.4 million bridge.

The Hindmarsh Island developers, the Chapman, who have threatened to sue the Federal Government for more than \$50 million over the bridge fiasco, claimed yesterday the second inquiry was an attempt by the Government to get "the result they want".

The director of the Aboriginal Legal Rights Movement in Adelaide, Ms Sandra Saunders, said she was "pleased" with the confirmation of the inquiry and claimed it would allow people who didn't participate in the royal commission a chance to present their views and beliefs.

# Move to bar judge on bridge inquiry

**Simon Jemison**

A High Court application to remove Justice Jane Mathews from a second Federal Government inquiry into the Hindmarsh Island affair could see new rules to curb judges from taking on quasi-judicial appointments outside their court.

Justice Dawson of the High Court yesterday allowed an application by nine Hindmarsh Island "dissident women" to quash Justice Mathews' appointment to proceed to the High Court Full Bench where a hearing is likely mid-June.

The nine Ngarrindjeri women – called "dissident women" due to their stand that no "secret women's business" exists on Hindmarsh Island – have no formal connection to Hindmarsh Island developers Tom and Wendy Chapman, who also oppose Justice Mathews' inquiry.

Adelaide lawyer Mr Nicholas Iles, representing the nine women said his clients believed Justice Mathews was an "inappropriate person" and that her appointment was invalid because of her position as a Federal Court judge in an inquiry "formed primarily for political purposes".

Mr Iles said her appointment raised questions about "the separation of powers doctrine" and the extent to which judges could act in reporting roles for the executive arm of government.

Yesterday's ex-parte application did not require the Federal Government or Justice Mathews to attend or state their view.

Justice Mathews, president of the Administrative Appeals Tribunal, was appointed in January by the then Minister for Aboriginal Affairs, Mr Robert Tickner, to study a fresh request to ban the building of a \$4 million bridge to Hindmarsh Island.

# Women's secrets material destroyed

By KATHERINE TOWERS

THE sealed envelopes that contained the controversial sacred secrets at the heart of the Hindmarsh Island bridge controversy have been destroyed by their custodian, Dr Doreen Kartinyeri, it was claimed yesterday.

Ngarrindjeri men and women, who have applied for heritage protection of Hindmarsh Island, revealed yesterday the envelopes, which were annexed to a report from Adelaide anthropologist Dr Deane Fergie, were burned by Dr Kartinyeri in January.

The latest twist in the long-running saga came yesterday after the applicants for heritage protection revealed that confidential women's material would be withdrawn from the second federal inquiry into Hindmarsh

Island, headed by Justice Jane Mathews.

On Wednesday, the day after a decision by the Full Bench of the Federal Court found all confidential information had to be revealed to interested parties, Justice Mathews advised lawyers for the Ngarrindjeri men and women that their claims of confidentiality over their secret information had to be withdrawn.

At a meeting yesterday afternoon, the applicants decided to risk losing their fight against the building of the \$6.4 million bridge by withdrawing the confidential women's material from Justice Mathews' inquiry.

One of the oldest surviving Ngarrindjeri women, Ms Maggie Jacobs, who has played an integral role fighting the bridge and

protecting the women's business, said yesterday it was the Ngarrindjeri "responsibility" to protect their country and traditions.

"We took our responsibility to protect our country and traditions so seriously that we revealed parts of our sacred knowledge," Ms Jacobs said.

A Ngarrindjeri elder and spokesman for the Ngarrindjeri men, Mr Tom Trevor, said that interfering with "spiritual places" such as Hindmarsh Island would have a continuing effect on the Ngarrindjeri and the future generations of non-Aboriginals.

"Where do we go as Aboriginal people ... what do we do to protect some of our traditional cultural and spiritual rights within our own land?" Mr Trevor asked.

# Challenge halts Hindmarsh report

By High Court correspondent BERNARD LANE

**THE Minister for Aboriginal Affairs, Senator Herron, agreed yesterday not to publish or act on the Hindmarsh Island report of Justice Jane Mathews until the High Court decided a constitutional challenge to her appointment.**

In Canberra the Full Bench declared itself "unable" to decide the challenge yesterday and reserved judgment.

In a later hearing before Justice John Toohey, the Commonwealth solicitor-general, Mr Gavan Griffith QC, read to the court the undertaking

given by Senator Herron.

Justice Mathews was appointed under Aboriginal heritage law by Senator Herron's predecessor, Mr Robert Tickner. Expected to report by June 30, she was to inquire into claims of "secret women's business" at Hindmarsh Island in South Australia. Given a report, the minister may order the protection of a sacred site.

But in yesterday's Full Bench hearing, several judges expressed concern about questions raised by her appointment and the 'Chief Justice, Sir Gerard

Brennan, implied the court might need to rethink the kinds of jobs federal judges can do in their personal capacity for the executive government without calling into question their independent judicial functions.

Mrs Dorothy Wilson and eight other Ngarrindjeri Aborigines who deny the authenticity of the Hindmarsh Island women's business brought the challenge. Their lawyers argue that Justice Mathews's appointment as the "reporter" under the heritage law is incompatible with her judicial function.

# Decision today on fitness of judge for Hindmarsh job

**Simon Jemison**

The High Court will deliver its decision today on whether Justice Jane Mathews is a proper person to act as a reporter for the Federal Government on a fresh Aboriginal heritage application to ban construction of a bridge at Hindmarsh Island in South Australia.

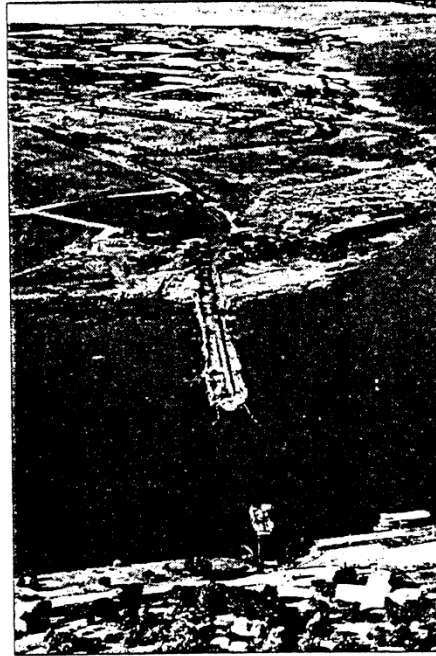
The decision will be eagerly watched by legal scholars for signs that the High Court may curb the growing trend of judges taking on quasi-judicial and executive appointments outside their own courts.

Judges have long been allowed to act as royal commissioners for the executive arm of government, but a growing number of the judiciary are taking on reporting roles for various administrative functions of State and Commonwealth governments.

Lawyers acting for nine Ngarrindjeri women — often described as the "dissident women" for their claim that no "secret women's business" exists on Hindmarsh Island — launched the legal action earlier this year to prevent Justice Mathews from conducting her inquiry on behalf of the then minister for Aboriginal affairs, Mr Robert Tickner.

Adelaide lawyer Mr Nicholas Iles, representing the women, said his clients believed Justice Mathews was an "inappropriate person" and that her appointment was invalid because of her position as a Federal Court judge in an inquiry "formed primarily for political purposes".

Mr Iles said her appointment raised questions about "the separation of powers doctrine" and



**South Australia's Hindmarsh Island area.**

the extent to which judges could act outside their court.

Justice Mathews, the president of the Administrative Appeals Tribunal, was appointed in January to study a fresh request to ban the building of a \$4 million bridge to Hindmarsh Island.

While the Hindmarsh Island royal commission in December last year concluded that "secret women's business" was a hoax, a fresh application by a group of Aboriginal women requires the Federal Government to conduct its own assessment of the merits of the heritage move to protect the waters surrounding the island.

Justice Mathews is understood to have completed her Hindmarsh Island study for the Federal Government in June. The Government has given an undertaking to the High Court not to open or release the report until after today's decision.

If the High Court finds Justice Mathews was an inappropriate person to conduct the inquiry, her report may never see the light of day and a fresh report by another reporter may be required.

Hindmarsh Island royal commissioner Mrs Iris Stevens found in her 340-page report that Aboriginal "secret women's business" claims emerged "in response to a need of the anti-bridge lobby to provide something of suffi-

cient cultural significance to warrant the making of a declaration by the Federal minister".

Mrs Stevens said the local Ngarrindjeri Aboriginal community was "used" by unions, environmentalists and lobby groups opposed to the bridge.

In February, Hindmarsh Island developers Tom and Wendy Chapman lodged a \$12 million negligence action against Mr Tickner as minister, and against Professor Cheryl Saunders, who authored the report on secret Aboriginal beliefs which Mr Tickner relied on to ban construction of the bridge for 25 years.



# Legal threat to Hindmarsh bridge

By ANDREW RAMSEY

SUPPORTERS of the so-called Hindmarsh Island women's secrets would challenge the Federal Government's planned special legislation in the High Court if it was passed by the Senate, a lawyer for the Ngarrindjeri people said yesterday.

Mr Stephen Kenny said yesterday's announcement by the Minister for Aboriginal Affairs, Senator Herron, that the Government would enact legislation to allow the bridge to go ahead would not end the long-running saga because his clients would "explore every legal avenue available to them" to stop its construction.

Mr Kenny said the Ngarrindjeri people would consider challenging the special legislation if it was passed by the Senate, and called on Senator Herron to appoint a new reporter and launch a fresh inquiry into the veracity of their claims.

"I find it unbelievable that (Senator Herron) should attempt to override the interest of Aboriginal people in such a way," Mr Kenny said. "Most certainly the Ngarrindjeri people will examine their rights very carefully to challenge this legislation if it should be passed."

## Cultural clash remains unresolved

THE former Aboriginal affairs minister Robert Tickner found in the application for the Hindmarsh Island bridge ban an opportunity to show the Labor government's commitment to Aboriginal heritage.

As Federal Court judgments last year indicate, in 1994 Tickner became caught in a vice between the brief time limitation for a temporary ban pending an inquiry under the federal Act, and tensions with the newly elected South Australian Liberal Government, which had decided to go ahead with the Hindmarsh Island bridge despite environmental and Aboriginal objections.

The situation was the result, as much as anything, of inadequacies in a decade-old Act which could have been removed by then.

But where did things really go

The dissident Ngarrindjeri women who refuted the existence of the women's secrets welcomed the announcement and said there should be no further inquiries.

A lawyer for the women, Mr Nicholas Iles, said the Mathews report tabled yesterday backed the conclusions of the South

Patrick  
Lawnham

Comment



off the rails for Tickner? It probably was in the advice given to the Labor minister after Federal Court Justice Maurice O'Loughlin in Adelaide quashed the 1994 inquiry report and subsequent 25-year bridge ban early last year, because certain procedural requirements hadn't been met.

To order a new inquiry immediately could have risked the embarrassment of having to back away from the bridge ban, if that's the way the second report went, and also may have exposed the Government to the danger of compensation payouts. But how

Australian royal commission and found there was insufficient evidence to support claims Aboriginal spiritual beliefs would be injured or desecrated if the bridge went ahead.

Former Aboriginal affairs minister Mr Robert Tickner banned construction of the \$6.4 million bridge in 1994 because of

much better if the dispute had been resolved a year ago.

Instead Tickner chose to appeal, he lost, and in the meantime the South Australian Premier, Dean Brown, set up a royal commission which surprised some by going so far as to find that the key women's spiritual claim was a complete fabrication.

The second inquiry by Justice Jane Mathews appears to have side-stepped the royal commission's finding, as has the new Aboriginal Affairs Minister John Herron.

With the royal commission's difficult circumstances well known, and its findings unconfirmed, its report will continue to be challenged. What also remains unresolved is the clash between Australian law, and the secrecy traditions of Aboriginal heritage.

the existence of so-called women's secrets detailed in a report by Professor Cheryl Saunders.

The 25-year ban was overturned last year by the Federal Court. The royal commission, boycotted by the secrets' proponents, found the women's secrets had been fabricated.

Earlier this month, a second

inquiry was ruled invalid by the High Court because Mr Tickner's appointment of Justice Jane Mathews, of the Federal Court, to head it was at odds with her independence as a judge.

The State Government has refused to begin construction work, fearing additional cost blow-outs if legal challenges result in further delays.

Hindmarsh Island developers Mr and Mrs Tom and Wendy Chapman said they were delighted with the senator's decision and called on the State Government to begin work.

"As far as (we) are concerned, the fabrication promoted by the anti-bridge ragbag of self-interested locals, violent unionists and other professional rathbags has been exposed (and) we urge the State Government to build the bridge and all interested parties to allow it to be built without obstruction," Mrs Chapman said.

The State Attorney-General, Mr Griffin, said last night the Government would not sanction construction work until the special legislation was passed.

"While waiting for the Federal Parliament to finalise the matter, the State Government will be undertaking negotiations with various interests with a view to smoothing the way for decisions on the bridge and the development on the island," Mr Griffin said.

## Acting Justice Jane Mathews AO

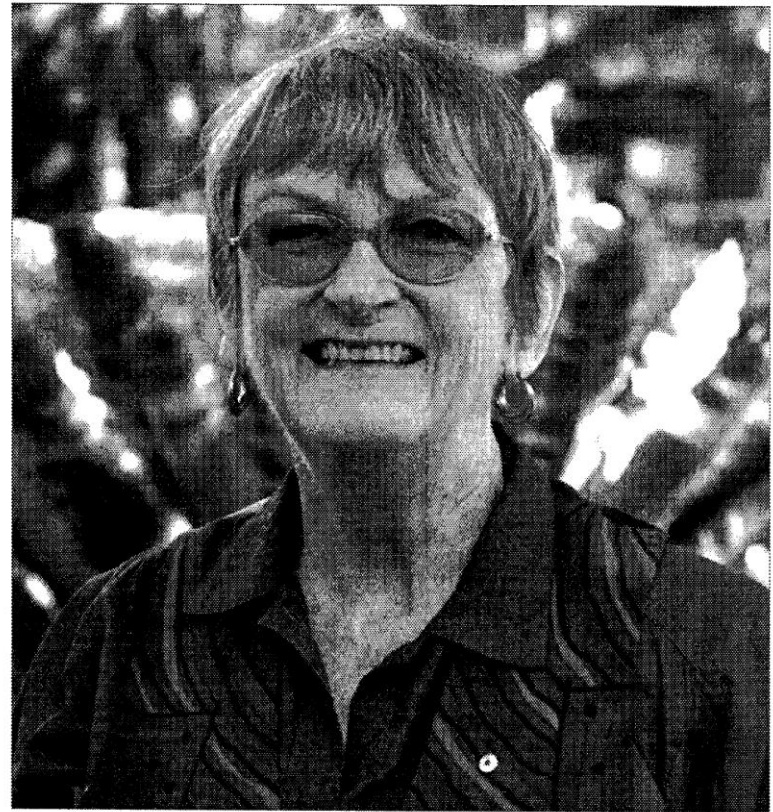
Tina Jowett<sup>1</sup> spoke with Acting Justice Jane Mathews for *Bar News* about her experiences as one of the few women at the bar and the bench in the 1960s to 1980s.

Jane Mathews was born and raised in Wollongong. She boarded at the Frensham School in Mittagong until she completed the leaving certificate<sup>2</sup> and was only one of two girls who then attended university.

**Bar News:** What motivated you to study law?

**Mathews:** That's easy; when I was 14 years old my school showed the movie of the Terence Rattigan play, *The Winslow Boy*.<sup>3</sup> It was about a school boy who was wrongly charged with stealing. The lawyer representing him, played by Robert Donat, got up before the House of Lords at the end of the movie and said, 'let justice be done.' And that just got to my idealistic 14 year old heart and the next holidays I went home and said to my parents, 'I'm going to study law.' My father, who was very conservative in some things said, 'No daughter of mine is going to do law.' He thought it would be a complete waste of time and I'd go off and get married and have babies.

My mother was delighted. She came from a family of lawyers. But my father wasn't happy about it. So I spent a couple of years persuading him to let me and he finally relented so I went to Sydney University. There were very few girls studying law then. There were only two others girls who started and finished in the same year as me.



to be a solicitor anymore, I'll be a barrister! You applied to be taken off the roll of solicitors and moved onto the roll of barristers and had another admission ceremony.

**Bar News:** How did you choose chambers?

# Judge sacks jury

A JUDGE discharged a murder trial jury in Sydney yesterday because one of the jurors cannot understand English.

The 12 jurors were empanelled a week ago at Darlinghurst Supreme Court for the trial of a man allegedly involved in the murder of Qantas steward John Cranfield.

Justice Matthews told the court yesterday that the problem of the juror was not discovered earlier because the man had no way of communicating with court officials.

The trial, scheduled to open last Wednesday, was held up by legal argument in the jury's absence.

Justice Matthews apologised to the jury but said it was imperative that all jurors understand and participate in discussions.

# Milat gets 43 years jail for 'thrill kill'

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By Margaret Scheikowski

8 June 2012 – 2:30am



Matthew Milat will spend at least 30 years behind bars for the "thrill kill" murder of a friend in the same forest where his great-uncle slayed seven backpackers.

But Donna Locke, mother of his victim, said: "He shouldn't have been leaving (jail) until he was old and grey in a body bag, like my son left the forest."

In sentencing Milat to a maximum 43 years in the NSW Supreme Court on Friday, Acting Justice Jane Mathews referred to his "admiration" of the criminality of his great-uncle, Ivan Milat.

The day after the axe murder Matthew Milat gloated, saying: "You know me, you know my family. You know the last name Milat. I did what they do."

Milat and Cohen Klein, both 19, pleaded guilty to murdering David Auchterlonie on his 17th birthday in the Belanglo State Forest on November 20, 2010.

In 1996, Ivan Milat was sentenced to seven life terms for murdering seven backpackers whose bodies were found in the same NSW Southern Highlands forest.

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# Diego Carbone found guilty of murdering Bradley Dillon in 2014 Leichhardt ambush

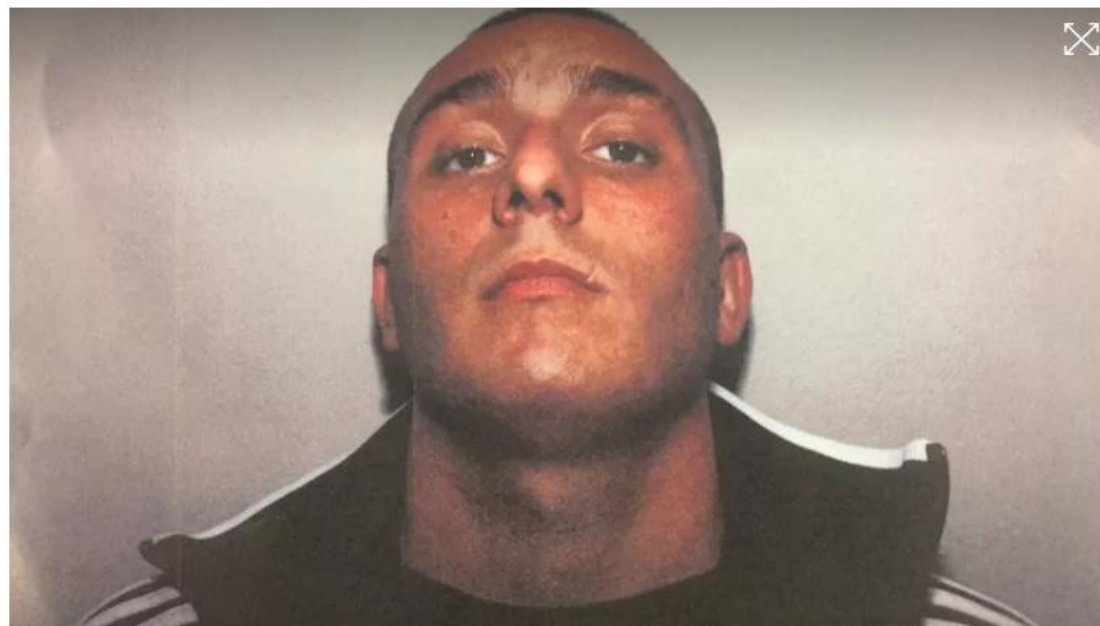
By Georgina Mitchell

**Updated** 12 October 2017 – 2:35pm, first published 11 October 2017 – 5:00pm



Twenty-five minutes before he died, Bradley Dillon sent a text message to his long-time friend.

"Got the car," the message said. "Pick you up tomorrow."



Diego Carbone, pictured on the day of his arrest, has been found guilty of murdering Bradley Dillon.

*Photo: Supplied*

Mr Dillon, 25, had just bought a Nissan GT-R and had driven it to Leichhardt, where he parked opposite the TAB on Flood Street.

He went inside the betting agency, coming in and out several times, before his phone lit up with a message from a number he didn't recognise. The phone sending the text had only been activated an

# Ex-boyfriend sentenced to 13 years jail for murder of Sydney pastry chef

**Updated** 28 February 2018 — 5:28pm, first published at 5:26pm

A A A

A judge has acknowledged the family of aspiring pastry chef Miming Listiyani might find her killer's prison sentence "completely inadequate" given the extent of their loss.

But Acting Justice Jane Mathews on Wednesday said she hoped they understood sentencing was complex as she jailed Khanh Thanh Ly for at least 13 years over the violent 2016 murder.

"You have lost a beautiful, much-loved and highly-valued person who was central to your lives," the judge told the Listiyani family before handing Ly a maximum 18-year sentence.

"You will no doubt think the sentence I am about to impose is completely inadequate, given the extent of your loss.

"I hope that you will understand that sentencing is a complex process and there are many factors to be taken into account."



# Judge gets the giggles but keeps the whip hand

By JANET FIFE-YEOMANS

It had to happen. After a two-week trial that had some people leaving the court after they burst into giggles, the judge finally succumbed yesterday.

It was the reference to the horsewhips that did it.

Justice Jane Mathews collapsed into uncontrollable laughter. She was reading out part of the transcript, in answer to a question from the jury, when she came to the evidence of Mr Shane Addicoat, who worked in Truth's Double Bay office.

Cross-examined by Mr Clive Evatt, counsel for Ms Fire, Mr Addicoat had said it was unusual for people who were happy with a Truth story to visit his office.

"Did you see any people with horsewhips?" asked Mr Evatt.

Mr Addicoat: "With horsewhips?"

Mr Evatt: "Looking for the editor."

Mr Addicoat: "Not looking for the editor, but I have seen a few."

When the judge recovered herself and the jury left the court to continue considering its verdict, her laughter prompted Mr Maurice Neil, QC, counsel for Truth Newspapers Pty Ltd, to apply for the trial to be aborted.

He said her levity had devalued Mr Addicoat's important evidence. He was not laughing, he said, and neither was Mr Owen Thomson, managing director of Truth Newspapers, who had sat through the trial.

Refusing his application, Justice Mathews said she was laughing because it was such a flippant piece of cross-examination. "I'm afraid I did treat it with levity and I think it deserves to be treated like that."

The flamboyant Mr Evatt said he was mortified about the references to flippancy.

He said he could remember a client of his who in 1958 had tried to get into the offices of John Fairfax, publishers of The Sydney Morning Herald, to try to horsewhip the editor. "They wouldn't let him in," he said.

# This judge knows the score

By MADELEINE COOREY

FEDERAL Court judge Justice Jane Mathews, new chair of the advisory committee to the University of NSW's chamber music group the Australia Ensemble, describes herself as a "great music lover".

The Federal Court judge says she grew up surrounded by music because of her pianist mother.

"It just happens I am a lawyer, it happens that I love music," she said.

As chair of the committee, Justice Mathews said her work will be to help forge the already formidable reputation of the ensemble not only in Australia but internationally.

"It [the committee] assists the ensemble in working out any differences, working out the direction it should be going and generally providing advice and assistance to it," she said.

"They are a great group of performers."

Justice Mathews replaces former Justice Gordon Samuels, who had chaired the group since it was founded in 1980 during his chancellorship of the university. He resigned following his appointment as Governor of NSW.



Justice Jane Mathews — Picture: TONY LEWIS

Justice Mathews has been a member of the university council since 1991 and deputy chancellor since 1992. She is also president of the Administrative Appeals Tribunal and deputy president of the National Native Title Tribunal.

The Australia Ensemble, founded in 1980, includes seven instrumentalists and tours Australia and overseas. It is funded jointly by UNSW, the Performing Arts Board of the Australia Council and the NSW Ministry for the Arts.

Members include former music director of the Australian Chamber Orchestra and co-concertmaster of the Sydney Symphony Orchestra first violinist Mr Dene Olding, violinist Ms Dimity Hall, viola player Ms Irina Morozova, cellist Mr Julian Smiles, flautist Mr Geoffrey Collins, pianist Dr David Bollard and clarinet player Ms Catherine McCorkill.

The ensemble will perform its 100th subscription program at the university's Clancy Auditorium in August.



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## Wagner groupies and virgins

By Joyce Morgan, Arts Editor

November 19, 2004

Cricket has its Barmy Army and rock music its Deadheads, but what to call the opera obsessives who follow performances of Wagner's Ring cycle around the world?

Their legions have assembled in Adelaide for the first full Australian production of the four-opera marathon - more than 16 hours of music.

Among them is an acting justice of the NSW Supreme Court, Jane Matthews, who will attend all three cycles of the State Opera of South Australia production over the next three weeks.

That will make 18 cycles she has attended over the years - mostly in Europe and North America. It does not include the D-I-Y ones she has held in her homes in Sydney and the Southern Highlands.

"There's been the Woolloomooloo Ring and the Kangaroo Valley Ring," she says.

For 10 years, the judge and a group of friends have gathered in her lounge room, to share food, company and their magnificent obsession: listening to recordings of Wagner's Ring, libretto in hand, for three days.

Justice Matthews, who has 11 full recordings in her collection, is in Adelaide with a group of 20 friends, some equally smitten with the German composer and his tale of greed, lust and power. Others are being introduced to the Ring for the first time. "But Ring virgins can become seduced," she warns.

Each Ring is different, even identical productions. Which is why she plans to attend every opera in Adelaide three times.

"There are always new ways of looking at it. It is so complex," says Justice Matthews, who will deliver a paper on Women and Loss in the Ring at a conference in Adelaide at the weekend.

She is impressed by the first opera in the cycle, *Das Rheingold*, which premiered on Tuesday night, and compares it favourably with overseas Rings.

"It was beautiful, quite stunning," she said.

While Justice Matthews has driven across Australia, Sherwin Sloan has flown in from his home in the Hollywood hills to attend his 70th Ring cycle.

The retired professor of ophthalmology says:

"It has become an obsession, a fetish even." Dr Sloan

admits his children disapprove of his 30-year passion. He recalls how he would listen at night to recordings at full volume.

"The children came downstairs and said I had to choose between them or the Ring. I said 'pack your bags'."

A compromise was reached: a pair of earphones.

# *Patron of the Arts*

- 1989-1994: President of the Arts Law Centre of Australia
- 1996-2006: Chair of the Advisory Committee of the Australian Ensemble
- 2002-2010: Member of Symphony Orchestra Council
- 2011-2017: President of the Wagner Society

