

## **SPEECH AT CEREMONIAL SITTING FOR RECENTLY APPOINTED SENIOR COUNSEL**

**Delivered by the Chief Justice, the Hon Justice Alan Blow AO, on 9 June 2022**

This is a ceremonial sitting to celebrate the recent appointments of three members of the Tasmanian legal profession as senior counsel. Their names are Sarah Kay, Robert Benjamin and Kate Cuthbertson. On behalf of the Court, I would like to welcome all the visitors who are here today. I particularly welcome the family and friends of the three appointees.

There has been a tradition in many Commonwealth jurisdictions that newly appointed Queen's Counsel or Senior Counsel appear before the courts in which they practise on a day appointed for the hearing of motions, and each announce his or her appointment, whereupon the presiding judge asks, "Do you move?" In response, the new appointee bows to the Court. In 2014 the judges decided that it was appropriate to have a ceremonial welcome for every newly appointed Silk that included the appropriate parts of the traditional practice. We have continued this new tradition ever since then. We will now proceed.

Ms Kay, do you move?

Mr Benjamin, do you move?

Ms Cuthbertson, do you move?

Ms Kay, Mr Benjamin and Ms Cuthbertson, on behalf of the Court I congratulate all of you on your appointments.

Ever since the 1590s, counsel learned in the law have been appointed at Queen's Counsel, King's Counsel or, more recently, Senior Counsel. The appointment of Queen's Counsel by the Governor-in-Council was replaced in this State by the appointment of Senior Counsel with effect from 2001.

The designation of Senior Counsel is reserved for those whose standing and achievements justify an expectation that they can provide outstanding service as counsel and advisors, to the good of the administration of justice. The appointments are made by the Chief Justice in

consultation with the other judges of the Court, judicial officers of other courts when appropriate, the Presidents of the relevant professional bodies, and certain other senior members of the profession. The required qualities include skill and learning, integrity and honesty, independence, diligence and experience, particularly experience as advocates in the higher courts or tribunals. Other factors that are taken into account include the mentoring of junior practitioners and contributions to the profession and to the community generally, particularly contributions that are above and beyond the call of duty.

Ms Kay was admitted as a legal practitioner in 1996. Her path and mine crossed during her time as an apprentice-at-law, when she spent three months working at the Administrative Appeals Tribunal, where I was a part-time Deputy President. She worked as a paralegal in London in 1997 and 1998. Since January 1999 she has been working as a legal practitioner in the Tasmanian State Service. She has conducted civil litigation in the Office of the Director of Public Prosecutions and the Office of the Solicitor-General ever since. She was appointed as Assistant Solicitor-General (Advisings) in October 2017 and as Solicitor-General in December of last year. For over 20 years she has been advising the Crown, its instrumentalities and authorities on a very wide range of issues, as well as appearing on behalf of the Crown in various courts and tribunals and delivering seminars to Government agencies.

The protocol relating to the appointment of Senior Counsel requires practitioners desiring appointment to submit expressions of interest during the first appeal term in each calendar year – usually a fortnight in early March. When it became known last December that Ms Kay was to be appointed as the next Solicitor-General, the judges and the Presidents of the Law Society and the Tasmanian Bar all agreed that she should be appointed as Senior Counsel without delay, particularly since she was to appear as counsel in her new role before the High Court in February. Accordingly, I appointed her as Senior Counsel with effect from 4 January.

The Honourable Robert Benjamin AM is a former judge of the Family Court of Australia. His first admission was as a solicitor of the Supreme Court of New South Wales in December 1975, at a time when the Family Law Act had been passed but not proclaimed. For almost 30 years he worked as a solicitor, routinely appearing in the Family Court in Sydney and Parramatta. During those years he completed a Master's Degree, became accredited as a mediator, as an arbitrator, and as a Family Law Specialist, spent about 13 years as the Deputy Chair of the

Academic Board of the College of Law, was elected as President of the Law Society of New South Wales in 2003, and was appointed as a Public Notary.

He served as a judge of the Family Court from 2005 until his retirement in May of last year. He also served as a presidential member of the Administrative Appeals Tribunal during those years, making a particular contribution in relation to aviation cases. He is a qualified pilot. During his years as a judge he served on numerous judicial committees, represented the Family Court on the Board of the Australian Institute of Judicial Administration, continued his involvement in legal education in many ways, presented papers at many conferences, participated in the drafting of family law legislation for Zimbabwe, and taught Indonesian Supreme Court judges about judicial mediation. Those were some of his more notable activities and achievements. There are too many more for me to list them all. In June 2015 he was appointed as a member of the Order of Australia for significant service to the judiciary and to the law, to legal education, mediation and arbitration, and to professional standards.

Since leaving the Family Court his most conspicuous role has been as a member of the Commission of Inquiry that is investigating the responses of Tasmanian government agencies in relation to historical allegations of child sexual abuse. He has also returned to the practice of the law as a member of the Tasmanian Bar. He acts as a mediator and as an arbitrator in providing both pro bono and reduced fee services in relation to cases in the Federal Circuit and Family Court of Australia. He provides formal and informal advice, mainly in relation to complex property, children and procedural family law matters. He provides guidance and mentoring to legal practitioners, mainly in Tasmania.

The protocol relating to the appointment of senior counsel states that usually an appointment will not be made if the applicant is not a practising advocate. For ethical reasons, there are restrictions on retired judges practising as counsel in their former courts, and Mr Benjamin is therefore not a practising advocate. However, because of his immense experience and professional skill, it is appropriate for him to have the status of senior counsel now that he is practising at the Bar in various other ways.

Ms Cuthbertson graduated from the University of Tasmania in 1998 with first class honours in law and the University medal. She was admitted in 1999, and worked at the Legal Aid Commission of Tasmania (as it was then named) as a barrister and solicitor from January 2000

to February 2010. She practised almost exclusively in the criminal jurisdiction of this Court and the Magistrates Court. During those years I was particularly impressed by her ability to represent clients who were mentally ill, and to conduct their cases with great skill and sensitivity. Twelve years ago she went to the Bar, and widened her areas of practice. She has been the head of Malthouse Chambers since 2014. Apart from crime, her areas of practice now include professional disciplinary proceedings, administrative law and judicial review, civil and commercial litigation, estate litigation, and planning matters. She has been a member of the Mental Health Tribunal, a member of the Anti-Discrimination Tribunal, and a Director of the Motor Accidents Insurance Board. She is currently a member of TASCAT in the Anti-Discrimination and Health Practitioners stream, a member of the Parole Board, a Criminal Injuries Compensation Commissioner, and Chairperson of the Tasmanian Racing Appeals Board. She has been actively involved in the Tasmanian Legal Practice Course for several years. She has a continuing involvement in the presentation of professional development sessions for the Law Society and in the mentoring of junior practitioners. She has been a member of the Council of the Tasmanian Bar since 2014, and has served as its secretary and treasurer for the last 3 years.

All three of the appointees here today have all the attributes required of senior counsel. It gives me very great pleasure to acknowledge their appointments at this ceremonial sitting. I congratulate all three of you again. Ms Kay, Mr Benjamin and Ms Cuthbertson, I hope you enjoy many years of challenging and rewarding practice as senior counsel in your various roles.

That concludes this ceremonial sitting. The Court will now adjourn.