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TRANSCRIPT OF PROCEEDINGS

O/N H-1661925

FEDERAL COURT OF AUSTRALIA
CEREMONIAL SITTING OF THE FULL COURT
TO FAREWELL
THE HONOURABLE JUSTICE KERR, Chev LH

THE HONOURABLE JAMES ALLSOP AO, Chief Justice
THE HONOURABLE JUSTICE KENNY
THE HONOURABLE JUSTICE GREENWOOD
THE HONOURABLE JUSTICE RARES
THE HONOURABLE JUSTICE GRIFFITHS
THE HONOURABLE JUSTICE KERR, Chev LH
THE HONOURABLE JUSTICE McELWAIN
THE HONOURABLE DEPUTY CHIEF JUSTICE AMBENG KANDAKASI CBE,
National & Supreme Courts of Papua New Guinea

HOBART

3.30 PM, FRIDAY, 25 FEBRUARY 2022

ALLSOP CJ: May I welcome everyone who is here in person or by video to this ceremonial sitting of the Court to mark the retirement of Justice Kerr after a long and illustrious career and to farewell a colleague and friend.

5 May I first acknowledge the traditional custodians of the land upon which we meet today, and pay my respects to their Elders, past, present and emerging.

10 It is a great pleasure to be able to host this ceremonial sitting in person in Hobart, after two years of virtual ceremonies and hearings, and not being able to come to Hobart. Whilst a message can be delivered over online platforms, it's not possible in this way to convey fully the collegiality and warm respect and appreciation that occasions such as this evoke. These ceremonial occasions provide an invaluable opportunity to acknowledge the service of Judges to the Court and to the public.

15 With Justice Kerr and myself on the Bench today are Justices Kenny, Greenwood, Rares, Griffiths, and McElwaine of the Federal Court, and it is a special pleasure and delight to have sitting with us as a guest of the Court Deputy Chief Justice Kandakasi of the Papua New Guinea Supreme Court. Deputy Chief Justice, you are very
20 welcome. Many Judges have joined us online, including, I should add immediately, Chief Justice Alstergren, whom I announced as an apology this morning, for which I apologise. The other Judges are from within the Court and other Courts, and may I also warmly welcome Chief Justice Blow and, also, Chief Justice Sir Gibbs Salika of the Supreme Court of Papua New Guinea, who is joining us online from Papua New
25 Guinea, from Port Moresby.

I especially also welcome today all of Justice Kerr's personal guests, particularly, Anna, Justice Kerr's wife, and your children, Sophia and Alex, your brother James and his partner Lisa and their son, Ben.

30 There are many other distinguished guests here today. They include Chief Justice Blow, whom I have mentioned; Justice Wood from the Supreme Court of Tasmania; Justice McGuire from the Federal Circuit and Family Court of Australia; Judge Taglieri from the same Court, and Judge Turnbull from the same Court; Mr Bernard McCabe, Deputy President of the Administrative Appeals Tribunal; Magistrates
35 Webster and Marron from the Hobart Magistrates Court; Mr Malcom Schyvens, the President of the Tasmanian Civil and Administrative Tribunal; and Ms Sarah Kay, the Solicitor-General of Tasmania.

40 Mr Greg Melick, whom I failed to mention this morning, for which I apologise, the Chief Integrity Commissioner of Tasmania; the Honourable Robert Benjamin, former Family Court Judge and Commissioner of Inquiry into the Tasmanian Government's response to child sexual abuse in institutional settings. Also Mr Bill Bowtell, Adjunct Professor at University of New South Wales; Professor George Williams from the University of New South Wales; the Honourable Mark Dreyfus,
45 the Federal Member for Isaacs; the Federal Members for Dunkley, Ms Peta Murphy; the Honourable Michael Lavarch, the former Attorney-General of the Commonwealth; the State Members for Clark, Ms Cassy O'Connor, Ms Ella Haddad and Ms Rebecca White, State Member for Lyons, and the Honourable Nick McKim, the Senator for Tasmania, as well as many other honoured guests whom we
50 welcome.

I note the apologies of the Attorney-General, the Honourable Michaelia Cash, Justice Logan, who is from the Federal Court and who is serving in Papua New Guinea as a Judge of the Supreme Court; Justice Banks-Smith from Western Australia; Justice Jennifer Davies; Justice Collier and former Justices Moore and Buchanan. Also, the
5 Honourable Mary Gaudron, Sir Gerard Brennan and the Honourable Michael Kirby. I apologise for any unintentional omissions.

Commencing as a Judge of the Federal Court and President of the Administrative Appeals Tribunal in March 2012, Justice Kerr, you end your judicial tenure just a
10 few months shy of that decade. You described taking on the presidency as inheriting a legacy of the Kerr Committee.¹ Today, we celebrate your work as Judge and President and your legacy of public service.

Your Honour has always clearly possessed a concern for using your grasp of the law
15 to further justice, while properly recognising the impact of the law and government on human lives and human dignity. This has been a hallmark of your life and work. This is evident in your early studies in the law and social work and in your impressive legal career as a young solicitor and barrister and, later, including your services as Dean of the Law School at the University of Papua New Guinea. Deputy
20 Chief Justice Kandakasi is not only one of your former students, but also your co-author in the annotation of the Constitution of Papua New Guinea.

This concern continued into your political career when, in 1987, you were elected to
25 the House of Representatives as a Member for Denison, representing the Australian Labor Party. “23 years in...[the] trenches”, I think, is how you had described your years in opposition and in the Hawke, Keating and Rudd Governments. You held many Ministerial Portfolios, most notably as Minister for Justice and, later, as Parliamentary Secretary for Pacific Island Affairs. At the time of your retirement from politics and re-entry into the profession as Senior Counsel in 2010, many,
30 including the Honourable Michael Kirby, lauded the grace with which you handled what was, no doubt, a challenging transition. Not longer after, you became President of the Tribunal and a Judge of this Court.

As President of the Tribunal, you always displayed a deep concern and commitment
35 to the importance of providing ordinary people with access to review of decisions by those in power. You were dedicated to ensuring that the impact, sometimes grave, of such decisions on human lives and human dignity should be kept in front of mind in your leadership and all of the Tribunal.² You oversaw the amalgamation of the Migration, Refugee and Social Security Tribunals into the Tribunal, resulting in an
40 ever more diverse and advanced workload.

This required immensely hard work, patience and tact, qualities which, to my observation, you have always shown. You champion merits review and rightly

¹ Walsh K, “Outgoing AAT president Duncan Kerr flags resource issue”, *Australian Financial Review* (19 May 2017).

² See, e.g. Walsh K, “Outgoing AAT president Duncan Kerr flags resource issue” *Australian Financial Review* (19 May 2017).

sought to remind everyone of its indispensable place in our legal system.³ You defended the independence and competency of the Tribunal and its decision-makers and staff and saw the critical importance of fostering public support for that Tribunal. Your leadership was acknowledged by your elevation to Chair of the Counsel of Australian Tribunals between 2014 and 2017. The strength, integrity and independence of the Administrative Appeals Tribunal is of enduring importance.

At your welcome ceremony, then Attorney-General Dreyfus attested to the bipartisan support of your appointment. On the Court, you have presided over all manner of matters before the Court, from employment and industrial relations, to taxation, class actions, constitutional law and migration, within registries all over the country. In each case, your reasons were expressed carefully and with clarity, and those who appeared before you were always treated with equal patience and respect.

You have made a particularly profound contribution to the area of migration law. Your role as leading counsel in *Plaintiff S157 of 2002 v Commonwealth* [2003] HCA 2; 211 CLR 476 formed the foundation of the Court's jurisdiction to review migration decision for jurisdictional error and which, as you have put it, constituted a second administrative law revolution, which set the foundations for constitutional entrenchment of jurisdictional error at the State level, as well as the Commonwealth.

Your contribution to public law and the Court has been enormous. The time requires that I not be exhaustive. But for example, in 2017, in *ARJ17*,⁴ sitting with Kenny and Flick JJ, you confirmed that the Court retains jurisdiction under section 39B of the *Judiciary Act 1903* (Cth) to review a purported non-privative clause decision made in excess of power, the decision being there to disallow the arbitrary and oppressive taking of possession of mobile phones from people in immigration detention. In 2018, sitting with Kenny and Perry JJ in *DAO16*,⁵ you made further important findings of legal unreasonableness in relation to the gravely concerning treatment of corroborative evidence, supportive of a fear of harm on the basis of homosexuality.

There are countless other decisions of this character. As a continuation of your commitment to migration law, last year you very kindly volunteered to take on the role of Migration Liaison Judge in the Court, in which you worked closely with Registrar Haag to manage and triage the Court's vast and voluminous migration case load. I am personally very grateful for this work. But your contribution has been wide and varied.

In 2017, with Kenny and Robertson JJ, you confirmed that under the National Disability Insurance Scheme, "reasonable and necessary" supports should be fully funded, which decision gave significant reassurance to persons with disabilities in Australia.⁶

³ Justice D Kerr, "The Intersection of Merits and Judicial Review: Looking Forward" (2013) 32(1) *University of Queensland Law Journal* 9, 15; Ceremonial Sitting of the Administrative Appeals Tribunal 1 July 2015.

⁴ *Minister for Immigration and Border Protection v ARJ17* [2017] FCAFC 125; 250 FCR 474.

⁵ *DAO16 v Minister for Immigration and Border Protection* [2018] FCAFC 2; 258 FCR 175.

⁶ *National Disability Insurance Agency v McGarrigle* [2017] FCAFC 132.

Then, again, later that year, with Logan and Farrell JJ, you confirmed that where an application for summary dismissal is brought against a litigant in person, the applicant has a duty under ss 37M and N of the *Federal Court of Australia Act 1976* (Cth) to assist the Court in understanding the claims and any evidence that might support those claims.⁷ In 2018, in *Jadwan v Rae & Partners*,⁸ you dismissed claims in the long running and complex proceeding against solicitors and counsel for professional negligence in respect of the government’s revocation of a nursing home approval.

Soon after, you tactfully dealt with the high profile case by one of Australia’s largest salmon farmers relating to the expansion of farming in Tasmania’s Macquarie Harbour.⁹

In 2019, you concluded a significant taxation case on the meaning of “public road” so as to include toll roads under the *Fuel Tax Act 2006* (Cth).¹⁰ Later, you allowed liquidators access to critical documents obtained by the AFP in raids on the property of land developer Mr Caratti,¹¹ and made important findings in *Doggett* as to apprehended bias claims based on interlocutory decisions, and the ability to question a judgment debt in bankruptcy based on propositions not advanced in relevant proceedings.¹²

Throughout your tenure, you have clarified and enhanced the progression of the law in many areas. When you disagreed with members and with colleagues, you did so with grace and courtesy.

I should mention something more about Papua New Guinea. Whilst Dean of the university, you edited, with Deputy Chief Justice Kandakasi, a published annotation of the Constitution. In 2014, with the agreement of the Attorney-General and myself, you were appointed to arbitrate the case of *Papua New Guinea’s Sustainable Development Program v the Independent State of Papua New Guinea* in the International Centre for Settlement of Investment Disputes sitting in company with two of the doyens of the arbitration world. You travelled to Singapore to hear the matter, which was dismissed on jurisdictional grounds.¹³ Your relationship with Papua New Guinea over the many decades is demonstrable of your commitment to service and the rule of law, and has greatly benefitted the relationship of respect between the Courts of those two countries and between those countries themselves.

⁷ *Kimber v Owners of Strata Plan No 48216* [2017] FCAFC 226.

⁸ *(No 4)* [2018] FCA 968.

⁹ *Huon Aquaculture Group Ltd v Minister for the Environment* [2018] FCA 1011. See e.g. Shine R, “Houon Aquaculture loses legal battle against Tasmanian rivals over Macquarie Harbour”, *ABC News Online* (6 July 2018).

¹⁰ *Linfox Australia Pty Ltd v Federal Commissioner of Taxation* [2019] FCAFC 131 (Robertson, Kerr, Steward JJ).

¹¹ *Caratti v Commissioner of Australian Federal Police* [2019] FCAFC 123 (Kerr, Steward, Banks-Smith JJ).

¹² *Doggett v Commonwealth Bank of Australia* [2019] FCAFC 19.

¹³ ICSIC Case No. ARB/13/33.

The difficulty with a speech such as this is the reduction of feelings of gratitude and admiration to pithy expression worthy of the subject. An example of the ever-present intractable limits of text and language. You, if I may say so, perhaps can be epitomised by a civilised insistence on the humanity of the law, not merely its
5 linguistic conclusions drawn from abstract logic or form shorn of values.

The English analytical logical positivism in philosophy and law in the 20th century sought to expel the indefinable as valueless. You, reflecting another school of law and philosophy, set your face against viewing the law in this way because it impairs
10 the protection of the law to the people it serves.

I cannot finish without a personal expression of gratitude. You have always assisted me with wisdom, tact, insight and genuine friendship, both when called upon and when not. I thank you for both, but especially for the latter. The role of Chief
15 Justice requires diplomatic skills that I often find more than demanding. The counsel of colleagues is essential. Sometimes that counsel is special. With you, it always was exceptionally special and valuable, containing insights from your 23 years in the trenches. You have my deepest thanks for that assistance and I will miss you very much on the Court.

20

On behalf of all the Judges of the Court, may I wish you and Anna a joyous, restful and rewarding retirement.

Mr Wilson, Deputy Director of Australian Government Solicitors Hobart,
25 representing the Attorney-General for the Commonwealth of Australia.

MR D. WILSON: May it please the Court. I also begin by acknowledging the traditional owners and custodians of the land on which we meet and pay my respects to their Elders. Your Honour, Justice Kerr, it is a great privilege to be here today on
30 behalf of the government and the people of Australia to celebrate your Honour's time as a Judge of the Federal Court. Your Honour retires after nearly 10 years of dedicated service to the Court, and today marks the celebration of a long and distinguished career in which you have devoted yourself to the improvement of the law and the legal profession. The Attorney-General Senator the Honourable
35 Michaelia Cash regrets that her Ministerial commitments prevent her from attending this ceremony today. She has, however, asked that I convey to you the government's sincere appreciation for your Honour's contribution to the work of the Federal Court and pass on her best wishes for your future endeavours.

The high regard in which your Honour is held is demonstrated by the number of esteemed guests that are present here today in person or by video, and I had a list which I won't read out because the Chief Justice has already covered that. I also
40 acknowledge the presence of your Honour's family; your partner of two decades, Anna; and also joining us via video, your son, Hamish. His mother, Celia Taylor, is with us today, and we're also joined by your Honour's step-daughters and sisters to Hamish, Sophia and Alex, as well as Alex's husband, Nathan. I've been told that Alex and Nathan have recently welcomed the latest addition to their family, Anderson. Time does not permit a full exposition of your Honour's achievements and the contributions you have made to the law, so this afternoon, I will focus on
45 some key achievements that mark your distinguished career. Your Honour studied
50

law at the University of Tasmania and then undertook a postgraduate degree in social work.

5 After working briefly as a social worker with the Tasmanian Education Department, in 1980, your Honour began your career in service of the law as a Crown Counsel in Tasmania. If I recall correctly, at that time, your Honour was using a double-barrelled surname: Cahoon-Kerr. You were admitted to practice in the High Court of Australia and in March of 1980, only weeks after that admission, you appeared before the High Court, led by the then-Solicitor General Roger Jennings QC and
10 Attorney-General for the State of Victoria and the Commonwealth. That was a seminal case concerning the prohibition in the constitution of the making of laws establishing a new religion, and whether the Commonwealth was permitted to fund church schools. In 1982, you commenced lecturing in constitutional and administrative law at the University of Papua New Guinea, and shortly thereafter, as
15 the Chief Justice has observed, you were appointed as Dean of that institution.

During your time in Papua New Guinea, you also worked in private practice and made a substantive contribution to the legal landscape by your work on two major
20 early texts on aspects of the constitutional law in Papua New Guinea: the annotated constitution of Papua New Guinea mentioned by the Chief Justice, and a volume which you co-edited with two other editors called Essays on the Constitution. I understand that these texts are regarded as the equivalent of Quick and Garran's Annotated Constitution of the Commonwealth of Australia and that they continue to be consulted by Judges and lawyers for insight into the interpretation of the
25 constitution of Papua New Guinea, especially those provisions which do not receive much judicial attention. It is clear, your Honour, that your commitment to the legal professional development extended beyond just yourself and your own interest in the law.

30 You committed part of your early career to the development of young solicitors and your peers. The students of your Honour's era as the Dean of the faculty of law at the University of Papua New Guinea are, these days, senior Judges and Legal Practitioners, having received a sound legal education at the law school of which you were Dean. I'm told, on the authority of one of your peers involved in the Supreme and National Courts of Papua New Guinea, that this cohort remembers your Honour
35 with enduring affection and with respect as a teacher who truly cared for his students. Following your time in Papua New Guinea, your Honour pivoted to fulfill an illustrious career in federal politics, serving in Parliament as the Member for Denison for 23 years from 1987 to 2010. Notably, for the 1987 election, you employed parts
40 of the Slim Dusty song, "I'd Love to Have a Drink with Duncan", as a feature of your campaign.

The use of this slogan, which was not without controversy, helped the public see you as a mate, a testament to your approachable and humble nature. During this period
45 of your career, your Honour served the Australian people under the Hawke, Keating and Rudd governments. You served as the Attorney-General in 1993, as Minister for Justice from 1993 to 1996 in the Keating government, and as Parliamentary Secretary for Pacific Island Affairs from 2007 to 2009 in the Rudd government. As Minister for Justice, your Honour made significant contributions to the legal
50 profession and the broader Australian community. You served on the Cabinet

committee that dealt with the Mabo and Wick decisions to confirm the existence of Native Title. reformed the Legal Aid system and expanded the network of community legal services. You supervised the development and settled the content of the Keating government's justice statement.

5

Your Honour also instigated major reforms in the Legal Aid system and in copyright and administrative law. Your Honour introduced and helped secure the passage of the Commonwealth Evidence Act 1995 and the Criminal Code Act 1995 and of legislation against child sex tourism. Your Honour also assisted with
10 comprehensively restructuring Commonwealth law enforcement arrangements. As mentioned before, in 2007, your Honour was appointed the Parliamentary Secretary for Pacific Islander Affairs. Your Honour's contribution to developing and fostering stronger relations with Australia's closest neighbours in the Pacific has left an indelible mark on both regions. The special ties your Honour developed with Pacific
15 French territories and the French saw you granted in 2011 the award of Knight or Chevalier in the National Order of the Legion of Honour.

From the time of your Honour's swearing in as a Judge and as President of the Administrative Appeals Tribunal in 2012, you made conscientious and insightful
20 contributions to the governance and work of the Federal Court of Australia. As the only Federal Court Judge in the Hobart Registry, your Honour has been called upon to deal with disputes across the entire spectrum of the Court's jurisdiction. Your insights into public administrative were constructive in collegiate discussions about complex cases. Your Honour also brought a unique perspective as a former
25 Attorney-General, Minister, and Member of Parliament to the Court's non-judicial interactions with Government on issues concerning policy, funding and resources for administrative functioning.

Your Honour has been able to draw upon your experience prior to be appointed as a
30 Judge in judicial decision-making. For example, at the Bar, your Honour was leading counsel in the landmark decision of Plaintiff S157, to which the Chief Justice has already referred. Your role in assisting the High Court to reach its decision guaranteed the rights of citizens to challenge unlawful or invalid decisions of Government and is one of your most enduring legacies.

35

Perhaps reflecting the importance of the subject in Tasmania itself, your Honour has also been involved in several leading Environmental Law cases. They include a case in 2014 in which the Tasmanian Aboriginal Centre obtained interlocutory relief in respect of a proposal to permit four-wheel driving in an area on the west coast which
40 was regarded as being of heritage importance to indigenous people. And in 2018, you presided over a case in which you rejected a challenge by a salmon Aquaculture Company in relation to salmon farming in Macquarie Harbour.

Concurrently with your judicial duties, from 2012 to 2017, your Honour served as
45 president of the AAT. Your Honour's appointment as President was supported by both sides of politics. The then Shadow Attorney-General, the Honourable George Brandis QC, described your appointment as the culmination of a lifetime's work in the law. During your term as President, your Honour steered the landmark amalgamation in 2005 of the AAT with its migration, refugee and social security
50 equivalents. From amalgamation, the Tribunal became increasingly integrated while

managing a significantly increased caseload. In 2015 to '16, you led the establishment of a new senior management team and new governance arrangements, including key committees and groups to support the President and Registrar roles.

5 The strategic plan for 2015 to '20 developed during your Honour's presidency
focused the AATs activities and guided the AATs decision-making for the coming
years. The plan identified major priorities, which included to create an integrated
National Tribunal, to improve the use of technology, to nurture relationships and
partnerships, to make the best use of resources, and to build capacity in delivering
10 merits review. Your Honour provided strong leadership to the Tribunal and will be
remembered as a very successful President. Your Honour's work as President has
ensured that thousands of individuals have had access to the efficient and effective
review of administrative decisions.

15 Aside from your contributions to the Bench, your Honour was deservedly elected to
the Council of the Australian Institute of Judicial Administration and served until late
2017. Since 2017, you have been on the AIJA Research Committee, overseeing
several significant projects. So despite retiring from the Council, you were asked to
continue with the Research Committee as Chair off a sub-committee working on a
20 current project in collaboration with the Council of Australian Tribunals relating to a
best practice guide to Tribunal complaint handling, exemplifying your dedication to
voluntary public service. I turn now to your Honour's personal attributes. I'm told
that your peers describe you as "truly collegiate and congenial", "astute and
pragmatic", "an engaging raconteur", "a thoughtful person whose sharp mind is open
25 to new ideas and new ways of thinking", and perhaps atypically for a former
politician, you are also described as "modest", "relatively quiet", and "unassuming".

I'm told that your Honour has many plans to enjoy your retirement, but first your
Honour will have to start to learn how to survive without the assistance of Maydena
30 Flanigan, who has been your loyal Executive Assistant for over 30 years. Next on
the list may be learning Greek, as I understand you and Anna are planning a holiday
in Paxos in July – no doubt a trip that will be filled with good food, good wine, and
best company. I'm told also that your Honour is keen to build your fitness by
working on yours and Anna's property as Premaydena in the south-eastern region of
35 Tasmania, and you may even kit up again for cricket with the Thylacines.
"Thylacine" is of course the biological term for the Tasmanian tiger and the club
motto is "nearly extinct". I understand that your Honour hopes that that is not a
description of your cricket skills.

40 Your Honour, in conclusion, it has been a privilege to be here today to celebrate your
remarkable career, your professionalism, your dedication and your commitment to
the improvement of the legal profession and judiciary are truly an example for us all.
On behalf of the Government and the people of Australia, I thank you for your
extraordinary contribution to the administration of justice in Australia and wish you
45 all the very best as you commence a new chapter in your life. May it please the
Court.

ALLSOP CJ: Thank you, Mr Wilson. Mr Zeeman, President of the Tasmanian Bar
Association and representing the Australian Bar Association.

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MR P. ZEEMAN: Thank you, your Honour. It is my great pleasure to appear this afternoon to represent the Tasmanian Bar and the Australian Bar Association to wish your Honour Justice Kerr best wishes on his retirement. I would like to also convey the best wishes of Mr Matthew Collins AM SC, who is the present of the Australian Bar. I also, your Honour, would like to pay my respects and the respects of the Bar to the Elders past, current and emerging of the Muwinina people of the South East Nation, on whose land this Court sits.

Your Honour, it must be said that departure is must harder than the arrival. Easier for counsel, because we know your Honour next week will be back in the trenches, but arrival brings hope and expectation. We had the pleasure of seeing that hope and expectation this morning at the arrival of Justice McElwaine. Departure brings reflection and a degree of uncertainty. What I'm confident is, your Honour, that a reflection of your Honour's judicial career will see that those hopes of arrival have been achieved and exceeded and that there is no uncertainty because your Honour has a bright future ahead of you – and I will make remarks as to that in a moment.

Your Honour, I'm indebted to the Chief Justice and my learned friend, who has set out all your great achievements. I feel like counsel for the third respondent in a matter which has heard everything that needs to be said and is just making space at the Bar table to justify his brief. Your Honour, unfortunately – or fortunately – you are very close to the legislated statutory age of senility, which I will say a little bit more about that. But you are forced to leave the Court, which, if one were to look at your contribution, no one would see any merit in the need for you to leave the Court.

Your Honour has made a substantial and considerable contribution to the administration of justice as a member of this Court and as the past President of the Administrative Appeals Tribunal, and many of it has been ventilated today. But, your Honour, the Bar would like to submit humbly that this contribution has been marked by your great industry, your logic, a deep understanding and compassion for those persons who appear before you in this Court. Your presence will be missed in this State and on the national arena. Your customary patience with counsel and your courtesy in Court, which has been unflinching, will be missed by all persons, be it counsel on this side of the Bar table or unrepresented litigants.

Your Honour's desire when you became the President of the Administrative Appeals Tribunal was to remove the rigidities and adversarial processes of the AAT, and that has been a very important development that your Honour oversaw, although somewhat frustrated, to borrow Justice McElwaine's phrase, by the prism of the Migration Act. Notwithstanding this, the AAT remains an integral part of the citizenry's interaction with Government, a very important role, and your Honour assisted the citizens of this country to interact with Government, a task which most citizens – well, many citizens – find frustrating and have found frustrating for many years. Perhaps even before Sir Humphrey Appleby was upon us. It has often been remarked with Judges generally that they don't know anything about the facts of life until there's evidence before them and have counsel have explained it to the Court in many different ways, often to fit their own position. But Your Honour, you have brought to this Court a great understanding of the realities of life. As has been noted, Your Honour was, prior to appointment to this Court, a member of the House of

Representatives for the Seat of Denison, now known as Clark, in great recognition of another great Tasmanian, Andrew Inglis Clark.

5 It cannot be underestimated the skills and qualities you took from being a Member of
Parliament to your skills on the Bench. Your Honour was known as a
compassionate Member of Parliament, who sought to understand the issues of his
constituents and to find them solutions. He never pre-judged them. He never
imposed his view on their lives. He was a man, a Member of Parliament, like many
Members of the House of Representatives, I would like to think, who sought to assist
10 people. Unfortunately – well, I would also mention, Your Honour, you did one thing
that many politicians didn't achieve, and that was to leave at your own choosing. A
rare feat, which the citizens of Tasmania were happy to see you make that decision,
albeit they weren't prepared to continue to endorse your party at the time.
Notwithstanding, we do have great representation.

15 Your Honour returned to practice and a busy practice fell at his feet very quickly, but
unfortunately, that was short-lived. You were only in practice for a period of
approximately two years before you were appointed to this Court. And as my friend
has mentioned, it is a reflection of how highly you were seen in a bipartisan manner
20 that the then Shadow Attorney-General, Senator Brandis, wholeheartedly welcomed
your appointment to the Court. Something that doesn't often occur when there are
people who have a history of being members of one political party or another.

25 Your judgments leave a significant legacy for the legal profession and the wider
community. I have no doubt Your Honour took significant time to write them, as
they are well written and easily understood, not only by counsel, but also by parties
who are involved. given that Your Honour, in his judgments, has exposed your
reasoning, your logic and why you have reached the decision you had. I know that
parties and counsel have appreciated that, and certainly, Appeal Courts appreciate
30 that because it's often a ground of appeal, a lack of proper reasons. We will miss
seeing those decisions, Your Honour, but I suspect you will not miss writing them.

Your Honour, I did say that you've reached the statutory age of solemnity, but I can
assure you that is a statutory fiction. It's not a medical diagnosis. Your Honour, 70
35 is the new 50, and we wish you and your family all the best in retirement and we
hope that we have not lost you completely and that you may be convinced at times to
engage with the profession on an ongoing basis. The Bar thanks you for your public
service in the administration of justice, and we wish you well. If it please the Court.

40 ALLSOP CJ: Thank you, Mr Zeeman. Mr Liveris, President of the Law Council of
Australia, remotely from Darwin.

MR T. LIVERIS: May it please the Courts, I first acknowledge the traditional
owners of the country on which we meet and recognise the continuing connection to
45 land, waters and community. I pay my respects to Elders, past, present and
emerging, and I extend that respect to Aboriginal and Torres Strait Islander peoples
here today. It is an honour to represent the Law Council of Australia to acknowledge
and pay tribute to Your Honour's exemplary career, and I thank the Court for
permitting my attendance to be made remotely. Earlier today, I had the privilege of
50 welcoming the appointment of Justice McElwaine to this Honourable Court. His

Honour is not only following in Your Honour's footsteps, but Your Honour's service to this Court, in this State, has no doubt been instrumental in affirming the need to ensure that Tasmania has a permanent resident Federal Court Judge.

5 Your Honour has worked tirelessly in dedicated service to Tasmania and to the nation more broadly, and departs having made a profound contribution to the work of the Court. In speaking with people in preparing for this address, it is apparent that there is an automatic connection in peoples minds between Your Honour and the advancement of justice in this country in all of the various offices that you have
10 occupied over decades and the numerous ways in which you have served the Australia people. When welcoming your appointment to the Administrative Appeals Tribunal, the then Presidents of the Law Council noted Your Honour's commitment to social justice and defending the underdog. We also acknowledge that, as Minister for Justice, Your Honour's integral work to the reform of the Legal Aid system, the
15 expansion of a network of community led services and the development of the Keating Government's justice statement.

Your Honour was attend of your time in terms of your advocacy for political representation of first nations peoples. In a speech to Parliament in 2008, Your
20 Honour said:

*Constitutionally, it does not fit very easily that recognition of the idea of self-determination and the claim of sovereignty that has been made and never
25 surrendered by the Australian Aboriginal people, through a kind of treaty process that then leads to the recognition of the entitlement of Indigenous Australians to be represented in the Parliament, is not an idea that we should turn our backs on.*

Sadly, here today, the constitutionally enshrined first nations voice to Parliament has
30 still not yet been achieved. Before I conclude my remarks regarding Your Honour's representation of the Australia people, I also acknowledge what has been said about Your Honour's affinity for and long-term support of our Pacific neighbours and Your Honour's environmental connections. Beyond politics, Your Honour has contributed to our legal system as a leading academic, respected barrister, President of the
35 Administrative Appeals Tribunal, Chair of the Council of Australasian Tribunals and as a Judge of this Court. It has, of course, been recognised that, amongst those achievements, Your Honour's name is synonymous with the decision of Plaintiff S157 v Commonwealth.

40 Of course, every judgment by our Courts and Tribunals impacts peoples' lives. In your work on this Court, this is a responsibility that Your Honour has always recognised in quite a unique way, and an extremely individual level in every case that you have presided over. Another thing that shone through to me when talking to those who know Your Honour best is your enthusiasm for mentoring others and Your
45 Honour's unique ability to identify and nature talent and expect nothing in return but for your mentee to do well and be happy in developing the legal profession. When Your Honour resigned from politics, you were quoted as saying:

*The challenge of improving the legal system and respect for the rule of law
50 were catalysts spurring my involvement in politics.*

Now, Your Honour retires from the Court after years of outstanding service to the legal system and leaves behind a legacy that will inspire the next generation into the profession. On behalf of the Australian legal profession, I thank Your Honour for the contributions that you have made and wish you and your family well for your retirement. May it please the Court.

10 ALLSOP CJ: Thank you, Mr Liveris. Mr Gates, President of the Law Society of Tasmania.

MR GATES: Thank you, Chief Justice. May it please the Court, I acknowledge the Muwinina People, the traditional owners of this land, and I also acknowledge the Elders, current and emerging, of the Tasmanian Aboriginal community. It's an honour to have the opportunity to address the Court and represent the members of the Law Society and recognise the significant contribution that Your Honour Justice Kerr has made to this Court, to the Administrative Appeals Tribunal as its President, but also to the legal sector more generally.

20 If my learned friend the President of the Tas Bar feels like the counsel for the third respondent, I suppose it follows that I must feel like the counsel for the fifth respondent. Much has already been said about your career achievements, so I won't go over those, but I will note that when you were appointed to this Court, you were only the second Tasmanian to be appointed to the Federal Court, and unlike Justice McElwaine, there can be no question as to you being a true Tasmanian in the sense that you actually attended all of your schooling here in Tasmania, attending 25 Claremont Primary School, Claremont High School and Hobart Matriculation College, which are all public schools.

30 After being admitted to practice, your Honour's first appearance was with the then Solicitor-General for Tasmania, Roger Jennings, in the High Court in Melbourne in your position as Crown Counsel with the Solicitor-General's Office. And I personally know how intimidating such an experience can be, because I have had a similar experience. Your work experience and your experience as Dean of the Law School at the University of Papua New Guinea and your work overseas is a testament 35 to your internationalism and interest in social affairs and social justice generally. And it should also be noted that for Tasmania, you established the Michael Kirby Chambers here in Hobart in 2010.

40 Your appointment to this bench has served as an important example to the profession in this state that remaining in and practising in Tasmania is not an impediment to achieving elevation to the Federal Court or achieving legal ambitions. It should also be recognised that your appointment as a resident Tasmanian Judge has been of great benefit to the state in terms of access to justice. Here, as a state in the Federation, it's important that the Court has permanent presence here, and it is so pleasing and 45 welcome that we have been assured that this is to continue, of course, with the appointment of Justice McElwaine but also beyond.

The hallmark of your career has been your interest in public affairs, social justice and service to the community. It is perhaps fitting but probably not at all a coincidence 50 that one of the most significant cases that you've been involved in was the S157

case, which is such a significant case in terms of assuring the centrality of the rule of law and that decision-making is not taken beyond the reach of the judicial arm of government both at a state and a federal level. It's also a testament to your talent and your dynamism that you were able to make the transition from the law to politics and back again and to achieve so much in both realms.

You've always been generous with your time, and on a personal note, you've always been generous with your time and support for me, and I'm sure that I'm not the only person that would say that about you. Your career as a whole speaks of a person who's committed to service to the community and to the public. On behalf of the legal profession and members of the Law Society, I want to congratulate you on a very distinguished career on the bench and to acknowledge your significant contribution to the profession, to the justice sector and to the community more generally. I wish you a long and fulfilling retirement. May it please the Court.

ALLSOP CJ: Thank you, Mr Gates. Justice Kerr.

KERR J: Where this Court sits was once a gathering point for the Indigenous peoples. After their dispossession, a three-storey building was constructed in 1840 to serve the colonial community as a boys school. In 1925, what had been a school became the Hobart Trades Hall. Many historic controversies were fought out here. This is where, at the Australian Labor Party's 1955 National Conference, its then leader, Dr Evatt, was confronted with a split which kept his party in opposition for 23 years and nearly destroyed it.

The Commonwealth bought the Trades Hall in 1974 to provide a home for the various Commonwealth Courts and Tribunals then scattered around Hobart. It took until 1980 before funds for the works needed to turn it into a Court precinct were made available. Some four years later on 24 October 1984, the then Attorney-General, Senator the Honourable Gareth Evans QC, with whom I was later privileged to work with in the Keating Government, officially opened the Edward Braddon Commonwealth Law Courts Building.

The following day, Chief Justice Bowen and Justices Northrop and Everett convened the inaugural Hobart sitting of a Full Court of the Federal Court of Australia. From Justice Everett's retirement in 1987 to the time of my appointment in 2012, no Judge was assigned to the Hobart Registry. Justices Ray Northrop, Peter Heerey, Shane Marshall, John Middleton, Richard Tracey and David O'Callaghan served as visiting Tasmanian Judges. Their doing so ensured that this Court and its significant national jurisdiction remained accessible to the Tasmanian community.

However, Tasmanians are sensitive to being left off the federal map. I welcome that although other Judges of this Court will, of course, continue to sit in Hobart as needs arise, there will be no need in the future for formal visiting arrangements. That is because the Federal Government has taken the occasion of my retirement not only to appoint Justice McElwaine as my successor but also to commit the funds required for an ongoing appointment to this registry. I acknowledge the work of Senator the Honourable Eric Abetz and Andrew Wilkie MP, who joined with the Law Society of Tasmania in advocating for that welcome outcome. As a result of their joint efforts and the positive response of the Commonwealth Government, this state's Lawyers

can have confidence that appointments in Tasmania will follow as routine whenever a vacancy arises. That is consistent both with the strength and depth of the Tasmanian legal profession and of the significance of this Court in having Judges appointed from every state.

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Many of the Judges on bench for my farewell today also attended Justice McElwaine's welcome this morning. I regret that his and my time as colleagues on the bench will be so brief. During COVID, it felt a little lonely as the single Judge in Hobart, although that was mitigated by the warm friendship that was extended to me by Judges of the Family Court and the Federal Circuit Court, with whom the Federal Court of Australia shares this Court building. However, the Federal Court of Australia is truly a collegiate national Court. I am sure that once the restrictions imposed by the pandemic lift, Justice McElwaine will experience, as I did from the outset, the same friendship and mutual respect as I was offered by the many Judges he will meet in person when sitting interstate as a single Judge or as a member of a Full Court.

Can I thank those who have already spoken. Chief Justice, I am enormously grateful for the warmth of your remarks. Mr Wilson, I would be grateful if you could convey to Attorney-General Cash my appreciation for those remarks that were extended on her behalf today. Mr Zeeman, I thank you for your very warm remarks. I think you conveyed a sense that I was rather too angelic. Occasionally, I did get grumpy. Mr Liveris, your reflection on the work that I undertook on a national level is most gratefully appreciated. And, Mr Gates, although you were a tail gunner, I am deeply appreciative of your personal remarks and the warmth with which you expressed them.

Anyone who reaches the age of 70 with all their limbs still intact and suffering only from statutory senility undoubtedly has led a lucky life. My life has been extraordinarily so, to a humbling degree. If I detour to highlight how important have been the turns of good fortune that have benefited me along the way, I make that detour to put on record my belief that where a person falls to Earth and the brute luck of being at the right place at the right time have as much to do with where they end up as do merit and hard work. Life's chances are not equal.

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I grew up in the northern suburbs of Hobart. My first good luck was that Mum and Dad had a big view of the world for me to absorb. Dad was born in Scotland. He came to Melbourne as a young man. After my grandfather lost employment in the Great Depression, of necessity, my dad provided for his parents. He became an actor, professional boxer, and an accomplished sportsman. Still a young man, he enlisted in the Australian Army when World War II broke out. He trained as an engineer and rose to the rank of Captain.

Following Japan's surrender, Dad served in the occupying forces. It was in Japan where he met my mother. Mum was a US citizen. Rare for women in those days, she had a career in the field that became nuclear medicine. Before and during the war, Mum had worked at the prestigious Mayo Clinic, in Minnesota. She was recruited by Robert Oppenheimer and flown to Japan immediately after the war to undertake medical reconstruction work, focusing on those who had been exposed to

nuclear radiation in Hiroshima and Nagasaki. My mother was given the honorary rank of Colonel on her arrival in Japan. My mother and father met when my dad was in charge of the exotic project of building squash courts on the grounds of my mother's commandeered hotel.

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World War II brutally disrupted the lives of millions of people, but the fate of my parents' war was to bring them together. Mum and Dad married in Japan. Later, with the occupation coming to an end, Dad had to find a job. He found a position in Tasmania as an engineer with a HYRO-ELECTRIC COMMISSION. He and Mum relocated here and took out a war service loan for a home. I and my brother, Jim, who is with us today, arrived soon after. I shouldn't put too much of a rose-coloured lens on our childhood, but a lot of love went into our upbringing. We had Mum for the world of books, science and ideas, and Dad to teach us how to swim, fish, and fight.

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The politics of our family was clearly to the left. My grandfather was an unabashed socialist, in the Scottish tradition. Mum had supported President Roosevelt 'new deal'. She remained a US citizen throughout her life. She voted in Presidential Elections. In her quiet, Lutheran way, Mum let Jim and I know the world would offer us many opportunities, but if you happen to be gifted with wealth or talent, at least some part of your life should be devoted to the service of others. Through her and Dad's example, we were also taught that it is possible to hold firm views without disrespecting those with whom you disagree. My parents' best friends were Glad and Ian Tullock. They regularly played social bridge at each other's homes. Glad happened to be the secretary of the Liberal Party of Tasmania.

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Jim and I did well as students at Claremont Primary and Claremont High School. We then each went onto Hobart Matriculation College for the final years of our secondary education. I suspect we were annoyingly precocious – certainly, at least, I was. I joined the Labour Party in 1968, when I turned 16. Even at that young age, I was ambitious for a public life, however arrogant that seems in retrospect, but there were no certainties in that. Brian Harradine and his supporters were the then-dominant faction in the Tasmanian branch of the ALP, although there was growing opposition to their power. I was on the other side.

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When I went to university, I chose to study law for purely pragmatic reasons. I had seen something about political conflict when helping my father letterbox for ALP candidates. Success was not a gift for life. Elections could be lost in even so-called safe seats. Preselection might be withdrawn on little more than factional whim. Beyond that, I knew that the rules of the ALP demanded solidarity. Elected members could dissent and push for change to policies, but voting in parliament against the decision that had been made democratically by colleagues was a reason for expulsion. I already had some red lines such as opposition to the death penalty. I knew I wouldn't cross such lines even if it seemed expedient to others. I was keenly aware that if I was going to risk the rough and tumble of politics I would need an income not dependent on the goodwill of my party colleagues if they ever demanded my conscience as a price for my vote. Studying law and becoming a lawyer - - -

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SIRI: This is the definition of colleague: a person with whom one works in a professional business.

5 KERR J: Well, that's an accurate description. Thank you, Siri. I thought studying law would give me the freedom to be able to say no. I graduated in 1973 with a law degree, having majored in anti-Vietnam war activism and hormones. The early 1970s was a golden era. The small size of the Tasmanian law faculty guaranteed that every one of its graduates wanting to practise law could find a position with a legal firm and start on a pathway to admission as a barrister and solicitor. Without the
10 least heed that that might not last forever, but with otherwise sound instincts, I chose to undertake a two-year postgraduate degree in social work. I will always be profoundly grateful for what I learnt about social policy and social change as a student of Dr Adam Jamrozik, then head of that school. After completing my training I moved to the north-west coast to take up a 12 months post with the
15 Department of Education as a social worker.

The following year at the age of 26 I won endorsement to be the ALPs candidate for the federal seat of Braddon. The Governor-General had dismissed Gough Whitlam's
20 government in 1975. The 1977 campaign to restore Labor to office was passionate and exciting. Alongside Bob Hawke I spoke to packed crowds at the Burnie community centre. I campaigned alongside the towering figure of Gough Whitlam in Queenstown. I pretended to be competent at football when joined by Darrel Baldock and John Coughlan on the gravel oval at Tullah. I worked the meatpacking rooms of rural north-west Tasmania alongside Paul Keating. You could smell the change
25 coming. We were going to win.

The outcome was a harsh lesson that the enthusiasm of friends and supporters may not best measure the thinking of the broader community. Labor was thumpingly
30 trounced in 1977. In a symbolic personal humiliation, I rolled my car after the booths had closed when Penny and I were returning from thanking our polling helpers. Much of my election night was spent at a local hospital getting my cuts stitched up. Sadly, and not for that reason, Penny and my marriage did not survive, but she has remained a constant friend and she has travelled from New South Wales to attend today. Needless to say I did not wrench the seat of Braddon from the sitting
35 member Ray Groom.

Why focus on these early events? I've done so to explore the paradox of the bad and good luck that led me to come to view the law as more than a means of earning an
40 income. Dusting myself off after my Braddon punishment, I set about my strategy of securing admission as a lawyer. At the time it required six months of training, legal training, and a year of apprenticeship to a solicitor. The first having set upon, I naively anticipated the second followed. I posted a nice letter enclosing my academic record and CV to every law firm in Tasmania – Hobart, Launceston and the North West Coast. But the golden era has passed. By 1978, there were more
45 graduates than positions available for apprenticeships and I was a bit late. Perhaps a reputation of political activism also did not serve me well. In any event, I received many polite replies, but all were rejections. I have those letters to remind me

whenever I get too full of myself, how close I came to having to give up on my dreams. But while bad luck can destroy a person's future, sometimes it clears a path. It was Merv Everett QC, later to become Tasmania's first Judge of this Court who saved my bacon.

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He told me that in the past, the Tasmanian Solicitor-General, Roger Jennings QC, had taken apprentices and that he might be open to do so again. He was. Apprenticed to the Solicitor-General, David Copeman tutored me in general advisings and John Ramsay in civil litigation. Tony Jacobs taught me the ropes of criminal law. He gave me a sound and practical grounding. Tony is present at my farewell today and I owe him very much. What I was given by David, John and Tony, was more than an adequate foundation for a legal career. But what was truly life-changing is that after I obtained admission, Roger Jennings trusted me enough to throw me in at the deep end. As has been mentioned already, my first appearance after admission was in the High Court.

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It was only a non-speaking role at a directions hearing as a Solicitor-General's junior. But it was a big step for me. In later matters before the High Court in which Tasmania intervened, I was junior counsel to each of Daryl Dawson QC and Mary Gaudron QC. Those precocious experiences involved me working with extraordinary counsel. It led me to imagine that one day I might not be wholly out of their league. Roger Jennings also gave me my first experience at international public law. The United States Drug Enforcement Agency had proposed a regulation prohibiting the importation into the United States of Tasmanian-sourced poppy straw for processing into therapeutic goods.

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The Tasmanian poppy industry was an important one for our agricultural sector. The Solicitor-General asked me to explore whether there was any chance of successfully challenging that regulation. The short version of a much more complex story is that I first had to prevail on the Fraser Government not to object to my perhaps provocative assertion that the external affairs power was not exclusive to the Commonwealth. Tasmania's case was that, as a matter of international law, it had standing in its own right to bring a proceedings in the United States to challenge the proposed regulation. The domestic resistance to that proposition in the Department of Foreign Affairs was overcome only after Tasmania's Premier, Doug Lowe, met with Prime Minister Fraser.

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That settled, I flew to Washington DC to work with US counsel to prepare and present Tasmania's case. The administrative law Judge to whom the matter was docketed, fortunately found in Tasmania's favour and the poppy industry survived. The opportunities that were gifted to me while working with the Solicitor-General were life-changing. While I was still to seek public office, I had become a lawyer, and for better or worse since then, I have sought to stay true to the core principles underpinning the rule of law that my mentoring had imbued in me. When Roger Jennings retired as Solicitor-General, I recognised it was time for me to strike out on my own.

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I applied for and took a three-year appointment at the University of Papua New Guinea to teach constitutional and administrative law. My appointment came with a right of private practice, so I could continue to work as a lawyer. After I took up my teaching position at UPNG, I became dean of the faculty. As has been noted, I co-

5 authored the annotated Constitution of Papua New Guinea. But, more importantly, I developed many lasting friendships. I am greatly touched that Deputy Chief Justice Ambeng Kandakasi, a former brilliant student of mine, who insisted – who assisted me with my research, has undertaken the great effort to travel to Hobart in order to share this day with me.

10 I left Papua New Guinea at the end of 1985 to accept a position as Principle Solicitor within the Aboriginal Legal Service in New South Wales. I came quickly to respect the team of 20, mainly young, but some older, lawyers who were all dedicated to working in an Aboriginal controlled organisation, to provide legal assistance to the

15 Aboriginal men and women of Sydney and much of regional New South Wales. I, of course, undertook that work myself, but I also had the privilege with working with the National Aboriginal and Islander Legal Service Secretariat in advancing a submission to the then Royal Commission inquiring into the Constitution.

20 Nailss's Submission proposed that the fundamental underlying sovereignty of Australia's original peoples should be recognised by Senate representation on the same basis as the States, so as to permit the diversity of Indigenous views being accommodated within that parliamentary system. I thank – I think it was Mr Liveris for referring to my remarks in the Parliament. Of course, that is not the means of

25 recognition now advanced. What is sought by Indigenous Australians is the fulfillment of the Uluru Statement, but the means of accommodating a claim to prior sovereignty is perhaps less important than the principle. I remain hopeful that an agreed way forward can be achieved. For the healing of our nation, it must be.

30 I learnt only by chance that the ALP was seeking a candidate to contest the Federal Seat of Denison, then held by Michael Hodgson QC. I'm indebted to the board of the Aboriginal Legal Service and its chair, Paul Coe, for then giving me the green light to seek pre-selection. The pre-selection was ugly, but that was not the end of things. There was a residual scepticism in the higher echelons of the party that

35 someone who had been described to them as a radical left-wing Sydney based lawyer could be a suitable candidate for a conservative Tasmanian electorate. Notwithstanding that that was a misreading both of the candidate and of the electorate, it was proposed that the National Executive intervene to withdraw my pre-selection. That move may have been successful but for its proponents overreach.

40 Those who thought I should be got rid of also wanted to get rid of Warren Snowden.

I was a relative unknown in the ALP outside of Tasmania, but Warren was not, and he had strong support from the national left faction. Taking us both on at the same time proved a bridge too far, but after the proposal for our disendorsement was

45 dropped, it was made clear to me that I should expect little or no support from the national office in any campaign. Until late polling showed Denison might be close, I had to self-fund my campaign. Only then did I receive any assistance from the national office. I am,

however, particularly grateful that Bill Bowtell came back home to Tasmania to help Di Stow shepherd my campaign in the last hectic weeks. My history in this Court might have been brief, and only as an applicant in its bankruptcy jurisdiction, had the results not gone my way, but Warren Snowden and I both won the seats we were
5 contesting. Warren has delivered his farewell speech in the House of Representatives just a few days ago, after 30 years of service as the Member for the Northern Territory and Minyerri.

This is not the occasion to reflect on my 23 years as a Member of the Federal
10 Parliament or my five as a member of the executive. I made that valedictory speech in the House of Representatives more than a decade ago. There's no need to rehash it. However, I should acknowledge, in his presence, my particular indebtedness to Iain Chalmers for getting me there. Iain, who it was who secured the right to the song Slim Dusty had made famous, I'd Like To Have A Drink With Duncan.
15 Together, we designed a cheeky TV and radio advertising campaign around that song's word and tune. On election night, it became clear that the message had cut through and the voters of Hobart and Glenorchy agreed that Duncan was their mate. The ALP had won its first seat in Tasmania for more than 12 years.

I stood down from the Parliament in 2010 to resume practice at the Bar. Greg
20 Gleeson, now Justice Gleeson of the Supreme Court of Tasmania, and I founded Michael Kirby Chambers in premises located just a little along Davies Street from these Courts. I was rusty, but not entirely out of practice. My predecessor, Michael Hodgman, had always maintained an active legal practice except when a Minister,
25 and I had followed his example. When time allowed, I acted pro bono in Courts and Tribunals for clients, usually constituents who had a plausible legal case but had been unable to get other representation. I was also briefed in some important constitutional matters involving questions of principle. I led George Williams as counsel – and I am honoured that George is present today – in Plaintiff S157/2002.
30 In that case, the High Court affirmed that section 75(5) of the Constitution entrenched “a minimum provision of judicial review” that cannot be removed by statute.

Sir Michael Kirby later did describe that decision as being one of the most important
35 in recent years for its affirmation of the centrality in Australian constitutional law of the rule of the law. The law remains authoritative and is frequently cited. My work at the Bar after leaving the Parliament mixed some excitement with the mundane. On the exciting end of the scale, I was brief in the aftermath of the Prime Minister of Papua New Guinea's being replaced, allegedly for incapacity, while recovering from
40 surgery in Singapore. I appeared in the Supreme Court of Papua New Guinea, seeking orders from the Supreme Court that Prime Minister Somare's dismissal, in the circumstances in which had occurred, was contrary to the PNG constitution. A majority of the Supreme Court agreed and ordered accordingly.

That important decision clarified the law, but in the nature of such controversies, in
45 practice, it was not to be the final word. At the subsequent elections, Sir Michael's party did poorly, and a number of his key supporters were defeated. So Sir Michael never

returned as Prime Minister. However, his legacy was already assured. When he died, his country's citizens universally mourned the loss of the man who had led their nation to independence and many years beyond. In late 2011, as was the then Government's practice, there was a public call for expressions of interest from
5 persons interested in appointment as a Judge of the Federal Court of Australia and President of the Administrative Appeals Tribunal. I applied.

An advisory panel made up of Chief Justice Pat Keane of the Federal Court and Former Chief Justice Brennan of the High Court and Former President of the AAT,
10 Justice Jane Matthews, considered the expressions of interest. When Attorney-General Roxon announced my appointment, as has been indicated, both the Leader of the Opposition, Tony Abbott, and his Shadow Attorney-General Senator Brandis, warmly welcomed it. I was glad of that support. The sentiments they expressed that public life can enrich the capacity for judicial office, rather than disqualify it are,
15 predictably, ones I share.

Chapter III, Courts are the judicial arm of the Commonwealth Government. In the first century after Federation, it was commonplace that Parliaments had Members later appointed to judicial office. Judges who held elected office include Tasmania's
20 Andrew Inglis Clark. His name lives on now as the electorate I formerly represented. Clark was a member of the State Parliament before his appointment as a Judge of the Supreme Court of Australia. Australia's first Chief Justice, Sir Samuel Griffith, an undoubted legal giant, the author of Tasmania's Criminal Code – initial author – had earlier served as Premier of Queensland. Sir Nigel Bowen, the
25 foundation Chief Justice of the Federal Court of Australia, served the Commonwealth as Attorney-General before his appointment. It came after he had lost the leadership battle by one vote in a contest with Billy Snedden for the Prime Ministership of this country.

30 Other former Judges of our Court, Bob Ellicott QC, Tony Whitlam QC, John Reeves QC and my Tasmanian predecessor Merv Everett QC also brought to their work as Judges the benefit of their experience of prior Parliamentary service. Those and many more of their ilk proved to be outstanding Judges. Something will be lost if such cross-fertilisation between the arms of government becomes entirely a thing of
35 the past. I would regret being the last dinosaur.

Judges and Presidents of the Tribunal are constrained by convention from defending their roles. Their reasons are public and must speak for themselves. For that reason, I will not descend to the particulars of my time in judicial office, although I am
40 extraordinarily grateful that the Chief Justice took the occasion to mention some. However, I think it appropriate to take this occasion to reflect on some broader themes. Writing in the Australian Law Journal Special Issue 2021, National Security and the Law, former Attorney-General Senator the Honourable George Brandis QC wrote recently:

45 *The custom that the Attorney-General should defend the judicial branch of government from political attack was disputed by one of my predecessors,*

Attorney-General Williams. I believe that the custom should be observed and I sought to restore it.

5 I acknowledge Senator Brandis' good intentions in those regards, but it is well past
time for there to be a formal repudiation of any narrow political conception of the
office. I am hopeful, whoever the Attorney-General might be after the next election,
that he or she will take the occasion to expressly recommit to exercising the
traditional role of the First Law Officer. Judges should never be and are not immune
10 from criticism, but unless the Attorney-General speaks out when necessary to protect
the institutional importance of judicial independence, the Courts are at risk of
becoming tabloid whipping boys. That is not in our nation's interest.

15 I will be brief in what I say regarding my tenure as President of the AAT. Although
the process was not without many large challenges, and the Tribunal's procedures are
yet to be fully harmonised, I was and remain convinced that the Abbott's
Government's decision to amalgamate the former SSAT, RRT and MRT into the
Administrative Appeals Tribunal was correct. That is unsurprising. I had begun
work on a similar initiative when serving as Minister for Justice in the Keating
Government. At my swearing in as President of the AAT, I observed its collective
20 strength:

...resides in its extraordinary team of skilled and independent decision-makers.

25 For that reason, I was delighted when, after having consulted extensively with me,
Attorney-General Brandis wrote on 10 November 2015 to advise that he had settled a
protocol to govern how appointments would be made to the recently amalgamated
Tribunal. The protocol preserved the Attorney's right to determine that a particular
appointment would be his personal call but provided that, save in such cases,
30 positions would be advertised. The names of those seeking appointment would be
submitted to an independent selection committee, the membership of which would
include the President and/or his or her nominee. The committee would recommend
to the Attorney those suitable to propose to the Cabinet on the basis of merit.

35 I was disappointed when the Attorney-General's plan to bring greater rigour and
transparency to the appointment process later came to nothing. I do not know what
led to its demise, but the protocol would have given greater stability to the Tribunal.
It is inevitable that its morale will suffer when appointments and reappointments lack
transparency and predictability. Deep cultures can endure transient vicissitudes for a
very long time before they fracture. No fatal fracture has yet occurred with the
40 Tribunal, but no one can know where a breaking point might be. It would be a grave
loss if the AAT ever was permitted to reach that tipping point. I remain optimistic
that Attorney-General Brandis' seemingly stillborn protocol of 2015 may yet be
relevant to preventing that. The acting president of the Administrative Appeals
Tribunal Justice Berna Collier is represented here by Deputy President McCabe.
45 Deputy President McCabe worked closely with me as the tribunal's division head,
tax and commercial. I deeply respect the leadership and the learning Bernard
McCabe consistently brought to that role.

The AAT's former registrar, Phillip Kellow, and a number of present and former members of the tribunal including my good friends, Ann Britton and Deputy President Greg Melick AO SC, who now leads Michael Kirby chambers, are also present today and I'm honoured by their presence.

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When anyone is appointed a judge of this court, they swear an oath to do right by all manner of people according to law without fear or favour, affection or ill-will. It's an awesome moment. I have been privileged to serve with two chief justices and more than 50 judges. And all have taken the same oath and all that I have experienced of them, they to a man and woman have manifested the values they committed to honour. And our court does not merely adjudicate private rights.

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Since 1610 when Chief Justice Coke 'spoke', risking the sovereign's wrath or worse pronounced in the case of proclamations that the king hath no prerogative but that which the law of the land allows him. Courts of our heritage have undertaken judicial review of alleged overreach of executive authority. In Australia, plaintiff S157 made clear that duty has a constitutional overlay such that it cannot be removed by statute. Some judges carry the weight of such responsibilities more likely than other but none of us escape the weight of having to decide the fate of our fellows in the matters that come before us. Yet the weight of that responsibility is lightened by this court's collegiality. That is a particular mark of our court.

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In the Full Courts, we sit as judges of appeal. Thus, when we make mistakes, as we all do, it is our colleagues who correct us rather than a panel of Olympian appellate justices isolated from the reality of the work of a judge at first instance. Full Courts do not hesitate to correct errors but the manner of that correction is really wanting and respect. And our collegiality is reinforced by sometimes shared disappointments. Few of us have not experienced the humbling reality that what we have imagined to be our best work later proves to be only a speed bump on the road to correction by the High Court. It has been a great and immense privilege to have served with the many extraordinary men and women who are Judges of our Court. I am also grateful to those who administer it. CEO and Principal Registrar Sia Lagos is a beam of light and I have always had the able support of the Tasmanian District Registrars with whom I have worked, initially Catherine Scott, then Anita McGregor and more recently Susie Stone. The whole apparatus of support for our work as Judges is profoundly efficient and that extends to those who manage its technology, ensure our security and clean our chambers. I am appreciative, of course, of everyone attending today.

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I particularly thank those Judges from the Supreme Court of Tasmania who have taken the occasion to attend and those of the Courts – Family Court and Federal Circuit Court. I cannot thank everyone individually, but I must mention a few beyond those that either the Chief Justice or I have already acknowledged. First, I thank my partner for more than two decades, Anna Pafitis. I have acknowledged being a lucky man. My luck was crowned when Anna accepted me into her life, notwithstanding her two then protesting daughters, Alex and Sophia. Alex and Sophia have become, I greatly treasure, more than reconciled to having such an odd stepfather. I love them dearly.

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Next, Celia, the mother of my son Hamish. That Hamish has grown to become the extraordinary young man he is now owes much to her. Hamish is in the United States and cannot be with us today, but I understand he is watching online. My son, I am proud of you. I am grateful for the joy you brought me. Then Michael Lavarch, with whom I worked closely in partnership as ministers in the Keating Government. Michael's record as Attorney General is one he is fully entitled to look back on with pride, but I have deeper reasons for extending thanks to Michael. Politics is a contested space and few true friendships are formed. Michael was my exception to that rule. I owe him far more than the usual professional courtesies. When I was the Minister for Justice, I went through some months of personal trauma. During that time, Michael protected my interests and ensured that my then-distraction did not imperil my career.

I also thank former attorney general, now shadow attorney general, Mark Dreyfus for coming to Hobart today. He and I were briefly colleagues in executive government. We are friends. Mark spoke to the government at my formal welcome nearly a decade ago. That he has seen fit to be present also at my retirement closes the circle. Whether Mark's own circle of fate has yet a further turn is in the hands of greater forces.

All of my electorate and ministerial staff deserve specific thanks, but I cannot possibly do that with any credibility in the time remaining. Some, however, have gone on to be members of parliament themselves. Those presently serving are federal members Peta Murphy MP and Brian Mitchell MP, State Labor leader Rebecca White MHA, Shadow Attorney General Ella Haddad, whose proud father is also attending, having led my office after the Keating government's defeat, as well as Greens leader Cassy O'Connor MHA. I have forgiven Cassy for turning to the dark side, though she sees it as turning to the light. We are still the best of friends.

Those who have since retired from public life include former senator Sue Mackay and former premier Lara Giddings. This can be a small world. I first met Lara in Goroka when she was an eight year old schoolgirl when I was seeking the advice of her father regarding the causes of tribal fighting in Enga province.

Only one of my electorate staff has yet gone on to become a member of the judiciary. Magistrate Reg Marron sits on the same bench as does my old friend from Young Labor and university days Chris Webster. I thank both of them for attending today.

There is no time to acknowledge and honour the work of each of my seven associates. I have spoken to most of them privately. But they all suffered trying to assist a technologically challenged judge with his legal research and having to proof his often overlong sentences. I am confident that they all will have fabulous legal careers.

But there is one very important person who worked with me I make an exception for. Mayda Flanagan has been my personal assistant for more than three decades. Mayda came to work for me in my electorate shortly after I became a member of parliament.

She made sure my constituents were heard and if possible their concerns addressed. Mayda returned to resume a role as my PA after my appointment to this court. Mayda and I rarely have to speak. We have worked together so long that she can telepathically anticipate my needs. My plans for retirement will have to start by
5 learning how to survive without the assistance of the twinned mind of Mayda Flanagan. Justice McElwaine has wisely retained Heidi White, my present extremely able associate, and Mayda Flanagan. He will not regret those decisions.

10 Finally I express my deepest gratitude to all of the judges of the court, but particularly those who have been able to travel to join Justice McElwaine and me on the bench in Hobart at this farewell and those attending remotely. I thank the Chief Justice for his generous remarks. A superior court of record is an orchestra of virtuoso soloists, yet it must cohere. Justice James Allsop's leadership and his
15 sometimes steel has somehow conducted his orchestra so as to cement the Federal Court of Australia's reputation as this nation's pre-eminent trial and intermediate appellate court.

I started this speech by acknowledging the central place that luck has played in my life. I end it the same way. Whenever I forget what I owe to fortune, I need only
20 walk 10 metres from here to Jennings Lane, named after the solicitor general who mentored me and gave me chances others never will have. From the brute fact that our life chances are far from equal, John Rawls developed his sophisticated philosophy and morality. He set out that philosophy in a book, A Theory of Justice. Rawls has influenced me, but in practice, I think that his sophistication adds little to
25 the simple guidance my mother gave my brother and I when we were young – that to lead a full life, some part must be given to the service of others. I did not go on to share my mother's faith, but if Mum is watching from on-high, I hope she thinks I adequately followed her advice. I thank you all very much.

30 ALLSOP CJ: The court will now adjourn.