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## TRANSCRIPT OF PROCEEDINGS

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O/N 162760

### FEDERAL COURT OF AUSTRALIA

### CEREMONIAL SITTING OF THE FULL COURT FOR THE SWEARING

### IN AND WELCOME OF

### THE HONOURABLE JUSTICE ROBERTSON

**THE HONOURABLE CHIEF JUSTICE PATRICK KEANE**

**THE HONOURABLE JUSTICE EMMETT**

**THE HONOURABLE JUSTICE STONE**

**THE HONOURABLE JUSTICE JACOBSON**

**THE HONOURABLE JUSTICE BENNETT AO**

**THE HONOURABLE JUSTICE EDMONDS**

**THE HONOURABLE JUSTICE COWDROY OAM**

**THE HONOURABLE JUSTICE BUCHANAN**

**THE HONOURABLE JUSTICE FLICK**

**THE HONOURABLE JUSTICE FOSTER**

**THE HONOURABLE JUSTICE NICHOLAS**

**THE HONOURABLE JUSTICE YATES**

**THE HONOURABLE JUSTICE KATZMANN**

**THE HONOURABLE JUSTICE ROBERTSON**

**SYDNEY**

**9.31 AM, MONDAY, 18 APRIL 2011**

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ROBERTSON J: Chief Justice, I have the honour to announce that I have received a commission from Her Excellency, the Governor-General, appointing me a judge of the Federal Court of Australia. I now present my Commission.

KEANE CJ: Mr District Registrar, would you please read the Commission.

THE DISTRICT REGISTRAR:

*The Commission of Appointment of a Judge of the Federal Court of Australia: I Quentin Bryce, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 72 of the Constitution in sub-section 6(1) of the Federal Court of Australia Act 1976 appoint Alan Robertson of Senior Counsel, learned in the law, to be a judge of the Federal Court of Australia, assigned to the Sydney Registry beginning on 18 April 2011, until he attains the age of 70 years.*

Signed and sealed with the Great Seal of Australia on the 7<sup>th</sup> day of April 2011, Quentin Bryce, Governor-General, by Her Excellency's command, Robert McClelland, Attorney-General.

KEANE CJ: Justice Robertson, I now invite you to take the Oath of Office.

ROBERTSON J: I, Alan Robertson, do swear that I will bear true allegiance to Her Majesty, Queen Elizabeth II, her heirs and successors according to law, that I will well and truly serve her in the office of judge of the Federal Court of Australia and that I will do right to all manner of people, according to law, without fear or favour, affection or ill will, so help me God.

KEANE CJ: Justice Robertson, I now invite you to subscribe the form of the oath which you have now sworn. Mr District Registrar, would you take the Commission and Oath of Office and place them with the papers of the Court. Before I invite the Solicitor-General for the Commonwealth to address the Court may I say, speaking on behalf of all the Judges of the Federal Court of Australia, that it is with the greatest pleasure and satisfaction that we welcome Justice Robertson to this Court. Justice Robertson has been a barrister for 28 years, for 16 of those years he has been Senior Counsel. During that time he has appeared in many of the nation's leading cases in the fields of constitutional, competition, administrative and taxation law. In this Court the deep well of his Honour's learning and experience will be constantly drawn upon to the great advantage of the Commonwealth and the people of Australia.

For 10 years he has been Convenor of the Administrative Law section of the New South Wales Bar. I mention this particular achievement among his Honour's many extra curial achievements because it highlights his Honour's deep involvement in that field of civil law which regulates the specific intersections between the Executive Government of the Commonwealth and the citizenry. I note that before Justice Robertson commenced practice at the Bar he spent two years working as

assistant to Sir Maurice Byers, the great Commonwealth Solicitor-General, whose work especially in those years when Alan Robertson, as he then was, was working for him contributed so much to the jurisprudence which reframed the relationship between the Commonwealth and the States and between government and citizens in Australia.

Lawyers tend to notice these things, these connections with the past, because they reflect the continuity of our legal traditions even in times of rapid change. But, Justice Robertson, we are excited by your appointment not by reason of the historical connections which your appointment invokes but because of your own attainments and attributes. You come to this Court as one of Australia's most eminent counsel and I have no doubt that you will enjoy the challenges of your new office, in the company of your new colleagues, as much as we will enjoy working with you. Mr Gageler, do you move.

MR S. GAGELER SC: If the Court pleases. I acknowledge the traditional owners of the land on which we meet and I honour their elders past and present. The Honourable Terence Cole QC was appointed in November 2005 to conduct a Royal Commission into the highly sensitive topic of the conduct of certain companies in relation to United Nations Oil for Food Programs in Iraq. The Commission held 70 days of public hearings before delivering its final report in November 2006. Each of those 70 days of public hearings was the subject of intense media scrutiny. A national newspaper reporting on one of them noted that a witness named "Snowball" had responded to a lawyer who had risen to ask him a question with a question of his own, "Who do you work for?" The newspaper report continued as follows:

*"It is of no concern to you, Mr Snowball," snapped the Commissioner. Mr Snowball, your obligation is to tell the truth no matter who asks you the question.*

No doubt seeking to capture the tension of the moment the newspaper report went on as follows:

*Terence Cole QC is known as one of the hard men of the law. He is sharp, he snaps, he asks withering questions but this was ugly. Snowball's barrister protested but Cole ordered the questioning to proceed but then –*

said the report -

*the mystery lawyer, Alan Robertson SC, courteously apologised to the man in the witness box, "I didn't hear the question, Mr Snowball. I represent the Department of Foreign Affairs."*

That rare public reporting of but a glimpse of his advocacy style illustrates much about the qualities Justice Alan Robertson now brings to the role of a Justice of the Federal Court of Australia; ever courteous, ever calm and never making an issue of something unless there was an issue to be made. As your Honour's first pupil and as

someone who has learnt from and admired your Honour personally and professionally for more than 30 years, I too am excited to be able to represent the Attorney-General and, through him, the Australian Government and the Australian people in welcoming your Honour to the Federal Court of Australia. There is none more obviously suited to the office to which your Honour is now appointed and there is none whose legal career has more closely tracked the development of the institution of which your Honour now forms part.

Your Honour was schooled in England. After a year at University College London you migrated with your parents to Australia. Your father, Captain David Robertson, was a British naval captain and barrister who had come to Australia to fill the role of Director of Navy Legal Services. Your Honour resumed your tertiary education at the Australian National University, graduating from the Australian National University for the first time in 1973 with a Bachelor of Arts with Honours. Your Honour then joined the Commonwealth Public Service where you spent the next five years with placements at Treasury, the Public Service Board and the Department of the Capital Territory.

In 1976, the year of the enactment of the Federal Court of Australia Act, your Honour returned to study part-time and later full-time at the Australian National University, graduating for the second time in 1980 with a Bachelor of Laws, again with Honours. Your Honour is, incidentally, the fifth graduate of the Australian National University Law School to be appointed to the Federal Court. In 1980, the year of the commencement of the Administrative Decisions (Judicial Review) Act your Honour commenced legal practice as an officer of the Attorney-General's Department, starting out in the Deputy Crown Solicitor's Office, and then moving to the prestigious Advisings Division. There you had the opportunity to work with very highly skilled and extremely knowledgeable public lawyers, including in particular Pat Brazil and Dennis Rose, all of whom worked intensively in constitutional and administrative law at a time in legal history when those fields were still little practised by lawyers outside the public sphere.

In 1981, whilst still an officer of the Attorney-General's Department, your Honour had, as the Chief Justice has already mentioned, the privilege of working as assistant to the then Commonwealth Solicitor-General, Sir Maurice Byers, indisputably the most effective and most well-loved advocate Australia has ever produced.

We are honoured today by the presence in Court of Lady Patricia Byers. Your Honour was with Sir Maurice in the heyday of the Tasmanian Dam case in the middle of 1983 and your Honour followed Sir Maurice to the New South Wales Bar when he concluded his term as Solicitor-General at the end of that year. Your Honour went on to have an enduring personal and professional relationship with Sir Maurice, often appearing as his junior over the next decade of his resumed practice at the New South Wales Bar. Sir Maurice is known to have been particularly fond of your Honour and would doubtless have chuckled with delight at news of your Honour's appointment.

Upon arriving in Sydney at the end of 1983, your Honour sealed your legal pedigree by reading with one William Montague Gummow. It is said that your Honour returned from Court – I should say a court other than the one in which your Honour is now sitting – one day to explain to your tutor that you did not think that you had learnt very much from the experience. “Yes, you did.” came the reply, “You learnt bad habits.” Your Honour retained only good habits from those early days of tuition. Your Honour learnt and has never failed to apply and has never failed to teach the benefits of thorough research of meticulous preparation and of rigorous analysis of the facts and the law. Without diminishing in any way your Honour’s other areas of specialisation which, as the Chief Justice has mentioned, significantly include competition law and revenue law, it is no exaggeration to say that your Honour was, from the beginning of your private practice in 1983 until last Friday, one of the leading administrative law and constitutional law practitioners in Australia.

Indeed your Honour has administrative law practice developed as the Federal Court’s administrative law jurisdiction itself developed. There is no significant development that has taken place in administrative law in the Federal Court at any time in the last quarter of a century with which your Honour was not involved in some significant way. There is scarcely a volume of the 188 volumes of the Federal Court Reports in which your Honour’s name does not appear. Your Honour’s ubiquity in administrative law as administered by the Federal Court is perhaps best illustrated by evidence elicited by your Honour in the mid-1990s during the hearing before Justice Beazley of a motion for an extension of time in which to commence proceedings challenging administrative action under the AD(JR) Act.

Justice Beazley, now on the New South Wales Court of Appeal, is I think also present and will doubtless verify the story. Your Honour for the respondent was cross-examining the applicant’s witness as to why he had not acted sooner. “Surely this is not the first time it has happened,” you put to the applicant’s witness. “No,” came the reply, “It has happened before.” “Well, what did you do that time?” your Honour asked. “I came to see you.”

1995 was the year your Honour was appointed Senior Counsel, a role into which your Honour stepped naturally and a role which your Honour performed with grace, distinction and exceptional generosity. Your Honour served, as again the Chief Justice has noted, for 10 years between 1988 and 2008 as the Convenor of the Administrative Law Section of the New South Wales Bar Association, followed by a further three years from 2008 as Convenor of the Constitutional and Administrative Law Section. Your Honour was also at all times an exemplary model of the open door policy of the New South Wales Bar, providing wise counsel to your many young and, I should add, not so young colleagues who sometimes queued to discuss their knottiest predicaments.

Your Honour’s reputation for legal skill and legal knowledge is second to none. Your Honour’s reputation for industry and integrity is second to none. Your Honour’s reputation for fairness is second to none. It was without hyperbole and to universal acclaim that in a speech given at a gathering to mark his retirement

from the Federal Court, the Honourable Darryl Davies referred to you already in 1998 as the doyen of administrative lawyers at the Sydney Bar. Your Honour spent five years as a member of the Administrative Review Council and an extraordinary 22 years as consultant editor of the CCH High Court and Federal Court Practice. When it comes to Federal Court practice, your Honour has literally written the book.

Your Honour is joined today by many admiring colleagues and by your close family. I single out only for special mention your wife Patricia; your children Joanna, Andrew, Hugh, Martin, Alexander and Alice and partners; your sister Jean and her family. On behalf of the Australian Government and the Australian people, I extend to your Honour Justice Robertson my congratulations on the commencement of this next phase in your distinguished legal career and I welcome you to the Federal Court of Australia. May it please the court.

KEANE CJ: Thank you, Mr Solicitor. Mr Westgarth, do you move?

MR S. WESTGARTH: May it please the court. On behalf of the Law Council of Australia, the 24,000 solicitors in New South Wales and the Law Society, it is a privilege and a pleasure to welcome your Honour to the Federal Court Bench and to congratulate you on your appointment. The President of the Law Council of Australia, Alexander Ward, regrets he is unable to be here today but he has asked me to pass on his personal congratulations and best wishes on your elevation.

We are very fortunate that the United Kingdom where your Honour spent your formative years was given no real opportunity to covet your intellect, expertise and skills. Your Honour was born in the historic maritime town of Fareham in the south-east of Hampshire. A Google search reveals nothing about that village other than it was one of the first towns in the country to be lit by electric light. There is no need to have on public record the year of your Honour's birth, suffice it to say, for those who share your Honour's interest in cricket, it was the year that the West Indies won its first ever Test Series against England. I have no doubt that your parents, the late Joan and David Robertson, would have been immensely proud to have witnessed today's ceremony, as is your sister, your wife Patricia and extended family, Andrew and Geetha, Joanne and Viv, Anne, Hugh, Martin, Alexander and Alice.

It is perhaps not surprising that none of your children have chosen to practice law although Andrew did pursue a legal path. From an early age, they were undoubtedly very aware of the long working hours involved in legal practice. An indelible holiday memory recalled by one of your Honour's offspring was that of Dad on a family holiday sitting under a palm tree in an idyllic location in Fiji, a Panama hat perched on your head but working on a gigantic pile of papers. Your Honour attended boarding school at Bradfield College in the UK. Your father was a barrister with the Royal Navy, often on the move. In the 1960s when he moved to Australia, Captain Robertson was Director of Navy Legal Services and, according to one report, was also noted for his steamboat hospitality by visiting naval personnel. I am informed that the steamboat reference relates to the Chinese traditional dinner table hotpot dish as opposed to any steam-propelled maritime vessel.

In keeping with the motto of the Fareham coat of arms, “Prest a faire”, translated from Old French as ready to serve, your Honour indeed has chosen to follow a career of service. Commencing an Arts degree in London, your Honour later joined your parents in Australia and graduated with a Bachelor of Arts with Honours in 1972 and a Bachelor of Laws with Honours in 1980 from ANU. As we have heard, your Honour was admitted as a legal practitioner in the Supreme Court of the Australian Capital Territory in 1980 and continued in various positions in the Commonwealth public service including Assistant to the then Commonwealth Solicitor-General, Sir Maurice Byers. In 1983, your Honour was admitted as a barrister of the Supreme Court of New South Wales where you read with Mr William Gummow, as he then was, now a Justice of the High Court. You had the privilege of working with a master of immense skill, intellect and knowledge.

In 1995 your Honour was appointed Senior Counsel, considered one of Australia’s leading counsel in constitutional and administrative law. Your Honour has appeared in every location of the Federal Court in Australia. Your Honour has provided expert opinions to Federal and State Government inquiries in relation to franchise law reform. These included providing opinions on the validity of the South Australian and Western Australian franchising bills. Your Honour has represented the Commonwealth at a number of significant commissions and inquiries such as the inquiry into Australian companies in relation to the UN Oil for Food Program before Commissioner Terence Cole in 2006, and the inquest into the death of the Balibo Five in 2007.

Your Honour has also represented the Commonwealth in the inquiry headed by former High Court judge, Ian Callinan, into the equine influenza outbreak, an inquiry that took six months, 80,000 documents, 2000 exhibits and 260 witness statements. Your Honour represented the public interest advocacy centre on behalf of Greg Kileen, a quadriplegic, who successfully took on the New South Wales Department of Transport, two Sydney companies and two vehicle conversion companies, to ensure all wheelchair accessibility taxis met the mandatory Federal Disability Standards for accessible public transport. As well as Convenor of the Constitutional and Administrative Law Section of the New South Wales Bar Association, your Honour has also served on the Administrative Review Council and has authored and consulted on various legal publications.

These include the Administrative Appeals Tribunal Practice, a publication described as the ideal resource for anyone who has dealings with the Administrative Appeals Tribunal, and various articles for the Administrative Review Council’s Law Bulletin. It has been said that it is the quiet ones that one needs to watch out for. Notwithstanding the extensive efforts of my spies, I have been unable to find any examples of any embarrassing conduct concerning your Honour. However, your Honour’s upright reputation didn’t stop a Sydney Morning Herald journalist from trying to conjure up an image of you reminiscent of a character in a Dickens or Peter Carey novel when reporting on your Honour’s appearance at the UN Oil for Food Program Inquiry. The Herald’s opening line read:

*A strange and rumpled figure had risen from among the lawyers to quiz the witness.*

This seems a rather unfair description, given that your Honour acquires your suits from the highly reputed Sydney tailor, J.H. Cutler. The word “strange” seems particularly inapt. Your Honour has been described by many colleagues and those who had briefed you as a real gentleman’s gentleman, a hard-working, trustworthy and honourable opponent, courteous, highly intelligent and possessing a dry sense of humour; all wonderful attributes for the bench and the task ahead. One colleague, while describing you as her favourite silk to appear with, did concede that she looked forward to appearing before your Honour because you would undoubtedly display the same incisive and unflappable characteristics that were apparent during your time at the Bar.

Upon learning of your Honour’s appointment, this colleague was quick to fire off an email to you. The subject line was simply a drawn-out, “Aarghh!” If this is any indication of her future appearances before your Honour, you can rest assured that her presentations will be succinct if a little unintelligible. In this case the writer was not expressing relief but emitting a cry of despair in the face of your imminent departure from the Bar. Unlike some members of the judiciary, your Honour is technologically savvy, loves gadgets and should have no problems with the court’s technology. On the home front, however, your Honour is not so deft when it comes to handyman chores and would prefer indulging in a night at the opera or theatre, tending to your wine cellar, burying yourself in a good book, exploring new travel destinations or downloading songs from the Internet.

On the other hand, rumour has it that map reading is not your Honour’s skill set and you’ve even been known to get lost driving home from the city. I believe your Honour also has a motorbike licence and, indeed, had a bike during your university days. On a holiday to the Red Centre your Honour rented a Harley-Davidson motorbike where you proceeded to give individual family members a spin around Ayers Rock. One hopes that your appointment to the bench will carry with it the desire to travel by more sedate modes of transport. Your Honour, on behalf of the Law Council and the Solicitors of New South Wales and the Law Society, I wish you every success in your new role. As the court pleases.

KEANE CJ: Thank you, Mr Westgarth. Mr Coles, do you move?

MR B. COLES: May it please the court. It is my very great pleasure to address the court on behalf of the New South Wales Bar Association and the Australian Bar Association. Each of those associations is delighted to herald the appointment to this Court of what, undoubtedly, is seen by all as Australia’s pre-eminent administrative law Barrister and a man who is well regarded, indeed, highly esteemed to an entire generation of counsel who practice in that and many other jurisdictions. Indeed, it is fair to say that one senses a real degree of appreciation of loss amongst many of your Honour’s admiring junior colleagues.

They have, of course, been able to console themselves with the ready acknowledgement that today's ceremony was a predictable, indeed, inevitable outcome of your Honour's distinguished success. As one of your former juniors has said of your Honour that in his view, "He," that is to say, your Honour, "always has been a judge." And it is your Honour's capacities of insight and judgment that have been the reason or the wellspring for production of the plentiful superlatives which form so readily from the mouths of those who know you well. Obvious such superlatives include descriptions such as urbane, disciplined, modest and, importantly for your Honour's new career, unfailingly courteous.

One of your readers with perhaps a knack for alliteration has described your Honour as constant, calm and confident and utterly unflappable. One senior counsel has observed of your Honour that, "He is the epitome of efficiency in preparation of opening address and cross-examination." Your Honour has been described as a precision-guided advocate. Australia's most pre-eminent appellate counsel has said of your Honour:

*His quietly spoken demeanour masks a very intelligent, very determined and very skilful advocate. Add to that a considerable knowledge of the Law, particularly in the constitutional and administrative areas, and he is –*

as most people in this room will know –

*a formidable opponent.*

Not to be outdone by the praise of the Bar, your Honour's numerous instructing solicitors have been effusive about your encyclopaedic knowledge of cases, your Honour's ready ability to call to attention cases directly in point, as well as your Honour's grasp of detail. There has been a high degree of praise for your thoroughly collaborative approach, and many of those with whom you have worked have praised and commented upon your Honour's insight and readiness to work through problems with the members of your team, and to listen to, and absorb and to take into account the views of others.

As noted earlier, the accolades to your Honour's knowledge of the law and forensic skills abound but, as has already been noted, a quest for copious examples of light-hearted anecdotes meet with a degree of relative resistance and a common refrain is that your Honour, said one man, is not a riotous individual. The Solicitor-General has mentioned your Honour's academic qualifications and your Honour's success both at school and university, and in particular has drawn attention, as all who know your Honour would, to the advantage that your Honour and doubtless Sir Maurice Byers himself had in relation to your Honour's early days of association with that pre-eminent advocate. Your Honour could not have had, many have commented, a better role model than Sir Maurice Byers.

Your Honour began practising at the New South Wales Bar in 1983. The records of the New South Wales Bar Association record your Honour's admission to the

association, proposed by Sir Maurice Byers and seconded by your then Pupil Master, Mr Bill Gummow, as his Honour then was. Your Honour purchased a room on ground floor, Wentworth Chambers, where your Honour remained for about two decades, moving in 2003 to the fifth floor of St James Hall Chambers where your Honour has remained until your Honour's appointment to this Bench. During the early years your Honour had at the Bar, your principal areas of practice, as have been noted, were in the sphere of administrative and constitutional law, but in time your Honour's prowess in the conduct of appellate cases has become very well known.

The early 1980s heralded something of a considerable boom in the growth and expansion of the administrative law areas of jurisprudence, and your Honour was well positioned with the coming into operation of the Administrative Decisions Judicial Review Act 1977 for the areas of practice and the opportunities which the commencement of that Act promoted with effect from the early 1980s. Your Honour was junior counsel to the Commonwealth Solicitor-General, Gavin Griffith QC in the *Spycatchers* case. Your Honour appeared in *R v Murphy*, *Georgiadis v The Australian and Overseas Telecommunications Corporation*, *Commonwealth v Evans*, *Deakin Industries*, to name but a few cases of significance in those areas.

Your Honour also made as counsel, a significant contribution in the area of the law of privilege and notable cases in this regard included the *Commonwealth v the Northern Land Council* and *Waterford v The Commonwealth*. Your Honour's particular insight into the areas of constitutional law and section 92 include such leading cases as *Cole v Whitfield* and *Street v The Queensland Bar Association*. Increasingly in recent years, your Honour has argued successfully for the Commissioner of Taxation in a number of High Court cases. These include, but of course are not limited to the *Commissioner of Taxation v Linta Textiles*, *Bluebottle v The Deputy Commissioner of Taxation*, *Raftland v The Commissioner of Taxation*, *W.R. Carpenter Holdings v The Commissioner of Taxation* and *The Commissioner of Taxation v Reliance Carpet Company*, all decisions which illustrate propositions of significantly more extensive importance than the particular issue of revenue law which they resolved for the immediate parties.

Your Honour's prowess at taxation law should not have come as a surprise, given early indications in the late '80s when your Honour appeared in a case called *Air Caledonie International v The Commonwealth* as junior to Mr Rodney Meagher QC, that being a constitutional case regarding whether an immigration fee was in fact a tax. Perhaps your Honour's early dipping into the experiences of the revenue law came as some measure of light relief from the emerging thicket of jurisdictional error.

Your Honour took silk in 1995. Bar News covered the Bar ceremony before the Court of Appeal when the then president of the Court of Appeal, Justice Kirby, addressed the silk, taking their bows, and spoke about his visit to the High Court in Bangalore. Your Honour, it is believed, would have been quite interested, perhaps more than others, because your maternal grandfather had practised at the Middle Temple and at the Calcutta Bar from around 1900 until shortly before the Second World War. Your Honour's father was at Gray's Inn and served as a military lawyer in the Royal Navy and was seconded to Lord Mountbatten's staff and, as has been

pointed out, it was he who brought his young family to this country in order to take up a position with the Department of Defence Legal Service.

Your Honour has given your time and expertise freely for the benefit of the whole of the Bar and in particular the junior Bar. It was, it is, I should say, significant that your Honour the Chief Justice and others have pointed specifically to your Honour's crucial role in founding the administrative law section of the New South Wales Bar Association. Later, it might be added, absorbing the constitutional section when the Convenor of that body took up appointment as Solicitor-General for the Commonwealth. It is very much to your Honour's particular credit that the administrative law section has been and remains amongst the most vigorous and successful sections of the Bar Association and one that has operated continuously since its inception.

It was through your Honour's relentless energy and enthusiasm that the section has arranged, over the years, very interesting programs of seminars with substantial speakers and indeed, highly successful dinners. Other organisations that have benefited from your Honour's expertise were the Administrative Review Council and the Law Councils Administrative Law Committee. Your Honour has, as has been pointed out, also appeared before a number of commissions of inquiry and public inquiries generally. Your Honour has, with absolutely no fanfare, conducted a number of pro bono cases and your Honour has otherwise given full time, attention and effort to the practice of the Bar throughout your Honour's entire career.

Your Honour is indeed well recognised in a profession not given for manifestations of particular sloth, as a phenomenally hard worker, but your Honour has managed always to balance your Honour's practice with family commitments. It is said that your wife once took you on a cruise out of the range of mobile telephones so that you couldn't be contacted, but your Honour's particular skill and ingenuity was put to use and your Honour managed to find a fax machine on board the ship and at some expense, managed to communicate with your secretary some urgent amendments to an advice then nearing completion. Your Honour's IT skills have often been noted, to the admiration of your numerous juniors, most of whom have not had that experience with other silks by whom they have been led. One junior observed that your Honour was the first silk she knew that could actually edit a document and return it with comments, all via email.

Through your Honour's appointment to the Federal Court, this Court has gained an exceptionally skilled lawyer with comprehensive experience in virtually every facet of the Court's jurisdiction, whether migration, customs, taxation, trade practices, corporations or any area of speciality one might like to name. But those particular areas of speciality do not exhaust your Honour's general range of capacities. Your Honour's experience and commitment to the law extends over the entire variety of statutory and general law jurisdiction which this Court administers, and the Bar

congratulates your Honour on your Honour's appointment and wishes you every success in your new office. May it please the Court.

KEANE CJ: Thanks, Mr Coles. Justice Robertson?

ROBERTSON J: Chief Justice, Judges of the Court, distinguished guests, my family, friends, colleagues, ladies and gentlemen. I thank those who have spoken: the Solicitor-General for the Commonwealth, Mr Westgarth and Mr Coles; any hyperbole is permitted and pardoned just for this morning. And I say *any* hyperbole because Justice Margaret White said recently, in effect, that one of the differences between men and women is that men do not recognise flattery but believe any compliment automatically.

I have practised, as you have heard, mainly in this court, and I have regarded this court as my professional home. I have been in cases in most, if not all of its jurisdictions, and in a few where the question was whether it had jurisdiction at all. It has more now than it had then. Indeed, as I understand it, the court only does not have general jurisdiction in federal matters because the court was not seen as the place to have cases involving collisions with federal telegraph poles and running down cases involving federal post office vans. Federal jurisdiction can, of course, be very complicated. I, myself, have never been unduly troubled by identifying it. I have proceeded on the robust basis that if I was in a case then it was very likely to be in federal jurisdiction.

The Federal Court Reports post-dated the establishment of the Court by some years. But I was interested to see that I appeared in a case in volume 1 with WMC Gummow, with whom I was reading, as you have heard, and most recently, at least thus far, in a case reported in volume 189. That suggests that I was at the Bar a very long time ago or that too much is reported or both of those things.

The first case in the Commonwealth Law Reports where I was listed as appearing was Clunies-Ross in 1984; a section 51(31) case. I was led by one AR Emmett and by Sir Maurice Byers QC and despite these advantages, we lost. I, of course, no longer have any opinion on whether the case was rightly decided.

I have appeared in all the registries of the court in the capital cities of all the states, in the Northern Territory, and of course Canberra in the ACT. And I have appeared before each of the three Chief Justices and most of the Judges of the Court.

I was alarmed to read recently in a new book of the importance of written submissions to "identify viable issues in what are often chaotic hearings accompanied by excessive and largely irrelevant evidence and documentation". I was somewhat relieved to find that the provenance of the book was North America. It hasn't been my experience in this Court to date and I will do my best to prevent it becoming the case in the future.

I want to say something briefly about my family. My parents sadly died long ago but my father was still alive when I took silk in 1995. With pride he came to the silks' dinner at the High Court in early 1996.

My parents both regarded England as home, although my mother was born in Calcutta. Neither of them went to university, both going into the Navy in the dark days in Europe of 1944/1945.

They both had very strong ideas of service of helping others: my mother in a more directly personal way; my father in their many works for Legacy and other charities and public organisations. They were both fine people and service to others was a guiding principle for them. I have tried to bring this ethos of service to my professional life.

As you have heard, my father was a naval officer first but in the 1950s studied law part-time in London and, as you had to do then, ate his dinners. Thus he was also a barrister although he never practised privately as such. He was a member of Gray's Inn and acted in many courts martial when an officer of the Royal Navy.

Although I didn't realise it for many years, my mother's father was also a barrister; a member of Middle Temple, and practised in Calcutta from about 1903, as you have heard. When I visited Calcutta two years ago I was shown records of the Calcutta Bar describing him in the 1920s as occupying the Office of Deputy Legal Remembrancer. To my obvious inquiry I was told it was "the Crown side".

None of this was present in my mind when I decided in 1975 to study law. I had previously studied English Literature, as you have heard, first in London and then at the ANU. So I am a strong believer in the relationship between clear thought and clear language. I was looking over the weekend at George Orwell's famous essay, Politics and the English Language, but I can't attempt to match his parody which began "The Fascist octopus had sung its swan song".

Indirectly K.E. Enderby QC was responsible for my interest in the law. He was Minister for the Capital Territory in 1973 and I was working in that department. The government decided there should be residential rent control and price control of certain goods, which I will come back to, in the ACT. The Landlord and Tenant Ordinance 1949 was revived as well as a Price Control Ordinance. The first case that I ever read was Rathborne v Abel, decided in 1964; a rent control case. Thus I came to be exposed to the analytical and linguistic skills of Sir Garfield Barwick who wrote the main judgment. His analysis of the statutory language and his own muscular prose were revelations to me as a student of English. I decided I should learn more and began my legal studies at the ANU in 1976.

You will be pleased that only the necessities of life were the subject of price control orders in Canberra in 1973 and those good were petrol, bread, milk and beer.

Among my teachers at the ANU Law School were Leslie Zines, Geoff Lindell, Paul Finn, David Hambly and a little later, Phillipa Weeks, to name just some. I thank them all as inspiring teachers.

As you have heard, on moving to Attorney General's, I was under the direction of Dennis Rose QC, then headed the Advising Division; a great lawyer of intense analytical skills.

To return to Sir Maurice, I worked with him as Solicitor-General on many cases between 1981 and 1983 and benefited immeasurably from what I then learned. He was a man of large intellect, large vision and wide interests, although those interests did not extend to reading novels. He thought radically and in relation to the Constitution he said we must sit as students and understand what it teaches us and what it says without imposing on it what we want to hear. He wrote in a distilled way, sticking close to those radical issues he had identified and dispensing with non-essentials. And of course he also had great charm. He was very proud of *his* Patricia, Lady Byers.

There is indeed an historical connection between this court and Sir Maurice. At the 13<sup>th</sup> Legal Convention of the Law Council of Australia in Hobart in 1963 there was a paper given by Byers QC and Toose QC called *The Necessity for a New Federal Court*. Sir Kenneth Bailey, then Solicitor-General, said that the Attorney General, Sir Garfield Barwick, had been working for some time on this question and had Cabinet authority to design a new Federal Court. You can see all this in the *Australian Law Journal* at the time.

As to those who helped me at the Bar I thank all of those who briefed me; all of those with whom I worked as counsel; the leaders from New South Wales, from Queensland, sometimes of course both states at once, and from Victoria. I also thank those gifted junior counsel on whom I have depended and from whom I have learned.

I was told, not of course by WMC Gummow, that life in the first year at the Bar was like life in the Army: long stretches of boredom interspersed with moments of sheer terror. I never found it so but as I have said, I practised mainly in this court under a gentler regime, not being exposed to the jocular brutality, as Maurice once described it, of the old Supreme Court of New South Wales.

I thank my secretaries and my clerks on Ground Floor, Wentworth Chambers, where I was for nearly 20 years, especially Angela Noakes. For the last eight years on 5 St James Hall, I thank my clerk, the inimitable and indefatigable Paul Daley. I thank also my secretary, Fiona, and the staff on 5 St James, Danny and Carolyn.

To those of you thinking of coming to the Bar, you need stamina, capacity to work hard and to deliver that work punctually, but you also need an element of good fortune. As to my good fortune at the Bar, I did numerous cases, often broadcasting cases, instructed by very good lawyers at a particular large firm. Years later the first of those lawyers to brief me, now John Griffiths SC, casually remarked to me that he had first briefed me by mistake. I have not inquired further into the nature of the mistake or the causes of it.

During my period on 5 St James over the last eight years I have much enjoyed the friendship and the companionship of Bret Walker, Tony Meagher, Peter Garling, Lindsay Foster, Noel Hutley and more recently Kieran Smark and Richard Lancaster.

I have said nothing about the members of my family who are here today. I don't want to embarrass them or myself so I will say no more than that I am very proud of each of them and their achievements. Of course without *my* Patricia I would not be here. She is the rock on which the family stands.

I am keen to embark on the work of the Court and without speaking of course of present members of the court, I shall do my best to follow those before whom I have appeared and who, to my eyes, were masters: Justice Lockhart, Justice Lehane, Justice Davies and Justice Hely, to name but some.

I have been asked why go to the Court now and there are perhaps many reasons. But let me end with two short stories.

In the middle of argument in *Tasmania v Commonwealth* in 1983 the Solicitor-General's Office was moved from the administration building to the brand new Robert Garran offices. When I was in Canberra for a case last year with Stephen Gageler, that new building, finished in 1983, had been demolished. This had a chilling effect on me. I thought that the cycles of life were getting shorter. There was less time than I had thought.

The second and last story is that four years ago, as you have heard, 2007, I was briefed in an inquest into the death of one of the journalists in Balibo, some 30 years before in 1975. I had a very bright and capable assistant from the Australian Government Solicitor and we were thinking about the evidence. And I said to him, Andrew, just remind me, who was the Minister for Defence in 1975? A quizzical look passed his brow and the short answer was, "I was three."

I have been very much buoyed by the support of those who have written and emailed and telephoned me since the announcement of my appointment. With that support from the profession I look forward to being able to contribute to the essential work of the court.

You honour me and, more importantly, the Court by your attendance today. Thank you all.

KEANE CJ: Thank you, Justice Robertson. The court will now adjourn.