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JUSTICES OF THE HIGH COURT
OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME

THE RIGHT HONOURABLE SIR GARFIELD EDWARD JOHN BARWICK,
G.C.M.G., CHIEF JUSTICE.

THE RIGHT HONOURABLE SIR HARRY TALBOT GIBBS, K.B.E.

THE RIGHT HONOURABLE SIR NINIAN MARTIN STEPHEN, K.B.E.

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ATTORNEY-GENERAL:

SENATOR THE HONOURABLE PETER DREW DURACK, Q.C.

OPENING OF THE HIGH COURT BUILDING AT CANBERRA

On Monday, 26th May 1980, the High Court of Australia Building was formally opened by Her Majesty the Queen, in the presence of a great and distinguished assembly including the members of the Diplomatic Corps, Ministers of State for the Commonwealth, Senators and Members of the House of Representatives, Premiers and Attorneys-General of the States, Chief Justices and Justices of Courts of the Commonwealth and other countries, the Chief Justices, Chief Judges and Judges of Federal, State and Territory Courts of Australia, the President of the Conciliation and Arbitration Commission and a large number of members of the bars and the solicitors' profession of Australia.

After the ceremonial entry to the Public Hall of the Chief Justices and Justices of Courts of the Commonwealth and other countries and the Chief Justices, Chief Judges and Judges of Federal, State and Territory Courts and the Justices of the High Court, the President of the Senate (Senator the Hon. Sir Condor Laucke), the Speaker of the House of Representatives (The Rt. Hon. Sir Billy Snedden, M.P.), the Deputy Prime Minister (The Rt. Hon. J. D. Anthony, M.P.), the Attorney-General (Senator the Hon. P. D. Durack) and the Leader of the Opposition in the House of Representatives (The Hon. W. G. Hayden, M.P.), The Queen, accompanied by His Royal Highness Prince Philip, was received at the main entrance of the Building by the Chief Justice (The Rt. Hon. Sir Garfield Barwick). Her Majesty accompanied by the Chief Justice, and Prince Philip accompanied by the Prime Minister (The Rt. Hon. J. M. Fraser, C.H., M.P.), were conducted to a dais erected at the east end of the Public Hall.

The Chief Justice then addressed Her Majesty in the following words:—

May I at once express to Your Majesty the great pleasure and deep and respectful gratitude felt by my brothers of the Bench and by me that you, Ma'am, have so graciously come here today to declare this building open for the use of the High Court of Australia. We would express to you our continuing loyalty to your throne and our affection for you personally. May I say on behalf of the Court how pleased we are that His Royal Highness has been able to join you and us in today's celebration.

We are glad to have with us on this dais the Prime Minister, the Presiding Officers of the Parliament, the Deputy Prime Minister, the Attorney-General of Australia and the Leader of the Opposition.

This large and representative audience includes the Dean and members of the Diplomatic Corps, Ministers of the Crown in the Federal Government, Senators and Members of the Parliament, Premiers and Attorneys-General for the States, Chief Judges of Federal and of Territorial Courts and Chief Justices of the Supreme Courts of the States as well as other Judges of those several Courts and the President of the Conciliation and Arbitration Commission.

Prominent in this audience are senior appellate Judges from sixty countries of the world who have been in conference throughout last week in Sydney. These distinguished jurists include thirty-one Chief Justices of Commonwealth nations who will be meeting in conference here tomorrow and Wednesday. That the wives of most of those whom I have mentioned are in attendance with their husbands adds to our pleasure and to the occasion.

The Chief Justices, Chief Judges and Judges as well as the visiting appellate Judges have all very kindly consented to wear their robes of office, thus adding to the dignity, and emphasizing the importance, of this ceremony. Present also are retired Justices of this Court and their wives and widows of Justices of the Court who died in office.

Representatives of the professional organizations of lawyers in Australia as well as members of all branches of the practising profession, representatives of various facets of Australian life, including the universities, representatives of industry and commerce, and of the Aboriginal people, are all present. The National Capital Development Commission, responsible for the construction of this building, the architects who planned it and supervised its erection and the building company which constructed it are all represented here. The artisans and workmen who laboured so skilfully to produce this building with its excellent finish and whose names are to be recorded on a panel to be attached to a wall in this hall also have their representatives present.

My brothers of the Bench and I are most grateful for the attendance of all these whom I have mentioned and of the presence of so many others whom I have not mentioned. To all we extend our welcome and express our pleasure that they have by their attendance underlined the historic significance of the day. For this is a great and historic occasion for Australia and for the Court: and, Ma'am, if I may say so, your presence with His Royal Highness gives to it supreme importance.

May I now ask the Prime Minister to speak to the occasion, after which I will resume my remarks.

The Prime Minister then addressed Her Majesty in the following words:—

Today marks a further step in the evolution of our nation. For today, in our national capital, in close proximity to the Federal Parliament, and to those buildings which house the executive arm of Government, we are giving a permanent home to the High Court of Australia.

Now, for the first time, the three great institutions of the Commonwealth, wherein reside its legislative, executive and judicial power, are brought together with a visible presence in our national capital.

To add to this sense of history, we are privileged, your Majesty, and honoured, to have you perform the opening ceremony.

For my Government, and for the people of Australia, it is a distinct pleasure to welcome you and his Royal Highness to our midst. Both of you, and your family, enjoy a deep respect and a warm affection from all Australians.

Little more than fifty-three years ago, when Canberra was a forbidding environment compared to its beautiful setting today, your late father, then Duke of York and later King George VI, officiated at the inaugural sitting of our Parliament in this city.

Since then, buildings which house the executive Government have inevitably been drawn to Canberra. Today, with your opening of the High Court building, the seat of the nation's supreme judicial body, Canberra becomes even more so our national capital.

The High Court of Australia is of special importance to all Australians — a vital element in our Federal constitutional system. This system involves a division of powers and it is a fundamental function of the High Court to pronounce upon the boundaries of these powers. The Court performs this function by express direction from the Constitution itself. It may seem strange that the High Court, which is so essential to the structure of our democracy, should acquire a permanent home only in the eightieth year of our nationhood.

Over the years, sittings of the High Court have been held in State capital cities. And each year, sittings have been designated to be held in every State. And yet, even now, Sir Garfield will not be saying to his brethren: "Oh rest ye brother mariners, we will not wander more". For the sittings of the Court will not be entirely confined to Canberra.

But the decision of 1968, by the Government of the day, means that the national court will now have its home in the national capital. In all, four Federal Governments have played a part in its establishment. But to bring the project to fruition has required a special

impetus. As my predecessor, Mr. Whitlam, acknowledged, when unveiling the foundation plaque in September 1975, the driving force behind the concept has been the present Chief Justice of Australia. This building bears testimony to Sir Garfield's vision, energy and imagination, and will stand as a memorial to the high standards of Australian designers and builders; craftsmen and artists. It is a building which will attract a growing national pride as the years pass. All too often, in the design of modern buildings, we are left with a functional result with little else to commend it. On this occasion, the pursuit of function and excellence has been rigorous and successful. Indeed, "I submit", that function and excellence can co-exist, as this magnificent structure proves, "beyond reasonable doubt"; or at least, "on the balance of probabilities". Today we celebrate the completion of a home worthy of the institution it is to serve; and we are grateful to all those whose skill and dedication have made this possible.

Now, the three arms of Government, in their inter-dependent and independent roles, will be made manifest to all. And those who reflect, will recognize that the presence amongst them of the judicial power, is an affirmation of the permanence and supremacy of the rule of law. For, in the final analysis, this is but a building: a means whereby the Justices of the High Court of Australia, as their oath of office requires, shall: "Do right to all manner of people, according to law, without fear or favour, affection or ill-will"

Your Majesty, this is a momentous occasion for us all. We are delighted that you and so many distinguished guests have been able to share it with us.

In this way, you have secured for this day, an indelible place in Australia's history.

The Chief Justice on behalf of himself and the Justices of the Court thus addressed Her Majesty:—

Eighty years have not yet fully passed since your great-grandmother, Ma'am, Queen Victoria, made her proclamation of 17th September 1900, bringing into existence the Commonwealth of Australia as on and from the first day of January, 1901. That Commonwealth represents the embodiment of the people of Australia in an indissoluble federal union under the Crown. The *Constitution Act* of the Imperial Parliament which authorized that proclamation granted the new Commonwealth its Constitution, alterable only by the will of the people of Australia expressed through the Parliament and a referendum of electors. The Constitution provided for a Federal Supreme Court to be known as the High Court of Australia, about which naturally a little more needs to be said on this occasion.

In 1901, your grandfather, Ma'am, then Duke of York, later King George V, opened in Melbourne the first Parliament of the Commonwealth. On the wall to your right, as you will have observed as you approached this dais, hangs the canvas painted by the great Australian painter, Tom Roberts, portraying that opening ceremony.

In the years which have intervened since 1901, that Commonwealth has progressed from a self-governing colony to its present status as an independent nation, internationally recognized. It is a member of the Commonwealth of Nations of which you, Ma'am, are the head. It is a founding member of the United Nations.

The economy of that Commonwealth has developed upon a base of primary production, agricultural and mineral, to include nowadays a highly developed industrial complex, not merely providing a great part of the needs of the people of Australia for manufactured goods but having a significant export of such goods to various markets of the world.

Its population has increased from little more than three million to more than fourteen million people due in part to the admission of migrants from Europe and Asia as well as from the United Kingdom.

So much has occurred, both in political and in economic terms, in so short a span of time: and largely by the energy and enterprise of the Australian people themselves.

The federal nature of the Australian Constitution involves the assignment to the Parliament of legislative power with respect to designated topics, leaving with the constituent States the residue of power, subject always to the terms of the Constitution itself. All valid laws of the Parliament, no matter what their subject matter or the particular legislative power which supports them, are paramount over all laws of the States which are inconsistent with such federal laws. For the resolution of the boundaries of the distribution of power between the Commonwealth and State and between State and State, and of other constitutional questions, including questions of inconsistency between federal and State laws and the meaning and operation of the constitutional guarantees of freedom of trade, commerce and intercourse between the States, and of freedom of religion, the Constitution provided for the establishment of the High Court. The judicial power of the Commonwealth was exclusively vested by the Constitution in that Court and in the other federal courts established by the Parliament or which are invested with such power by the Parliament. Neither the Parliament nor the executive may under any guise whatsoever exercise the judicial power.

In 1903, by the *Judiciary Act* of that year, the Parliament made the necessary provision for implementing the Constitution by inaugurating the High Court. Pursuant to that statute, a Chief Justice and two Justices were appointed. In Court No. 1 in this building hang portraits of the first Chief Justice and the first two Justices. Outside Court No. 1 there is a mural, the gift of the Australian Bar Association, commemorative of the occasion when the Chief Justice and Justices assumed office.

The number of Justices has been increased by the Parliament on two occasions, at first to five including the Chief Justice and later to seven including the Chief Justice, at which number it now stands. On the dais with you, Ma'am, are all seven members of the Court presently in office.

The Constitution gave to the High Court jurisdiction to hear appeals from other federal courts and courts exercising federal jurisdiction and from the Supreme Courts and certain other courts of the States. Thus, the High Court has jurisdiction to hear appeals from the courts of Australia, some coming as of right and others by its special leave, in all matters. In fact, the work of the Court as a general court of appeal occupies and has always occupied the greater part of its time. The Court has thus had and has used the opportunity thus afforded to bring uniformity to much of the law operating in Australia, a great part of which has been inherited by or made by the States. Its work in this respect has added considerably to the development of a sense of unity in the Australian people: and will, I am sure, continue to do so.

From the inception, the Court had, and has been grateful for, the assistance of the learning, wisdom and experience of their Lordships of the Privy Council except in cases involving the distribution of power between the elements of the federation. In those cases, to use the language of the Constitution, cases involving questions inter se of the constitutional power of those elements, the Court's decision is by the Constitution made final unless the Court certifies the case to be one proper for decision by the Crown in Council. In practice, with but one exception, such cases have been finally decided by the Court itself.

But since the passage by the Parliament of two statutes, one in 1968 and the other in 1975, no appeal may now be brought from the High Court to the Crown in Council in any case whatsoever with the exception of a case involving an inter se question which the Court certifies as proper for decision by the Council. Though as yet appeals in matters of purely State concern may be taken direct from certain State courts to the Privy Council, what the High Court decides in any case binds all the courts in Australia in point of precedent in all cases.

The Court has thus become the final court of appeal in Australia in all matters. Apart from the possibility of appeals to the Crown in Council from State courts in matters of exclusively State concern, the Court is at the apex of the judicial systems of Australia, that of the Commonwealth and those of the several States as well. It thus has great authority. Its authority extends through the whole gamut of the law, constitutional and general. From here on, the Court will finally determine the common law in Australia, affecting as it does the daily lives of the citizens.

You will have observed, Ma'am, that on the doors by which entry to each courtroom is obtained, a design of shields is displayed. This emphasizes the Court's role in providing for the citizen a shield against all invasion of individual right and all infraction of the Constitution.

According to the Constitution, the seat of Government of the Commonwealth was to be established in territory within the State of New South Wales but possessed by the Commonwealth and distant at least one hundred miles from the City of Sydney. In 1909, an area of some 910 square miles was ceded to the Commonwealth by the State of New South Wales and became the Federal Capital Territory, known since 1938 as the Australian Capital Territory. Within that territory the City of Canberra has grown; and within that city the seat of Government of the Commonwealth has been sited since 1927.

In that year, your father, Ma'am, then Duke of York, later King George VI, opened the first Parliament to sit in the national capital. Since 1927 the Parliament has always met in Canberra and the executive government has progressively operated its major departments of state in and from this city. You have yourself, Ma'am, on three separate occasions, 1954, 1974 and 1977, opened the Parliament in this city.

Since 1927, Canberra, slowly at first but with increasing rapidity since 1950, has developed to the point where, now adorned by Lake Burley Griffin, it is one of the beautiful cities of the world. Its population has grown to a quarter of a million people; its facilities both material and cultural are now of a good order. It is a place of which Australians are increasingly becoming proud. It now occupies a secure and vital place in the life of the nation.

In 1968 the Australian Government decided that a building be built in Canberra to house the High Court. Evidently it was felt that, having regard to the increasing maturity and prosperity of the nation, the time was ripe for seating the High Court in the national capital. Steps were then taken to select a site and a design for a building for the Court's exclusive use. Burley Griffin, whose plan for Canberra has generally been followed, sited the High Court broadly in the area which surrounds this building, particularly the area to the east. The present

site was chosen after a decision to build a Parliament House on the shores of Lake Burley Griffin had been abandoned. It was decided that the Court building, facing the lake, should stand apart, as it were as an island, well separated from adjacent buildings in order to emphasize both the independence and the unique character of the Court. This has been achieved. This building does stand apart. It is well separated from its neighbouring buildings. It was felt that the National Gallery would make a congenial neighbour for the Court, particularly as the National Library is the nearest building to the Court on its western side.

As the result of an Australia-wide architectural competition in which there were some 158 entrants the design of this building was chosen by a committee consisting of Sir John Overall, then Chairman of the National Capital Development Commission; Mr. E. H. Farmer, then Government Architect to the State of New South Wales; Mr. Daryl Jackson, a prominent architect in practice in the City of Melbourne; Sir Peter Karmel, Chairman of the Australian Universities Commission; and myself as Chief Justice of Australia. The choice of the winning design was unanimous. The committee's recommendation was accepted by the then Government of Australia. Mr. Kris Kringas headed the group of architects which designed the building. Unfortunately, his untimely death denied him the satisfaction of seeing the completion of his creation. His widow, may I say, is present here today and a tablet near this dais commemorates her husband.

After development of the design, particularly in the matter of the internal finishes of the building, as, for example, the panelling of the courtrooms, a contract for the construction of the building was let in 1975. Work commenced that year. The construction and furnishing of the building has occupied the intervening five years. The building is now ready for occupation. I need not take time to describe it, for you, Ma'am, have today seen its principal features, and others in this audience will later inspect it. Suffice it to say that it is a noble building, not copied from classical models but Australian in its use of light and space. It is appropriate to satisfy the national sentiment and the international standing of the Australian people. It provides a fitting embodiment of the Court, emphasizing its national significance and its independence. It is well suited to express the supreme importance of the law and of the Constitution in the life of the nation. It is a standing reminder that the law, its just administration and its observance by the citizen are fundamental to the maintenance of civilized life and the mutual freedom of Australians.

It is further to be observed that this building as designed is not readily, if at all, capable of extension. Therefore the eventualities of

the future have had to be considered and provided for. The building has not been built for today alone but as well for the tomorrows yet to come.

Until now, the Court in the exercise of its jurisdiction has used premises owned by a State. Now, for the first time, it will occupy premises built and owned by the Commonwealth. The Court has heretofore sat principally in Sydney and Melbourne, visiting the capital cities of Tasmania, Queensland, South Australia and Western Australia once each year for a brief time principally to hear cases originating in those States.

I might mention in passing that the Court has presently resolved that, though seated in Canberra, if sufficient business to warrant the Court's attendance is forthcoming, it will visit the capitals of those four States at appointed times for the hearing of appeals.

By reason of the passing last year by the Parliament of the *High Court of Australia Act*, the Court now has the control of this building and its precincts, the appointment and control of its staff and the management of its own finances which will be provided directly by the Parliament by a single line in the national budget, that line resulting from a budget proposed by the Court itself. The independence of the Court in the exercise of its judicial function is secured by the Constitution. Now the Court has the maximum independence in the management of its own affairs which can be given to it under our system of government.

I have referred to the development of Australia, its accession to national independence and international recognition. I have mentioned its economic growth. I have emphasized the importance of the High Court in the national life.

It is now appropriate, as it seems to me and has appeared to the Parliament and the Executive Government, that the High Court should be seated in the national capital, and its supreme importance emphasized by such a building as that in which we now are.

With the occupation of this building by the Court all three organs of Australian government — the Parliament, the Executive and the Court, "the keystone of the federal arch" as Alfred Deakin, an early Prime Minister of Australia, described it — will be found at the seat of government here in the national capital.

Justice, Ma'am, is not administered in the name of the Parliament, nor in the name of the Government, but in the name of the Crown. All crime is prosecuted in the sovereign's name. The Crown in this respect represents the people of our country, all the people, not merely

the majority or some of them. The Crown through its own unique quality thus emphasizes and expresses the unity of our people, ignoring their divisions, whether they be social, economic, ethnic or political.

Earlier I mentioned some of the occasions when you and your family, Ma'am, have been associated with events in the development of this Commonwealth and of Canberra in particular.

If I may say so, Ma'am, it is thus doubly appropriate that you should today perform this historic ceremony, further associating your throne and your family with this country and this place and with the administration of justice. Here, in this building in the national capital, the Constitution is to be interpreted and maintained, the liberties of the people safeguarded and even-handed justice under law administered in the sovereign's name without fear or favour, affection or ill-will.

And now, Ma'am, may I respectfully ask you to speak to us and to declare this building open for the use of the Court on behalf of the Australian nation.

Her Majesty spoke as follows:—

It gives great pleasure to me and to Prince Philip to be here in Canberra for the opening of this new building for the High Court of Australia.

This morning we inspected its principal features — the courts, the provisions for practitioners, and the library, chambers and other facilities for the Justices. It was all very impressive. I warmly congratulate everyone who took part in this enterprise — those responsible for the original idea and for seeing it through to completion, the architects who designed the building and the civil engineers who constructed it. By their imagination, energy and care, they have created an excellent environment for those who will use the Court, as well as a structure that will command attention and excite interest.

For the High Court of Australia is at the pinnacle of the judicial system of Australia. It has a special place under the Australian constitution, serving both as a final Court of Appeal on matters of general law and as arbiter on constitutional issues. The Court has a critical and sensitive role in the federal compact that binds the Commonwealth of Australia, determining the law not only between citizen and citizen, and between citizen and executive government, but also between the governments that constitute the Commonwealth of Australia.

We should remember today Chief Justice Griffith and Justices Barton and O'Connor, who constituted the High Court of Australia in 1903, and with their successors defined the role of the court, in accordance

with the constitution, and established for it a fundamental place in the national life. I am pleased to pay tribute to the Judiciary of Australia — including the Judges present today and the Justices of this Court in particular — for the admirable way in which they discharge their onerous responsibilities.

The law of the land is a priceless inheritance and it secures the liberties which, as individuals and as a nation, we prize. In times of social change and tensions in the world, great are the demands upon the courts and the challenges to them in reconciling competing interests and in accommodating traditional rules to new circumstances.

The High Court of Australia has earned great respect, both within Australia and beyond, and it is recognized as a court of the highest eminence amongst the courts of the nations. I am therefore very pleased that so many Chief Justices and Judges from many other countries, including members of our Commonwealth of Nations, have taken the opportunity to be with their Australian colleagues on this special occasion. Their presence is a reminder of the importance of the law in the life of all nations and in international relationships. The law is one of the most effective meeting grounds for Commonwealth countries. Commonwealth Law Ministers were recently together in Barbados and Commonwealth Chief Justices are even now gathering for a meeting in Canberra.

Prince Philip and I have watched with great interest over the years the development of Canberra as a city combining natural beauty with the functions and symbols marking its place in the nation. Today, for the first time, the High Court will occupy and control its own building in the national capital. It thus has a physical embodiment, taking its place at the seat of government with the Crown and Parliament. This building symbolizes its unique and independent nature and provides a reminder of the place which the law and its administration rightly occupy in the life of our people. A new page will be turned in the history of Canberra and I am delighted to be here to see it written.

The development of Canberra has been matched by the great changes that have occurred throughout Australia. The people of Australia can take pride in the steady growth of our country, which they see reflected in the capital.

I am very pleased to declare this building open for the use of the High Court of Australia.

The Chief Justice then presented to The Queen a medallion to commemorate the occasion.

The Queen accompanied by the Chief Justice and Prince Philip accompanied by the Prime Minister and followed by other members

of the official party left the dais and, having been joined by their wives, walked to the forecourt of the Building where The Queen planted a tree and viewed the waterfall.

The Chief Justices and Justices of Courts of the Commonwealth and other countries and Chief Justices, Chief Judges and Judges of Federal, State and Territory Courts of Australia left the Public Hall in procession and were presented to Her Majesty and His Royal Highness.

The mode of citation of this volume of
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CORRIGENDA

- 147 C.L.R., page 246, headnote, line 10: For "fill" read "file".
- 147 C.L.R., page 259, headnote, line 23, *Re Aper*: Add reference 35 F.L.R. 388.
- 147 C.L.R., page 259, headnote, line 24: For "*Re Wood; Ex parte Amalgamated Metal Workers' and Shipwrights' Union* (1980), 54 A.L.J.R. 557" substitute "*Reg. v. Bowen; Ex parte Amalgamated Metal Workers' and Shipwrights' Union* (1980), 144 C.L.R. 462".
- 147 C.L.R., page 269, footnote (15): Add reference 35 F.L.R., at pp. 406-407.
- 147 C.L.R., page 297, headnote, line 5: Omit "in" (where first occurring).
- 147 C.L.R., page 299, footnote (6): (1980) 144 C.L.R. 55, at p. 60.
- 147 C.L.R., page 338, footnote (46): For "239-239" read "238-239".
- 147 C.L.R., page 340, catchwords, line 6: For "*Patents Act 1951*" read "*Patents Act 1952*".
- 147 C.L.R., page 340, last line: For "*Patents Act 1981*" read "*Patents Act 1952*".

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