

Speech Given at the Ceremonial Sitting for the Swearing in of Justice Kennett

21 March 2022

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Supreme Court of the Australian Capital Territory

Justice Kennett

10 Attorney, Justice Gageler, judges and magistrates, other distinguished
guests, family, friends and members of the profession. I thank the
speakers for their kind words and for emphasising my good points
without completely straining limits of plausibility, and for glossing over
my associated weaknesses. Newly-appointed judges are, as you will
15 know, generally a thankful lot, and most of what I have to say today is
by way of acknowledging important people in my journey here.

Thank you first, and especially, to Mr Daly for your welcome to
Ngunnawal country. I acknowledge the first people of the land on which
20 we meet and I pay my respects to their elders, past and present. I
acknowledge that the Aboriginal proposals of this country never ceded
their sovereignty of it, and that the justice system, of which I now form
part, has often given them the opposite of justice. These things need
to be said at ceremonies like this, and never, as you say, Mr Pappas,
25 never in a perfunctory or formulaic way.

The Chief Justice spoke at her swearing-in ceremony the week before
last of the great emergency that is the over-representation of Aboriginal
people in the criminal justice system. That is one of many ways in which
30 life in this country for its first peoples is, to put it very mildly, not what it
should be. This is not something to be fixed by the provision of social
services, although they are needed and important.

The pain of dispossession, destruction of culture, frontier violence that
35 is only now being fully brought to light, and decades of outright
discrimination, echoes down through the generations, and that is not
only a massive burden for Aboriginal people to carry. It is a weight on
our nation's mind and a cloud over its heart, something our polity needs
to make right before we can truly be comfortable and relaxed.

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The method and the content of that reckoning with the past are way
beyond my expertise and beyond my proper province from today, but it
has to start, I think, with showing respect and meaning it, which is why,
when we conduct ceremonies on this land, it is important to
45 acknowledge the people who occupied it, understood it intimately, and
cared for it for countless generations before Europeans came, and
who are still here among us.

5 This country has been important in my life. I grew up in Hughes in the Woden Valley. I remember the song of magpies in the morning as I walked to the school bus and being swooped by them in spring, and I remember the gentle hum of a lawnmower heard from half a suburb away which served to emphasise how quiet Canberra was on Saturday afternoon.

10 I used to look out over the limestone plains to the mighty Brindabellas where I wanted to be a lot of the time. I spent many weekends in those hills, walking, hanging out with friends, and climbing on sun-warmed granite. It's usually sun-warmed granite in my memory, although in fact it was often freezing cold.

15 In my early 30s, after a couple of attempts, a friend and I found our way to the magnificent stone arrangements at the top of Mount Namadgi. Of course, we didn't know the old stories of that place, and we felt slightly tentative about being there, but it was a powerful place, nevertheless, a wild rocky mountain top among thickly forested valleys and slopes. We stood and thought of the old people, who took the time to go up there year after year, to affirm their connections with their country and with each other. This love of getting out into the natural world has remained with me.

25 As you have heard, I studied law very close to this spot at the Australian National University. The teachers there are next in the long list of people that I need to thank. I think especially of John McMillan and Dennis Pearce who taught me administrative law; Geoffrey Lindell, who very thoughtfully taught me constitutional law; Paul Finn, later Justice Finn of the Federal Court who supervised my Honours thesis; and the later Phillipa Weeks who tried to teach me about property. They might not have inspired me to study very much for the exams, but they planted seeds that eventually bore fruit.

30 They conveyed a sense of the law as an interconnected set of principles, or at least a sense that that's what the law should be. Their example made me want to think as deeply as I could about how the law works, particularly the law that controls our governmental institutions, and to have some small role in the articulation of that law.

40 Later, I was lucky enough to find my way into the Attorney-General's Department where I worked in the Office of General Counsel. I learned to write an opinion from great government lawyers like the late Dennis Rose QC, and the late George Witynski QC who was my boss for most of the time I was there. I am very pleased that George's partner, Peter, who was also an inspirational colleague in those days,

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is here today, along with some other former colleagues from the Attorney-General's Department.

5 Government lawyers play an important and often unnoticed role in our legal system, and I am very glad to have been one. Working in General Counsel was immensely satisfying. Among other things, it gave me the opportunity to put on a wig and go to court. The first court I appeared in was the High Court, which is rather unusual, not that I had a speaking role, of course. That came much later. I realised then that what I really
10 wanted to do was to be in court and to argue cases and to try to deal with those difficult questions from the Bench.

I became counsel assisting the Solicitor-General, a fantastic job, where I got to work closely with Gavin Griffith QC for his last year as
15 Solicitor-General. Since then, Gavin has become a sought after arbitrator all over the world, but he is luckily in Australia at the moment and is also here today. From there it seemed inevitable that I would go to the Bar, even though I had enjoyed my time in Attorney-General so much and was sad to leave.

20 I arrived in Sydney where I knew hardly anyone and set about trying to build a practice. I had good tutors when I started at the Bar, John Marshall, a fine commercial barrister and later silk, got me into some good meaty commercial cases with lots of documents. That helped my
25 cashflow a lot, and I learned something about how to get your head around a complicated factual case; how to marshal the evidence; and, of course, how to do schedules of objections. John's detailed chronologies were legendary. Unfortunately, John has had to retire from practice because of ill health and is not able to be here. I will
30 refrain, albeit reluctantly, from public discussion of my other tutor, Stephen, now Justice Gageler, as he may soon be called on to mark my work.

At the risk of straining convention, I will mention one current practitioner,
35 Neil Williams of senior counsel, who encouraged me to go to the Bar and became my unofficial third tutor when I did so. Our wives were close friends, so it was inevitable that we would spend a lot of time together, and luckily we became close friends as well. In his quiet way, Neil has been a very significant figure in the Australian legal profession.
40 I am one of probably dozens of barristers that he has guided to success over the years.

From 2003, by my reckoning, until this morning, I practised on the Tenth
45 Floor of Selborne and Wentworth Chambers. I thank my colleagues there for their company and advice and for putting up with having a reserved public lawyer in their midst. I thank my clerks on the floor,

initially the unflappable Di Strathdee, and more recently, the amazing powerhouse, Emma Houlihan, and all of the chambers staff.

5 You may have noticed that all of the professional mentors and role models I have mentioned are men. That reflects the make-up of the profession in the early years of my career. There were very few senior women at the Bar practising in areas that I was interested in, and the best were recruited to the judiciary at an early age. That is changing, albeit gradually. Now I see a solid cohort of female silks and a growing
10 number of incredibly talented female juniors. It has been a pure joy to work with some of them, and I should add, with some of the men too, but I will not embarrass people by mentioning names.

15 When I became a silk, I decided that the least I could do was, when asked who I wanted as my junior, give the solicitor a shortlist in which at least half the names were women. The challenge for the Bar and the courts is getting these brilliant lawyers to stay and not move off to do other things. If the profession can become roughly 50 per cent female at all levels, I think that will quite significantly change the way lawyers
20 think about their work and our expectations of each other.

I genuinely loved being a barrister, at least most of the time. Sometimes the cases were a bit dreary, but I always used to say it beat having a job. Now, I've given away that freedom and taken on significant
25 responsibility, but before I say more about that, I have to complete my list of thank yous with the most important ones.

30 My parents were born in the 1930s to families that were far from well off, when Australia was still clawing its way out of the Great Depression, and when they were children war came. Their upbringings were so austere and lo tech as to be almost incomprehensible to us now. They were part of a generation of young, educated, progressive people that eventually propelled Australia out of its mid-century, narrow-mindedness, through the excitement of the Whitlam years, and into the
35 sunlit uplands of the 1980s and 90s. I hope that my generation will eventually be able to say that we left the country as prosperous, egalitarian and tolerant as it was when we found it.

40 My parents worked hard to provide my brother and me with material comfort, intellectual stimulation and educational opportunities well beyond what they themselves had known. My father died last month. He would have very much liked to see this day. My mother lives on the north coast and is not able to be here today, but if she has managed to get her computer to behave, she will be watching the live feed. So, too,
45 my brother Duncan who has lived in England these last 20 years. It was great that he was able to visit us over the summer, despite the pandemic.

5 It is just over 30 years since my wife, Winsome, and I, decided to spend our lives together. Our relationship has anchored me and made me better. She reshaped her career to move to Sydney, put up with me working barrister's hours and set me straight on many issues. I chose very well all those years ago and I hope that she thinks so too.

10 Our children have lit up our lives and continue to do so. Rowan, who studies philosophy, is here today with his partner, Paris. His older sister, Grace, and her partner, Luke, are watching on-line. They have a good excuse. They are at home in Dubbo with their daughter, May, who is three weeks old today. Grace, I should say, was already winning our family Facebook Messenger group where we share photos because her job normally is looking after elephants at Western Plains Zoo.

15 Now, I said that I would say something about joining this court. It's going to be particularly interesting for me to be part of a court whose jurisdiction is general. My practice has sometimes been described as broad, but I tend to think of it as rather specialised, and I'm very aware
20 that I'm going to be exposed to a lot more of life's rich tapestry than I am used to seeing, and I'll be dealing with facets of the law which I've not looking at for some time.

25 I'm sobered by the responsibility that I'm taking on to do justice to all manner of people in cases that affect them deeply. Judges always need the assistance of the profession, even if they sometimes appear not to, but in my case the need will be obvious. I'm very much looking forward to that learning process. I am also excited to be joining a strong and energetic court. My colleagues have reputations that extend well
30 beyond the borders of the territory and they are nice people, to boot. Perhaps my one regret today is that my old friend, Associate Justice McWilliam, has absented herself from today due to a lurgy that she didn't want to give to the entire profession.

35 Finally, to end where I started, I'm happy to be coming back and spending more time on this beautiful piece of country and serving its people. It has better restaurants and many more apartment buildings than when I left, but it still has relatively manageable traffic, great weather and the mountains on the horizon. Thank you.
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