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TRANSCRIPT OF PROCEEDINGS

O/N H-59979

ADMINISTRATIVE APPEALS TRIBUNAL

CEREMONIAL SITTING OF THE TRIBUNAL FOR THE SWEARING

IN AND WELCOME OF THE HONOURABLE JUSTICE KERR AS PRESIDENT

THE HONOURABLE JUSTICE KERR, President
THE HONOURABLE JUSTICE KEANE, Chief Justice of the Federal Court of Australia
THE HONOURABLE JUSTICE BUCHANAN, Presidential Member
DEPUTY PRESIDENT S.D. HOTOP
DEPUTY PRESIDENT R.P. HANDLEY
DEPUTY PRESIDENT D.G. JARVIS
THE HONOURABLE R.J. GROOM, Deputy President
DEPUTY PRESIDENT P.E. HACK SC
DEPUTY PRESIDENT J.W. CONSTANCE
THE HONOURABLE B.J.M. TAMBERLIN QC, Deputy President
DEPUTY PRESIDENT S.E. FROST
DEPUTY PRESIDENT R. DEUTSCH
PROF R.M. CREYKE, Senior Member
MS G. ETTINGER, Senior Member
MR P.W. TAYLOR SC, Senior Member
MS J.F. TOOHEY, Senior Member
MS A.K. BRITTON, Senior Member
MR D. LETCHER SC, Senior Member
MS J.L REDFERN PSM, Senior Member
MS G. LAZANAS, Senior Member
DR I.S. ALEXANDER, Member
DR T.M. NICOLETTI, Member
DR H. HAIKAL-MUKHTAR, Member
DR M. COUCH, Member

SYDNEY

9.32 AM, WEDNESDAY, 16 MAY 2012

KERR J: Chief Justice, I have the honour to announce that I have received a commission from her Excellency, the Governor General, appointing me as President of the Administrative Appeals Tribunal. I present the commission.

KEANE CJ: Mr Registrar, would you read the commission aloud, please.

REGISTRAR: I, Quentin Bryce, Governor General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, and under subsection 6(1) of the Administrative Appeals Tribunal Act 1975, appoint the Honourable Justice Duncan James Colquhoun Kerr a judge of the Federal Court of Australia as president of the Administrative Appeals Tribunal for a period of five years, beginning on 16 May 2012, dated 10 May 2012, signed Quentin Bryce, Governor General, by her Excellency's command, Nicola Roxon, Attorney General.

KEANE CJ: Justice Kerr, I now invite you to take the affirmation of office.

KERR J: I, Duncan James Colquhoun Kerr, do solemnly and sincerely promise and declare that I will be a true allegiance to Her Majesty, Queen Elizabeth II, her heirs and successors according to law, and that I will well and truly serve her in the office of President of the Administrative Appeals Tribunal, and that I will faithfully and impartially perform the duties of that office.

KEANE CJ: I now invite you to subscribe the affirmation which you have now taken. Mr Registrar, would you keep these with the papers of the Tribunal. Congratulations.

KERR J: Thank you very much.

KEANE CJ: Mr President.

KERR J: Thank you. Mr Dreyfus.

MR DREYFUS QC MP: Thank you, your Honour. First, may I acknowledge the traditional owners of the land we meet on, and pay my respects to their elders, both past and present. It is a great honour to be at this special sitting of the Administrative Appeals Tribunal to welcome your Honour, Duncan Kerr, as a judge of the Federal Court of Australia, and as the president of this Tribunal. The Prime Minister, the Honourable Julia Gillard, and the Attorney-General, the Honourable Nicola Roxon, very much regret that ministerial commitments have prevented their attendance here today. They both asked that I convey their warmest congratulations to your Honour.

Your Honour joins the Tribunal today in the midst of a renewed career as a barrister, and after a distinguished career in federal politics. In embarking on this new role, your Honour made it through a selection process more strenuous than the average job application. In 2008 the Attorney-General formalised the government's policy for federal judicial appointments to ensure greater transparency and public confidence in the process. This meant that your Honour's expression of interest was assessed by an

advisory panel, including no less than Chief Justice Patrick Keane, Sir Gerard Brennan, and Justice Jane Matthews.

This distinguished panel considered a very large number of candidates and made recommendations for the Attorney-General's recommendation. It follows that your Honour's appointment reflects the high regard your legal colleagues have for you, and your aptitude for Tribunal leadership. I would like to take a moment to emphasise this point by agreeing with Michael Kirby who, in opening the chambers named after him in Hobart in 2010, outlines the reasons he had for his high regard for your Honour's abilities. He said this, and I quote:

I have a special reason for confidence in the future success of the members of Michael Kirby Chambers. Duncan Kerr appeared before the High Court in a case that was concerned with higher constitutional principle, administrative law, and natural justice. Not all parliamentarians can successfully make the transition from politics to the court room, but Duncan Kerr not only succeeded in his advocacy, he greatly impressed us by his command of the authorities, skill, in argument and responsiveness to questions. As it turned out, the case, Plaintiff S157, was one of the most important in recent years for its affirmation of the centrality in our constitutional law of the Rule of Law.

Michael Kirby was, of course, predicting success for your Honour in practice, but his comments are equally apt to predict success in your Honour's judicial career. I am pleased to see so many of your Honour's family here to share this special occasion; your partner Anna, your brother Jim, your son Hamish and his partner Jessica – are all in attendance, as well as members of Anna's family. I particularly acknowledge those who have made the journey across Bass Strait to be with us today.

It is notable that, in accepting this appointment, your Honour will be only the second Tasmanian appointed to the Federal Court, and it has been over 25 years since that appointment. Your Honour is also the first president of the Administrative Appeals Tribunal to be appointed from a state other than New South Wales, Victoria, or Queensland. I am pleased to report that your Honour is a particularly authentic Tasmanian, having completed all levels of schooling on the Apple Isle. Your Honour attended Claremont Primary School, Claremont High School, and Hobart Matriculation College; these have been described to me as "battlers" schools.

Many of your Honour's teachers had served in our armed forces during the Second World War, including your English teacher, Mr Williams, who instilled in your Honour a love of English literature. Your Honour graduated from the University of Tasmania with a Bachelor of Laws in 1975, and then completed a Bachelor of Arts in Social Work at the Tasmanian College of Advanced Education. Growing up in Tasmania, I understand that your Honour received much guidance and support from your family, who offered you the lessons of their very varied life experience. Your Honour's grandfather, James Kerr, was a Scottish master at sail in the Merchant Navy, until he was invalided out after World War One. James Kerr was a committed

socialist all his long life, and I understand a formative influence in your Honour's childhood.

Your Honour's father, who shares your name, had fought in the Pacific War, and met and married your mother Gertrude in post-war Japan. Your Honour's mother was an American medical scientist posted to assist in the reconstruction of medical facilities in Hiroshima and Nagasaki. After the war, your Honour's father became an engineer in the Tasmanian Hydro Electric Commission. Your Honour grew up very much aware of the challenges of hydro industrialisation, forestry and dams – debates that continued into your more than 20-year service as the member for Denison.

Your Honour's career as a politician began, as many do, with student politics. Your Honour served as President of the University of Tasmania union, at a time when debate was raging about the Vietnam War and conscription. Your Honour went on to be elected to the House of Representatives as member for Denison in 1987. Your Honour served on the Labor front bench, both in opposition – I should say in Government, then in opposition, and then in Government again, and on more parliamentary committees than I am able to list. I am sure if the Attorney-General were here she would remind us that you are among her predecessors in that role.

During your time as Minister for Justice, you secured passage of the Commonwealth Evidence Act and the Criminal Code Act in 1995, which I am not sure every lawyer in the room would thank you, but with which you will now have ample opportunity to re-familiarise yourself. Your Honour was deeply involved in political life in Canberra and Tasmania and beyond. Recently, for improving relations between Australia and France in your role as Parliamentary Secretary for the Pacific, your Honour was awarded the French decoration of Chevalier in the Légion d'Honneur by the French ambassador.

I should now turn to discussion of your Honour's impressive legal career, but I feel the need for some light relief, as I am sure your Honour must, from time to time. In your spare time, your Honour is what might be described as a cricket tragic; this is a term that has been applied to other politicians as well. The tragedy in your Honour's case is perhaps your membership of the cricket team known as the Hobart Thylacines. And for those of you in the room who are not Tasmanian, Thylacine is the biological name for what we colloquially refer to as the Tasmanian Tiger. The cricketers thylacines have an average age of above 60, and share with their namesake the motto, "Almost extinct".

Your Honour shares the love of bushwalking with your partner, Anna. I understand you are particularly fond of the Bay of Fires and the Maria Island walks. I am told your Honour also enjoys another Tasmanian icon, Gillespie's Ginger Beer. The story goes that a Hobart lad started Gillespie's to support his unwell parents, and I understand you were shrewd enough to introduce him to a female member of your electorate staff, ensuring their lifelong happiness and perhaps your lifelong supply of ginger beer. I shall return to discussing the law, your Honour's first love, after cricket and politics, that is.

I am pleased to report that during your Honour's political career your Legal Practising Certificate was never allowed to lapse. Your Honour took silk in Tasmania in Tasmania in 2004 while serving as the federal member for Denison. In the beginning, your Honour decided to pursue a legal career after a political defeat in the federal election for the seat of Braddon, some 10 years before your Honour ultimately entered the Federal Parliament. Your Honour was taken under the wing of the then Tasmanian Solicitor-General, Roger Jennings, who became your Honour's mentor and friend. Mr Jennings involved your Honour in significant national and international cases from very early in your career. In fact, your first appearance after admission was with Roger Jennings in the High Court in Melbourne before Murphy J.

Your Honour was sent alone to Washington DC to defend a serious legal challenge that would have cut down the growing Tasmanian poppy industry. Later, your Honour relocated to Port Moresby to spend three years as Dean of the Law School at the University of Papua New Guinea, also advising the Ombudsman Commission of Papua New Guinea on the anti-corruption and administrative law. Your Honour has recently renewed your PNG connection by appearing in a constitutional case there.

After retiring from the Federal Parliament, your Honour established the Michael Kirby Chambers in a historic sandstone building in Hobart in late 2010. I understand your Honour has valued opportunities to mentor junior barristers at chambers and undertake pro bono work. Michael Kirby himself travelled to Hobart to open the chambers, and his remarks expressed confidence and high hopes in your endeavour. I have already noted Michael Kirby's comments about your Honour's work on Plaintiff S157. Your Honour united a diverse group of people to work on that case, developing complex legal argument in a very short amount of time. I am sure that in the current fiscal climate the attorney-general will be very pleased to hear of your ability to operate quickly.

Your Honour leads a Tribunal, the mandate of which is to provide review that is fair and just and also economical, inform and quick. Your Honour's appointment of president of the Administrative Appeals Tribunal has been lauded by both sides of politics. The shadow Attorney General, George Brandis, described your appointment as the culmination of a lifetime's work in the law. He said you would, and I quote:

Bring a degree of insight and understanding of the workings of government, which few senior barristers have.

I agree wholeheartedly with Senator Brandis as to your professional qualifications and I can also add, from personal experience, that your Honour's abundance of, what we call, people skills will be the icing on the cake for the Tribunal. In closing, I should tell your Honour that I bear personal best wishes of federal ministers and members of the Federal Parliament on both sides, many of whom have already directly congratulated your Honour but some of whom ask me to convey their sentiments to you when they learned that I would be speaking at this welcome and I am pleased that - and your Honour will be pleased that you are joined by a number of your

Honour's former colleagues from the Federal Parliament. Your Honour, on behalf of the Prime Minister, the Attorney General, the Australian Government and the Australian people, I extend my congratulations on your appointment to this high office. I welcome you to the bench of the Federal Court of Australia and to the presidency of the Administrative Appeals Tribunal.

KERR J: Thank you very much, Mr Dreyfus, much appreciated. Mr Catanzariti, please.

MR CATANZARITI: May it please the Tribunal. When Sydney songwriter Pat Alexander first composed the song I'd Like to Have a Drink With Duncan in 1974, little did he know it'd become a national hit when Australian country legend, Slim Dusty, recorded it seven years later, nor did he envisage it being the slogan for a concerted advertising campaign in 1987 that would ultimately unseat the incumbent federal member for Denison, dubbed the mouth from the south, the Honourable Michael Hodgman AM QC. As the election result showed, the public did give their vote to Duncan because Duncan was their mate. Today, as we celebrate your elevation as president, it is a privilege to add my remarks on behalf of the Law Council of Australia and its constituent bodies. Your Honour has an extensive curriculum vitae that points a picture of a career dedicated to the law, academia and service to the public within Australia and the Pacific. Your father, as we have heard, served in the armed forces during the second world war and your mother was part of the medical reconstruction team in Hiroshima and Nagasaki looking after the medical problems caused by atomic bombs. Your parents met in such dark circumstances. After they experienced the desolation and misery of post-war Japan, it only seemed natural for them to come to live in Tasmania where your Honour was born.

Growing up in Claremont, in the northern suburbs of Hobart, your Honour has remained loyal to your working class base. The depth of your intellect, humanity and fair mindedness and decency has seen your Honour come out strongly as a human rights campaigner and champion of the underdog, the latter ably demonstrated by your partisan support for the St Kilda Football Club. Your Honour studied law at the University of Tasmania and then undertook a post-graduate degree in social work. After working briefly as a social worker with the Tasmanian Education Department, your Honour began your career in service of the law in 1980, as crown counsel in Tasmania. It was during this year, you were also admitted to practice in the High Court of Australia. Your Honour began your legal career apprenticed to Roger Jennings QC and, only weeks after admission, you were led by him appearing for Tasmania before the High Court in the Attorney General for the State of Victoria v Commonwealth, a seminal case concerning the prohibition in the Commonwealth constitution on laws establishing religion.

Your Honour's Tasmanian upbringing evidently stood you in good stead when you commenced work at another island jurisdiction. In 1982, you commenced lecturing in constitutional and administrative law at the University of Papua New Guinea and, shortly thereafter, were appointed to dean of that institution. During your time in Papua New Guinea, you also worked and private practiced and authored an annotated

guide to the constitution of Papua New Guinea. Given your Honour's passionate concern for social justice and your evident abilities, it was perhaps inevitable that you would gravitate towards a career in politics. In 1987, you stood for the seat of Denison, representing the Australian Labor party. At that time, party pundits said that Denison was unwinnable. Nevertheless, your insurgency was successful and you became the first Tasmanian to win a seat for the ALP in more than a decade. You went on to hold Denison for 23 years, three different governments and eight parliaments. Your Honour served the people of Australia under the Hawke, Keating and Rudd Labor governments and during this time, your Honour held a number of Commonwealth Government ministerial positions. Your Honour served as Attorney General for 26 days, holding the portfolio while Michael Lavarch's re-election was delayed by the death of an opposing candidate.

As Minister for Justice, your Honour was to work closely with Attorney General Lavarch over the subsequent years. Your Honour and the Attorney became close friends, enjoying a degree of personal and professional trust that is only seen rarely in parliament. It was as Minister of Justice that your Honour shone, making significant contributions to the legal profession and broader Australian community during your remarkably adventurous in Australian public life. Paul Keating's regiment speech and the Mabo and Wik decisions occurred during your Honour's tenure as Minister for Justice and you worked with the Attorney General to confirm the existence of Native Title. As Minister for Justice, your Honour pursued reform of the legal aid system and expanded the network of community legal services. Your Honour also supervised the development and settled the content of the Keating Government's justice statement. Your Honour has resolved to help those within society who are least able to help themselves, which was reflected in the reforms and policy initiatives outlined in the justice statement. In the foreword of that statement, the then Prime Minister, Paul Keating, said:

The reforms and policy initiatives outlined in the justice statement are designed to make access to justice a reality for all Australians. The justice statement is an integral part of the government's broad reform agenda to build a stronger and fairer nation and to ensure that all Australians can share equally in the benefits of Australian society.

The Law Council of Australia, on behalf of the Australian legal profession, thanks you for your significant contribution to driving reform in relation to the legal assistance sector within Australia. Your Honour also instigated major reforms in copyright and administrative law and was a driving force behind a law commission - reform commission report - on improvements to freedom of information laws. Your Honour introduced and secured passage of the Commonwealth Evidence Act 1995 and in the Criminal Code 1995, secured the passage of legislation to courier child sex tourism and comprehensively restructured Commonwealth law enforcement arrangements. Following the 1996 election, your Honour spent a somewhat frustrating 11 years in opposition. You were a formidable shadow minister during this time, holding such portfolios as immigration, environment, justice and the arts.

However, your Honour had kept your practicing certificates of barrister and it was in this capacity that you were part of significant legal accomplishment.

Your Honour was leading counsel in the landmark High Court decision of *Plaintiff S157 v the Commonwealth*, which cemented the availability of judicial review of Commonwealth administrative decisions. S157 is now recognised as one of the seven most far reaching and influential of the High Court's decisions on constitutional matters in the past century. This decision, which guaranteed the rights of citizens to challenge unlawful or invalid decisions of government, is one of your most enduring legacies. The election of the Rudd Government gave your Honour a second chance to serve as a member of the executive. In 2007, your Honour was appointed parliamentary secretary for Pacific Island 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. You are an important advocate of improved interpersonal relations between Australia and the Pacific Islands, a region you knew very well from your earlier career in Papua New Guinea. The special ties your Honour developed with Pacific French territories and the French saw you were awarded the highest distinction in France, the Knight in the Order of the Legion d'Honneur, presented in August last year. More recently, your Honour has been appearing in the Supreme Court of Papua New Guinea on behalf of Michael Somare in the context of its escalate pressures on the independence of the judges of that court.

You continued to be engaged as a member of the legislature during the Rudd Government. A particular point of interest, given today's proceedings, is that in 2010, your Honour introduced a Private Members' Bill for parliamentary judicial misbehaviour or incapacity commission bill, which your Honour said aimed to give some certainty in parliament when considering alleged impropriety by federal judges. Your bill has formed the basis for the government's proposed mechanisms to investigate the removal of judges, which is currently before parliament. In 2009, your Honour announced that you would not be contesting the next election. Your Honour quietly remarked that the Labor part could hold Denison with a fair, average or even poor candidate. I am informed that Andrew Wilkie begs to differ. Nevertheless, this perhaps demonstrates the depth of your constituent's affection for you and the role, your personal standing had in Labor during those 23 years. Following retirement, your Honour returned to the bar, practicing from Michael Kirby Chambers in Hobart. Your Honour commented that you are embarking upon a third career. The Tasmanian bar must be sorry that your third career was so short but I am very glad to celebrate the start of your fourth. It is clear from what I have said that your Honour brings an unparalleled diversity and quality of professional experience and expertise. A staunch defender, an advocate for human rights, your Honour also brings compassion, balance and a conviction to the Federal Judiciary.

In a recent newspaper article on 13 April, your predecessor, the Honourable Garry Downes is quoted as saying:

I would like my successor to be a judge of excellence in the judging role but also somebody who has an interest in and is prepared to become involved in administration and dealing with government.

Indeed, your Honour has excellent credentials for the role as a senior barrister, academic, former member of parliament and a government minister. Such experienced insight should all go well for the annual process of recruiting Tribunal members. There are many colleagues, friends and community members who are here to celebrate your appointment today and to issue every success in your judicial role, not least your partner Anna, son Hamish and step-daughters Sophia and Alex. On behalf of the Law Council of Australia, I wish your Honour a distinguished and fulfilling service in the Tribunal and into the court. As the Tribunal pleases.

KERR J: Thank you very much, indeed, Mr Catanzariti. Mr Estcourt.

MR ESTCOURT: Your Honour, I understand Ricky Ponting a little better now, batting at number three after two great openers is not easy and I think - I fear, at least - that my innings may be a little shorter than I had otherwise wished. Your Honour, as a colleague and a friend of over 35 years, it is a singular pleasure as well as a great honour to welcome you today on behalf of the Australian Bar Association and to congratulate you on your appointment as a judge of the Federal Court and president of the Administrative Appeals Tribunal. Your Honour, it is hard to imagine how you might be better suited to fulfil this most important office of president of the AAT. Your Honour has degrees in law and also in social work. You have been a lawyer since 1977. You were a member of the House of Representatives for 23 years from 1987 and, as both as a lawyer and a parliamentarian, you have achieved a very high level of distinction, as we have heard already this morning. As a lawyer, you have been crowned counsel in the Tasmanian Solicitor General's office and I note the Tasmanian Solicitor General, at least the present Tasmanian Solicitor General, is here today, your Honour, to welcome you as well.

You have been dean of the Faculty of Law at the University of Papua New Guinea. You have been the principal solicitor for the New South Wales Aboriginal Legal Service and you have also been a legal officer in a community legal service; a great breadth of experience. Since 2004, you have been eminent still. Most recently, again as we have heard, representing Sir Michael Somare in the Supreme Court of Papua New Guinea in relation to the validity of Sir Michael's office as Prime Minister. As a member of Federal Parliament, you served notably as Attorney General, Minister for Justice and, more latterly, as the parliamentary secretary for Pacific Island affairs. You have also published extensively, including your Honour's book *Building Democracy in a Globalised World*, which continues to influence the thinking of those interested in the expansion of democratic rights around the world. As a barrister, you have acted as counsel in the High Court, Federal and Family Courts of Australia, the Supreme Court of New South Wales and the Supreme Court of Tasmania and, of course, your Honour is no stranger to the Administrative Appeals Tribunal itself. As well as very considerable experience as a criminal lawyer and perhaps what might now be called a good old fashioned common lawyer,

your Honour also brings to the presidency of the AAT very great experience in constitutional and administrative law cases, including, as we have heard, several important cases in the High Court and the full Federal Court.

Your Honour was, as has been noted, lead counsel for the successful plaintiff in the High Court in Plaintiff S157 and it should be noted that that case has been described by Robert Lindsay, writing in the Australian Institute of Administrative Law Forum, as ranking with the Boilermakers case, the Engineers case and the Australian Communist Party case as a most significant development in constitutional jurisprudence of Australia. But perhaps, your Honour, what is more important than the decision in that case itself is your Honour's motivation for your pro bono representation of the plaintiff. You took that case on because you were convinced that legislation that removed all right of judicial review in refugee cases was not merely cruel and wrong but was also an affront to the rule of law.

This courage and decency were also your Honour's hallmarks as a member of parliament. You served in cabinets that were responsible for confirming the existence of Native Title after the Mabo and Wik decisions, for reforming legal aid and expanding community and women's legal services, for ending the shameful prosecution of homosexual men and for criminalising overseas child sex tourism. Your Honour's courage was also evident as far back as 1987 as we have already heard this morning, when you defied the cautious Australian Labor Party national office in order to run your very own unorthodox election campaign with great success.

As it has been said already, it is not well-remembered now that you purchased the rights to Slim Dusty's song and redubbed it on various advertising radio spots during the election campaign. Neither has there been much publicity of the fact that your Honour was, last year, bestowed France's highest and oldest national honour, have been made a Chevalier de la Légion d'Honneur for your commitments to defending values due to France and for your role as Cabinet Secretary for the Pacific in enhancing friendly ties between Australia and France.

Your Honour, on reflection, I expect that I am the first person in our nation's history to congratulate and to welcome a French Knight on becoming an Australian president but, your Honour, on behalf of the bars of Australia, I do congratulate you on your appointment as president of what is the most important bastion for the protection of citizen's rights in this country.

Like those who fill the office of President of the Commonwealth Administrative Appeals Tribunal before you, you possess the unique quality of pre-eminence as a lawyer but you also have great experience as a lawmaker and as a public administrator and above all, your Honour, you have an unshakeable belief that by our acts, the lives of others can be made better. So, your Honour, on behalf of the bars of Australia, welcome.

KERR J: Thank you very much, Mr Estcourt and may I say, certainly you are far too modest. You have led me on a number of occasions. Thank you, it be. If I might ask Dr Aleck, please?

DR J. ALECK: Your Honour, it is a pleasure for me to be here this morning and to extend warmest congratulatory wishes to you on behalf of the Australian Institute of Administrative Law on your appointment as a judge of the Federal Court and today, as President of the Commonwealth Administrative Appeals Tribunal.

The relationship, if I may characterise it so, between the Administrative Appeals Tribunal and the Institute is a valuable and enduring one and one is provided a constant medium through which the cherished principles to which the Tribunal gives meaningful effect everyday are faithfully conveyed, thoughtfully discussed, critically analysed and from time to time, respectfully challenged – all with a view to promoting a greater knowledge and understanding of administrative law and in the process, to contribute to the improvement about law and a deeper appreciation of its importance in the lives of all Australians.

This is a relationship to the substance of which you have directly contributed in the past and to which we finally hope you will wish to contribute in the years to come. On occasions like this, it is customary to look back with a view to highlighting what may be described as the inexorable bearing of whence and whither and to frame perspective good wishes for the journey ahead, against the backdrop of what has gone before in, as we have heard, both serious and light-hearted terms.

I have – I might have done so today and in canvassing the historical record of the Tribunal's establishment, reviewing the perspectives of past presidents on their arrival and their departure and reacquainting myself with your own background, I certainly found a great deal to draw from. I have resisted that temptation, however, in the interest of brevity and because much of that is familiar ground to many of you here today and to rein which others have already done a considerably more able job of traversing than I might have done.

Indulge me, please, in one pertinent vignette which fortunately we have not yet heard. As the Attorney-General observed in her announcement of your appointment, that you are only the second Tasmanian to be appointed to the Federal Court and the first to be appointed as President of the AAT. I was reminded by my Tasmanian colleague on the National Executive Council of the Institute of Administrative Law that it was the first Tasmanian to be appointed to the Federal Court in 1984, Mervyn Everett, who, as a senator nearly a decade before that, played an active role in the passage of the Administrative Appeals Tribunal Act which he presciently and aptly described as a milestone in the evolution of the Australian Legal System.

At the time the Administrative Appeals Tribunal Bill was being debated in the parliament and then the year since the Tribunal's establishment, much has been made of the need for what then Senator Everett described as a barrier against the exercise of administrative discretion to be erected to protect the rights of individuals and

corporate entities from being, in his words, “trampled upon.” To be sure, the AAT has provided and continue to provide this kind of safeguard and we are a better society because of it.

Without diminishing the importance of this credible and necessary retrospective checking role, however, I would prefer on an occasion like this to look forward rather than backward and to focus on the equally, perhaps more important role, of a mature, but one hopes, always evolving Tribunal as a source of prospect of guidance, instruction and direction for those of us who make reviewable decisions and for those of us who teach, study, circumspectly consider, constructively develop, usefully elaborate on and responsibly endeavour to approve the law on which such decisions are properly based. In this way, the Institute embraces the opportunity to continue our thematic affiliation with the Tribunal and celebrates today, what we trust marks the beginning of a new relationship with you as its president. Once again, on behalf of the Institute, congratulations on your appointment.

KERR J: Thank you very much, Dr Aleck. May I first welcome and thank you, Chief Justice Keane, for being willing to join with us on our bench today. It is a great honour that you have done me and the Tribunal in being present today for this swearing in ceremony. I should welcome those who have done me the honour of attending today and done the Tribunal the same honour, particularly: Sir Gerard Brennan, a former Chief Justice of the High Court of Australia, thank you for your presence; Sir Laurence Street, former Chief Justice of New South Wales; His Excellency, Charles Lepani, the High Commissioner for Papua New Guinea – a country with whom I have enormously fond memories and experience, I thank you for being present today.

There are a number of former Attorney-Generals who have come together today: Mr Bob Ellicott, who of course was also a Commonwealth Solicitor General; Mr Michael Lavarch, who I might single out as being one of my long time friends. Politics can be a harsh place and we make very few true friends. We have many acquaintances but Michael and I have become lifelong friends as a result of the time we spent together. Mr Philip Ruddock, of course, who followed as Attorney-General in the Howard government, and I thank you for your presence, Philip and Mr Robert McClelland who recently stood down as Attorney-General of the Commonwealth.

To have four former Attorneys of the Commonwealth present today is a great honour. We also have: Mr John Dowd QC, former Attorney-General of New South Wales and President of the International Commission of Jurists; Mr David Bennett QC, a former Solicitor-General and of course as Mr Estcourt mentioned, Mr Leigh Sealy SC is present, the Solicitor-General for Tasmania. I have a number of former Parliamentary colleagues – ministers, former ministers present today. I see Laurie Brereton and his wife, Trish Cassell, present.

I know that Senator Joe Ludwig is present and I believe Senator – I hope – yes, there, my very good friend at – I do not know how to thank you, John Faulkner, for all those years of very strong advocacy for causes that you have believed: just

everything that has been said about me can be reflected about your service in the Australian Parliament. Many colleagues, former members of the Parliament at state and federal levels are present; as are judges of the Federal Court; judges of State Courts; former judges of Federal and State Courts; those of the district and other state courts; and members of academic profession.

Then, of course, my partner, Anna, who I love very much; my brother and family – of course you would understand that that is the most touching of those present today.

Thanks too to my Tasmanian colleagues who have made the effort to come up and Greg Melick SC who brought me a bottle of champagne to celebrate last night and who we enjoyed an evening with. Thank you so much and of course a large number of other friends from so many different roles in my life, including artists, activists and agitators, please, my welcome to you. Thank you so much for your presence.

Can I particularly thank those who spoke today at the bar table. It really is a delight, Mark, to have you speak on behalf of the Prime Minister and the Attorney General and your warm best wishes to me are reciprocated and I would be grateful if you would pass back to both the Prime Minister and the Attorney my thanks for making you available to speak today.

Can I say one small remark in relation to the observations that were made about *Plaintiff S157*. True it is that it is a significant case but I certainly would not have been able to advocate as I did without the assistance of George Williams, Professor George Williams, who served as junior counsel in that case and really prepared many of the, I suppose if you use a military language, the bullets that were fired in argument in that case. So I thank you very much George and thank you for your presence again today. Can I say in relation to the political entry into the Parliament I regret very much that Michael Hodgman QC cannot be with us. I visited Michael some weeks ago.

He is not well but he was a formidable opponent. Surprisingly we developed a friendship which has endured and it is something that I think is a very good mark of the better side of Australian political life that out of contest and the adversary aspects of our political system we can build friendships that cross political divides.

It may also be not quite true that I am the second Tasmanian to be a Federal Court Judge. I believe Peter Heerey is with us today and Peter, I understand, was born in Launceston but in a sense became a mainlander and entered the bar and served as a barrister and built his professional reputation at the Melbourne bar but I think Peter would claim to be the second Tasmanian appointed to the Federal Court and I the third but I am quite content to say I am only the second Tasmanian who did not leave and practice at the other bars quite so extensively to hold that honour.

It is, I believe, an opportunity today not only to express thanks but also to recognise the significance of this occasion. On a personal level, I note Stephen Gageler sitting at the bench. Stephen in an article called, *Beyond the Text: A Vision of the Structure*

and Function of the Constitution in the *Australian Bar Review*, wrote a very prescient article about how he might seek to advocate to the High Court a balanced view of its constitutional responsibilities. That was before his appointment as Solicitor-General which has given him the opportunity to put that view into practice but in his article he said something very revealing. He said:

After all, I am a lawyer. Law is what I do and law is all I do.

I fear my path to this position, as has been said, has been rather more various and circuitous than that but I do share what he wrote in that article, his view, that in its highest expression the law should integrate underlying values and principles with intellectual rigour and respect for text and authority. I would endorse those principles and hope that I can make them living ones in the role that I have now been appointed to.

I am also very grateful for the fact that the Shadow Attorney-General endorsed my appointment. Public life, he noted, can enrich the capacity for office rather than disqualify. In any case I am certain of the fact that the presence today of a number of colleagues from all sides of the political spectrum shows that I left the Parliament with far fewer enemies and more good will than the sandpaper of 23 years of public life usually permits.

Now, what is the role I step into? Dennis Pearce's book on the Administrative Appeals Tribunal recalls that the establishment of the AAT was recommended initially in the Commonwealth Administrative Review Committee report of 1971.

The basis of the coincidentally named Kerr Committee's recommendations was a concern that review of government decisions through Parliament and the Courts was inadequate as to its content and inaccessible to most persons effected. Dennis Pearce records that what was needed, it was said, was an accessible, informal and relatively cheaper means of obtaining a review of the merits of a decision. The Kerr and the subsequent Bland Report triggered the enactment of the *Administrative Appeals Tribunal Act 1975* which, whilst not implementing the Kerr Committee's report line by line, word for word established a world first institution.

The Administrative Appeals Tribunal is a unique creation of the Australian legal system. Many hundreds of enactments now confer merits review jurisdiction upon the Administrative Appeals Tribunal. When decisions fall short of what is required, and review is sought, the Tribunal has been given the power to set the decision aside and substitute a correct and preferable decision.

Today, more than three decades after the establishment of this world first administrative law Tribunal, each Australian's right to challenge perceived error in administrative decisions has become normative and, at least insofar as jurisdictional error is concerned, constitutionalised.

But notwithstanding the many further significant legislative and judicial developments which have led to that outcome, the original vision of the Kerr Report that the AAT should be a Tribunal capable of providing fair but accessible, informal and relatively inexpensive means of obtaining merits review remains as relevant now as when it was first expressed. This Tribunal has weathered the challenges of the decades and has become strongly entrenched as part of the architecture of the Australian system of government. It has a strong foundation and a proud record.

But of course any new appointee comes to their role with some instincts as to where the Tribunal ought be headed and it seems sensible for me to let my views be known.

As Minister for Justice in the Keating government I commissioned the ARC's *Better Decisions* Report. The commissioning of that report reflected my concern that a more holistic approach to merits review was required across the spectrum of Commonwealth decision-making and that remains my view. And in my application for this position I wrote:

I favour working within AAT to ensure that any unnecessary rigidities and adversarial processes that may have crept into the way the Tribunal operates are reduced or removed. I am conscious that there are many areas of the work of the AAT where processes akin to a court may be appropriate but in the end the work of the AAT is designed to produce through fair processes the best and preferable decision that a sound administrator ought to have arrived at with the least delay in cost. It is not to replicate the processes and work of the courts.

Might I say this Tribunal deals with an extraordinary range of matters from the most complex and detailed matters fought vigorously with silk on all sides to those brought by self-represented litigants. Lest my views be misinterpreted, my own experience of the AAT has always been, and particularly I refer to Deputy President Groom in Tasmania and the work that I have seen there, that the members of the Tribunal do everything reasonably open to them to best understand and assist unrepresented or disadvantaged applicants when they come before them.

It is too early for me to make bold statements about my role as President.

The collective strength of the AAT resides with its extraordinary team of skilled and independent minded decision makers and with the experienced staff who support them. Any sensible person would first want to draw on that collective experience and I look forward to drawing on that experience, to continue productive and constructive working relationships with our internal and external stakeholders as we share in the task of building on the already strong foundations established by my predecessors and might I say in closing, can I thank, Garry Downes, my immediate predecessor, for the kindness he has extended to me in making my entry into this position as comfortable and as smooth as it has been.

I thank you all. I particularly thank those at the bar table who have said such kind remarks to me today and I would be grateful if you would pass on to the respective bodies that you represent my thanks for your attendance today.
