

**WELCOME ON BEHALF OF THE
WA AND AUSTRALIAN BAR ASSOCIATIONS FOR THE
THE HON KENDALL J
ON THE OCCASION OF HIS WELCOME AS A JUDGE OF
THE FEDERAL CIRCUIT COURT OF AUSTRALIA
29 January 2018**

May it please the Court.

It is my privilege to appear on behalf of the Western Australian Bar Association and the Australian Bar Association at this ceremonial sitting to welcome your Honour as a Judge of this Court.

If I may be permitted to digress for a moment: on behalf of the WA Bar Association I wish to take this opportunity to also formally welcome the Chief Judge of this Court, who is, of course, also the Deputy Chief Justice of the Family Court of Australia. The tyranny of work and distance mean this is the first occasion on which the Western Australian Bar has been able to acknowledge in open Court your Honour's, the Chief Judge's appointments.

Your Honour, the Chief Judge, is of course no stranger to Western Australia and we look forward to seeing your Honour here as regularly as your other commitments permit.

It is, perhaps, unusual to start a welcome with a quibble. However, in what is otherwise a very accessible and insightful book on Advocacy, which your Honour wrote with your spouse Justice Curthoys, and of which your Honour is justly proud, there is no guidance on how one should approach the task set for the Bar table this morning.

Pausing there, I might observe that writing a book on advocacy with one's spouse is not without its potential difficulties. Many barristers' spouses regularly complain of their partner's long-windedness and inability to speak plainly – well, at least mine does.

As said, it is a quibble. Although no less a judge than Michael Kirby described the book as “helpful, truthful and wise”, it probably is impossible to provide clear guidance as to how one should deal with the vast biography and curriculum vitae which led to your Honour's appointment.

There are, at least, the following streams in the river of your Honour's career – namely as:

- academic;
- writer;
- administrator and leader;
- practitioner – both as a solicitor and advocate;
- servant to, and teacher of, the profession;
- law reformer;
- advisor to the Executive; and
- decision-maker

If those streams were differently coloured, in an aesthetically pleasing manner of course, one would sometimes dominate, while at other times the colours would run fully next one to the other, or blend completely.

It is an extraordinarily rich and diverse career. Despite your Honour's youthful appearance – perish any suggestion of middle-age – your Honour has been thinking, writing, teaching, or practising law – leaving aside your participation in executive decision-making for more than thirty years.

Throughout that time your Honour has focused on, and been driven by a concern for the individual – especially the disadvantaged individual within society.

Three examples only might suffice in the allotted time: firstly, your Honour's world-leading and ground-breaking work in opposing the exploitation of individuals via sex trafficking and in the pornography industry.

Secondly, the authoring of the 2011 Report for the Law Society on “Psychological Distress and Depression in the Legal Profession”.

And thirdly, of course, in your years on the Administrative Appeals Tribunal, your Honour has been predominantly engaged in balancing executive decision-making with the position of individuals who are usually on the wrong end of the power imbalance.

Each of the above three might be thought to be signature achievements – but they do not, of course, tell the whole.

Your Honour joined the Bar in Western Australian in 2008, initially at Francis Burt Chambers. Your Honour then practised from John Toohey Chambers where you were when appointed as a full-time Deputy President of the AAT in Perth.

Your Honour quickly established a speciality – although it was not the whole of your practice – in intellectual property. Your Honour enjoyed the work, as well as the confidence of a demanding group of instructors.

Unfortunately, as a gay man, your Honour did not experience the Bar as a welcoming or inclusive place. I wish to acknowledge your Honour's experience in this respect. It is inadequate to say that is regrettable. Equally, I am not in a position to say what that must have been like for your Honour. Importantly, however, that experience must not be gainsaid.

My firm conviction – which I am sure is shared by the vast majority of the Bar in Western Australia and across Australia – is that the Bar is, and must be, a place where all are welcomed and given an opportunity to fully develop and prosper.

The Bar is a competitive place – that should be celebrated – but while we act for our clients to ensure they are equal before the law, we must do all that we can to ensure equality within the law.

In that context, it may be observed that your Honour's appointment has a wider significance to the profession in this State especially, one might think, to its younger members.

Whether such role-modelling will extend to the driving of an oversized truck with dogs in the back and country music blaring, or the repetition of the mantra "I'm Canadian. We hunt!" is, at best, unclear.

Your Honour joins this Court at an important point in its history. For many years the demands on this Registry have very significantly outstripped its judicial resources. Your Honour's appointment is a significant step in seeking to address that imbalance. The Government is to be congratulated on taking such a step.

No doubt the only person whose joy at your Honour's appointment might have matched or exceeded your own was his Honour Judge Lucev who, no doubt, has felt very much like Sisyphus rolling an immense bolder up a hill one day only for it to roll back down, and for it to be rolled back up with no end in sight to the labours.

The Court – both here and across Australia – is the busiest of the Commonwealth Courts and, I am sure, your Honour will be given no time to bask in your appointment.

The Bar congratulates your Honour on your appointment and looks forward to appearing before you in the years to come.

May it please the Court.

Matthew Howard SC