

**CEREMONIAL SITTING OF THE HIGH COURT OF AUSTRALIA
ON THE OCCASION OF THE RETIREMENT OF THE CHIEF JUSTICE
THE HON. SUSAN MARY KIEFEL AC
AT CANBERRA
ON MONDAY 16 OCTOBER 2023**

Speech by Peter Dunning KC, President of the Australian Bar Association

Chief Justice Kiefel, Chief Justice Designate Gageler, Justices of the High Court, former Chief Justices and Justices of the High Court, distinguished guests all, it is my pleasure and privilege, in equal measure, to speak on behalf of the Bar nationally to say thank you, Chief Justice Kiefel, for your distinguished service of more than a generation to the courts in Australia, more than half of it on this Court.

It is a significant day in the life of Australia when there is a retirement of the head of the third arm of government. All the more so when that retirement occurs to the backdrop of overwhelming societal acceptance of the activities of that arm of government in its important task of quietening controversies peacefully and in an orderly fashion, and standing as the arbitrator between the State and the citizen. Again, all the more so when that is done with the unwavering admiration of the practitioners who have the privilege of appearing before that Court because of the fine exercise of its jurisdiction. That that is so, Chief Justice Kiefel, says everything, and certainly more than I can hope to convey in the next couple of minutes of your Honour, your Honour's leadership of this Court, your colleagues on the Court, those who come after you and those who have preceded you.

It has been my great good fortune throughout the year to speak on a number of occasions when you have been speaking. On one of those, I took the liberty of describing your Honour as a trailblazer for women in the law. Epitaphs like that are apt to be overused, but not on that occasion, and for all the reasons and more that have been outlined by those who have spoken before me.

As we all know, your Honour commenced the Bar in Queensland in 1975. Your Honour went to the Supreme Court of Queensland in 1993, just as I was coming to the Bar in Queensland, so I never had the privilege of appearing either alongside or against your Honour, but since then I have had the privilege of appearing before your Honour many times. Your Honour's practice at the Bar was wide and varied. You did everything from complex commercial cases to vexed defamation proceedings before juries. Your 18 years of the Queensland Bar left an enduring practice amongst barristers in Queensland. Likewise, your busy and varied practice equipped you well for the distinguished career in the judiciary that would follow.

Your short stay on the Queensland Supreme Court and your 11 years on the Federal Court based in Brisbane has done much for the promotion of the best attributes of the Bar in Queensland. However, it is your Honour's work on this Court that is rightly the proper focus of today, and particularly in the discharge of your office as Chief Justice. I could not, of

course, in the time available hope to critique the many ways in which your Honour has so significantly contributed to the law in Australia and to the life of this Court, so I have chosen to touch on just four: intellectual leadership, the promotion of certainty, the maintenance of the institutional integrity of the Court, and the place that courtesy and dignity has in the efficient and effective operations of a court.

Intellectual leadership in any court is important. It falls, predominantly, on the head of jurisdiction and is never more important than in the apex Court. Your Honour's intellectual leadership across all aspects of the law in this Court has been exceptional and will be your Honour's enduring legacy, or among them.

Your Honour's commitment to the promotion of certainty has done a great deal for the efficient development of the law in Australia. Your Honour's preference for joint judgments when possible, but never at the expense of individual expression, has done much to ensure that people like me and those who stand alongside me, when clients come to them with their predicament, can, as far as possible, say this is where you stand. The importance of that in a coherent legal system cannot be understated.

Thirdly, your Honour has taken important steps to maintain the dignity and currency of this Court, including, as the Attorney General for the Commonwealth touched on, during difficult days which your Honour handled with skill and aplomb.

Finally, your Honour's commitment to courtesy and dignity in your dispatch of business before the Court has been a crucial feature of your Honour's time on the Court, and a great feature of your Honour's legacy. If ever there is something upon which judges must lead by example it is their conduct in court, as that reflects on other judges and those who appear before it. Not, I might say, that that stops your Honour from being able to ensure that politeness came with the expense of efficiency. Your Honour had a delightful combination of courtesy, patience and firmness in announcing to counsel from time to time of the grim news that their argument was just not going to make it today. Indeed, I can give eyewitness account that your Honour was exercising that jurisdiction as recently as last Friday.

I hope I will not be criticised for descending to the parochial when I observe that when your Honour concludes your term as Chief Justice your Honour will be the fourth Queenslander to have occupied that office, starting with Sir Samuel Griffith, the inaugural Chief Justice, and later Chief Justices Gibbs and Brennan, providing a safe pair of hands for the head of the High Court for a quarter of its life – without, of course, suggesting that safe hands are not also available in New South Wales, Victoria and Western Australia.

Of course, nobody achieves where your Honour has arrived to today without the love and the support of family and friends. Your Honour has been fortunate to have the love and support of your husband, Michael, your sister, Jennifer, your brother in law Brian, your sister in law, Katrina, your niece, Eleanor, and your nephews, Hamish, Max and Leo. They are, and are entitled to be, justifiably proud of your Honour's quite extraordinary legal career and service to the Australian community. Unfortunately, your parents and your brother are unable to be here. The wide array of judges from not only the Supreme Court of Queensland and the Federal Court, past and present, attests to the indelible mark you made on those courts.

As your Honour leaves this Court shortly, though, I am reliably assured that you are not free of all weight of your responsibilities. You and Michael are now, I am told, the custodians of a

young Rottweiler who has previously been identified as Fletcher. No doubt, the same combination of courtesy, patience and firmness might be required on occasion. Your Honour will, in the next phase of your career, have more time to spend at your property in the mountains of Brisbane, pursuing your interests of cooking, music and the like.

Chief Justice Kiefel, on behalf of the Bar throughout Australia, in every place and in every area of practice, I salute your distinguished service to this Court and to the Australian people. You leave this Court with the respect, admiration and affection of the Australian Bar. Those of us who had the good fortune to appear before your Honour are better barristers for it. The Bar wishes you every happiness in the next phase of your career.

May it please the Court.