

## Preface

The High Court of Australia plays a fundamental role as an institution of Australian government. Yet, curiously, it has never been subjected to sustained scrutiny in that role. True, the law journals are replete with learned legal analyses, but these are addressed to a narrow audience, are mainly confined to particular areas of law, and, even within those boundaries, are largely doctrinal. This book examines the work of the Court as a whole: the way it operates, its historical development, the people who have contributed to that development, the leading cases, and, above all, the institutional role of the Court in Australian society. It will be of absorbing interest to lawyers, but it is not only for lawyers. It is for anyone whose life or work is touched by the Court, or who has a professional or intellectual interest in the way the Court shapes and develops Australian law, or who has even a modicum of curiosity about the role and record of the Court and its impact on Australian law, politics, and society.

The High Court's story, from A to Z, is told in 435 separate entries, by 225 authors, in about 650,000 words. Yet this is no mere compilation of known facts. The book is the product of a good deal of original research, and much of the information about the Court is published for the first time. Even more importantly, the book does more than merely present information, old or new; it provides fresh insights into the role and work of the Court through analysis, criticism, and reflection. It is not, after all, a dictionary, but a Companion; and like any good companion, it provides an honest appraisal, celebrating strengths and exposing weaknesses in equal measure.

In addition to the editors, who between them wrote about one-sixth of the book, the authors include current and former Justices of the Court, leading academics and practitioners, and others with special knowledge and expertise. Putting aside the shorter, factual entries, the wisdom of the authors is distilled into finely honed and literate mini-essays of up to 4000 words in length, which in some cases are gems of the genre. Like the Japanese *haiku* or the Shakespearean sonnet, these entries have a distinct form, their composition demanding a skill beyond expert knowledge of the subject matter. With some massaging from the editors, the entries taken as a whole display considerable virtuosity, and contain much to surprise and delight.

That is so partly because the editors, in addition to endeavouring to produce an original and authoritative work with a critical dimension, also encouraged diversity. The book does not 'run' any particular 'line'. The commentators come from all points on the socio-political spectrum, and the book is enriched by the resultant contrasts. That the entries are attributed to their particular writers signifies not merely authorship but also individual responsibility for a point of view. Many authors have not shirked from a point of view. The book is the better for it.

At one stage, the editors considered including entries directed specifically to evaluation of the Justices and evaluation of the Court's decisions. A well-known American

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commentator has, for example, identified what in his view are the ten 'best' and the ten 'worst' Justices, and the ten best and ten worst decisions, of the United States Supreme Court (Bernard Schwartz, *A Book of Legal Lists* (1997)). Although tempted to engage in this rather playful exercise, the editors ultimately resisted, for two reasons. First, the criteria by which this identification might be made are elusive and their application subjective. Is a decision good because, for example, its outcome is politically or socially desirable, or its reasoning elegant, or because it is faithful to precedent, or because it breaks new ground and departs from precedent? Secondly, there was in the end no need for discrete entries on these issues, as the whole book is an evaluation of the role and record of the Court in its first 100 years. We commend it to you on that basis.

The book was the brainchild of Michael Coper, who initiated the project when he first joined the Law Faculty of the Australian National University (ANU) on a part-time basis in 1994. The authors are multiple and diverse, but the project has significantly been an ANU project, with the editors all holding ANU positions, the project having been physically located in Canberra, and virtually all members of the ANU Law Faculty having made contributions as authors. Nevertheless, the book is the work of many hands, as is revealed emphatically by our acknowledgments below. The editors would, however, like to pay special tribute to their dedicated research assistants—first and foremost to Troy Simpson, who worked unstintingly on the book for almost three years, and secondly to Francesca Dominello and Susan Priest, who were each with the project for a little over a year. The book took its shape mainly from the collective effort of this team of six—the three editors and the three research assistants.

Of course, no single book on the High Court can be a comprehensive account of the Court's work over 100 years. Although there are entries on all of the Justices and most of the areas of substantive law to which the Court has contributed, the choice of particular cases to be accorded entries in their own right (many more are canvassed in other entries) was necessarily selective, and not a little subjective. The cases might have been selected because they were unarguably leading cases, or important milestones in the history of the Court or the nation, or because their facts or the identity of the litigants attracted some notoriety, or simply because the editors judged them to be interesting or instructive. If your favourite case is not there, you might write and let us know.

Indeed, we invite you, the reader, to write to us in relation to any aspect of this pioneering work. If you think we have fallen into any error, factual or legal, or have committed any serious sin of omission, and you can support your claim, we would be delighted to hear from you and to take account of your comments in the second edition.

The production of this book has been an extraordinary task. Liaising in a tight timeframe with more than 200 eminent (or in some cases soon-to-be eminent) authors, who for the most part responded superbly to our rigorous editing process, was always going to be a challenge. In the context of this exquisite mix of pleasure and pain, every entry has its own story, though in the nature of things these stories are unlikely ever to be told. Instead, we offer to you in this book the end product of our labours: a companion to have by your side; to consult in times of need, or just for the pleasure of good company; to learn from and perhaps to be enriched by; to use as a point of reference or departure for further inquiry; or simply to enjoy. In any case, it is our hope that, in making the work of the Court better known and perhaps better understood, the book will truly be both *amicus curiae* and *amicus populi*.

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Michael Coper  
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