

## Chapter 1

# The Role and Future of the Federal Court within the Australian Judicial System

*Chief Justice James Allsop*

## Introduction

Before I begin, I would like to extend my warmest congratulations to the ANU Centre for Commercial Law and the ANU Centre for International and Public Law for their efforts in organising a conference to mark the Court's 40th anniversary. The papers at the conference, which are reproduced in this collection, provide a wide-ranging survey into the Court's contribution to the development of Australian law.

My task in this chapter is to address in broad terms the role and future of the Federal Court. It is important to look back to the origins and development of the Court for a number of reasons. First, it is important to understand why some fine lawyers and great Australians thought the creation of a national superior court to be important. Secondly, an examination of the past helps to identify the trajectory of the Court into the future. Thirdly, from reflection upon the experiences of the Court, one may see the place of the Court in the life of the nation.

## The Early History of the Federal Court

In the 1960s, there was momentum within the profession for the establishment of a new federal court. While some have put this down to purely pragmatic considerations, others, including Justice Susan Kenny of the Federal Court, have drawn parallels between the impetus for a federal court and what historian Geoffrey Serle has described as a 'surge of national consciousness' from the period of the 1960s to 1980s.<sup>1</sup> This focus upon nationhood can be detected in comments from Mr M H Byers QC and Mr P B Toose QC, who described the creation of federal courts as a *national* endeavour befitting a 'fully independent nation' where identification with nation rather than State had been cemented through the experience of the World Wars and the Great Depression, and the less violent experience of the uniform tax legislation.<sup>2</sup> Initial imaginings on the

1 Justice Susan Kenny, 'Federal Courts and Australian National Identity' (2015) 38 *Melbourne University Law Review* 996, 999, quoting Geoffrey Serle, *From Deserts the Prophets Come: The Creative Spirit in Australia 1788–1972* (Heinemann, 1973) 176. See also at 998, citing James Curran and Stuart Ward, *The Unknown Nation: Australia after Empire* (Melbourne University Press, 2010).

2 M H Byers and P B Toose, 'The Necessity for a New Federal Court (A Survey of the Federal Court System in Australia)' (1963) 36 *Australian Law Journal* 308, 313.

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