

Chapter 2

Excellence, Innovation and Courtesy: Federal Court Procedure and Modernity

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Introduction

At the first ceremonial sitting of the Federal Court on 7 February 1977 its new Chief Justice, Sir Nigel Bowen, said:

This Court has no history and, as yet, no tradition. ... It is my hope that the Court will quickly establish itself as a court of high standing in the eyes of the profession and of the public. It will be the earnest endeavour of the members of this bench to ensure that it does so.¹

Chief Justice Keane reflected on this in 2010:

[N]o one would ... doubt that Sir Nigel's ambition has been achieved, at least to this time. What might be thought, however, is that there was little that was especially visionary in his stated ambition for the court; but that would be wrong.²

Now, four decades after its formation, the Federal Court has clearly established itself as a Court of high standing which fosters excellence, innovation and courtesy.³ The lifespan of the Federal Court has seen the rise of statutory rights and remedies, the conferral of collective redress, as well as the emergence of the modern regulator and the managerial judge. I will focus on significant challenges that have arisen during that time and the adaptation of civil procedure in response. I will use the Federal Court's ethos of excellence, innovation and courtesy as a framework to illustrate how the Court has responded procedurally to the challenges before it.

Excellence is illustrated by the evolution of the individual docket system of case management and the managerial judge, although recent case law on civil penalties shows that the role of the modern regulator in the civil justice system has also expanded. I will examine native title procedures under the rubric of *courtesy* and the interpretation

1 Swearing in Ceremony, Federal Court of Australia, 7 February 1977, NAA A1209 1977-255.

2 Personalia, 'Chief Justice Patrick Keane' (2010) *Bar News* 117, 118 <<http://www.austlii.edu.au/au/journals/NSWBarAssocNews/2010/27.pdf>>.

3 The exact provenance of the ethos of excellence, innovation and courtesy is unclear. The former Chief Justice Michael Black concluded that it was adopted in the early days of the Court. He states: '[e]vidently, the Chief Justice and the foundation judges had determined that theirs should be a court of excellence, innovation and courtesy': Chief Justice Michael E J Black, 'The Federal Court of Australia: The First 30 Years – A Survey on the Occasion of Two Anniversaries' (2007) 31 *Melbourne University Law Review* 1017, 1028.

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