

FOREWORD

by **THE HONOURABLE CHIEF JUSTICE JAMES ALLSOP, AO**

The Federal Court of Australia sits as a court of original jurisdiction, derived from over 150 statutes, as well as an appellate court. Its practice areas include admiralty, taxation law, consumer law, bankruptcy, intellectual property, native title and migration law. Last year over 11, 000 matters were filed in the Court, a number that continues to trend upwards. As the jurisdiction of the Federal Court expands and its workload continues to increase, it is of continuing and growing importance to maintain a dedicated authorised report for the judgments of the Federal Court.

The publication of decisions of courts is of fundamental importance for a number of reasons. First, it is of great value to legal practitioners, judicial officers and those learned in the law as an authoritative record of previous decisions.

Edmund Burke correctly observed:

“This study [of law] renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources.”¹

The certainty and clarity afforded by a respected court reporting series cannot be understated as providing a robust basis from which legal submissions can be promulgated, and legal issues considered. It allows the solicitor or barrister to practice their craft, the judge to determine legal issues in accordance with the law, and the interested observer to evaluate the content of those decisions. In short, publication of judicial reasons allows the law to grow.

Second, at a more philosophical level, the publication of decisions provides that transparency which has come to form one of the essential characteristics of the accountable judiciary we are familiar with in Australia.

The point is articulated well by Chief Justice Gleeson, who observed:

“Judicial prestige and authority are at their greatest when the judiciary is seen by the community, and the other branches of government, to conform to the discipline of the law which it administers. The rule of law is not enforced by an army. It depends upon public confidence in lawfully constituted authority. The judiciary claims the ultimate capacity to decide what the law is. Public confidence demands that the rule of law be respected, above all, by the judiciary.”²

Continuing down this line of reasoning, Justice Kirby adds,

¹ Edmund Burke “On Moving His Resolutions for Conciliation with the Colonies,” 22 March 1775

² The Hon Murray Gleeson, ‘Courts and the Rule of Law’, *The Rule of Law Series*, speech delivered at the University of Melbourne on 7 November 2001.

“it has been recognised by the High Court of Australia that the true foundation for this principle of judicial accountability is that it is an attribute of the administration of justice. The obligation to state reasons, and to publish them, is a healthy corrective against the arbitrary exercise of judicial power.”³

Third, a long-standing report series such as this documents the evolution of the common law across not only time, but governments, judges, legislation and historical events.

Sir Walter Scott once said that

“A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect.”⁴

With the benefit of many years of observation of court craft at work, one such as myself can appreciate how true this is. Beyond the courtrooms of this country, such a legal history provides a contextual understanding of those principles we might consider fundamental to our most basic notions of fairness, morality and law. Through these reported decisions, we glimpse the judicial reasoning that has given voice to these values over time. The *Federal Court Reports* have been with the Federal Court since 1984. Much has changed in the jurisprudential landscape within that time. Future generations will find it a valuable legal as well as historical resource.

In closing, I wish to formally acknowledge the contribution to this series of Mr Victor Kline. He has been the editor of the *Federal Court Reports* for twenty-five years. On behalf of all those who use them, I congratulate Mr Kline on his long years of service and dedication in supervising the publication of 200 volumes of the *Federal Court Reports*. Without the continued efforts of the editorial team, a publication such as this would not be possible. For that, a debt of gratitude is owed by the Court, the legal profession, and all those who rely on and cite the *Federal Court Reports* in their daily work.

³ The Hon Michael Kirby, ‘Judicial Accountability in Australia’, a lecture delivered for the Commonwealth for the Commonwealth Legal Education Association at the University of Queensland on 6 October 2001.

⁴ Sir Walter Scott, ‘Guy Mannering’ (1815) c XXXVI.