

**Speech delivered by Chief Justice Higgins
on the occasion of the 75th anniversary of the Supreme Court
on Friday 30 January 2009¹**

Chief Minister, Mr Pilkinton, Mr Barnett, Members of the Legislative Assembly, the Judiciary, the Magistracy and the legal profession (not necessarily in that order), staff of the Law Courts, ladies and gentlemen. We gather today to celebrate the 75th anniversary of the Supreme Court of the Australian Capital Territory; an historic occasion and one deserving of commemoration.

I am fortunate to share the bench today with many esteemed colleagues: the resident judges of this Court their Honours Justices Gray, Refshauge and Penfold, and my nephew Master Harper, the additional judges of this Court, their Honours Justices Graham, Lander, Spender, Moore and Cowdroy OAM and their Honours Chief Justice French of the High Court and Chief Justice Black AC of the Federal Court.

It is also a privilege to have present my predecessor, the Honourable Mr J.A. Miles AO, and former judges of this Court, the Honourable Mr J. Gallop AM QC RDF and the Honourable Mr K. Crispin QC. Also present are former additional judge the Honourable Antony Whitlam QC and former Master Alan Hogan. It is a great pleasure to have their company today to celebrate 75 years of the Court to which they have made a distinguished and lasting contribution.

I wish to acknowledge the apologies of those unable to attend this ceremonial sitting:
PLEASE SEE ADDENDUM LIST.

¹ I would like to acknowledge the research and drafting assistance provided by my Associate, Ms Tamara Tulich.

In commemorating the 75th anniversary of this Court, recognition must be given to the history of this land and to its traditional owners. I acknowledge the Ngunnawal People and their continuing custodianship of this country.

The Supreme Court has, over the past 75 years, forged a uniquely Territorian legal tradition, and has been the centre of many controversies – both legal and political – that have contributed to the fabric of this Territory and our nation. A cursory examination of the last 75 years reveals the rich history of this Court – of which it is today, no doubt, a product – and its ongoing significance, as it adapts to meet the needs of the community into the 21st century.

The history of the Court, as it is inextricably linked to the history of the Territory, dates from the surrender to the Commonwealth of the Yass Canberra district by the Government of New South Wales. That surrender was for the purpose of providing the Seat of Government of the Commonwealth, and was accepted on 1 January 1911.²

From the acquisition of the Territory to the founding of the Supreme Court in 1933, Territory matters were heard in the Queanbeyan Court of Petty Sessions,³ the Cooma Court of Quarter Sessions⁴ and the High Court of Australia⁵. This was not a particularly workable arrangement and proved inadequate to meet the needs of the growing Territory population. Indeed, records reflect that the Queanbeyan Court of Petty Sessions sat only

² Pursuant to the *Seat of Government Acceptance Act 1909* (Cth) ; see also the Honourable J Miles AO, ‘Justice at the Seat of Government’ (1992) 66 *The Australian Law Journal* 555 at 555.

³ Woolcock Withycombe, SM, *Ethos and Ethics: A History of the Law Society of the Australian Capital Territory 1933-1993* Canberra: The Law Society of the Australian Capital Territory, 1993, at 13.

⁴ The Honourable J Miles AO, ‘History of the Supreme Court of the Australian Capital Territory’ unpublished at 1.

⁵ Section 8 of the *Seat of Government Acceptance Act 1909* (No. 23 of 1909) provided that “the High Court and the Justices thereof shall have, within the Territory, the jurisdiction which immediately before its surrender and acceptance belonged to the Supreme Court of New South Wales and the Justices thereof”: *Pitcher v Federal Capital Commission* (1928) 41 CLR 385 per Knox CJ and Powers J at 390.

three times a year⁶ and, when sitting in winter, the Queanbeyan Court House was warmed by a wood fire that the most junior practitioner in attendance had the formidable duty of stoking.⁷

In the 1920s, calls were made for the establishment of a “complete scheme for the administration of justice inside the Territory” to avoid delay and inconvenience to Territorians.⁸ In the following decade, on 25 November 1930, the ACT Court of Petty Sessions was established. Three years thereafter, by the enactment of the *Seat of Government Supreme Court Act*⁹, the Supreme Court of this Territory was established. It is fitting that the Act was assented to by Sir Isaac Isaacs, Australia’s first Australian born Governor General¹⁰. It, in fact, took two attempts to get the Bill passed, the second Bill, introduced in late May 1933, commenced on the first day of the following year.

This Act has immense significance for the Territory, not only as the founding document of this Court, but as the reason the Territory is entitled the Australian Capital Territory. The Territory was originally called the Territory for the Seat of Government, but was commonly known as the Federal Capital Territory. The Supreme Court of the Federal Capital Territory was wisely regarded as too long a name to make for a legible court

⁶ Harris, J ‘The Administration of Justice in the Australian Capital Territory and the History of the ACT Supreme Court from 1933-1963’ National Internship Program 1995; Ms Harris obtained this information from Queanbeyan City Council member Mr Shears who consulted records to obtain this information.

⁷ Woolcock Withycombe, SM, *Ethos and Ethics: A History of the Law Society of the Australian Capital Territory 1933-1993* Canberra: The Law Society of the Australian Capital Territory, 1993, at 13.

⁸ by the Secretary of the Federal Capital Commission to the Secretary of the Department of Home and Territories on 12 December 1925: Australian Archives, Attorney-General’s file A1, 3790 of 1931 extracted in the Honourable J Miles AO, ‘History of the Supreme Court of the Australian Capital Territory’, unpublished, at 1-2; This was followed some 8 months later by Robert Garren imploring this as a matter of urgent attention to the Attorney General; a local solicitor, Cyril Davies, also agitated for the establishment of law courts in the Territory – see the Honourable J Miles AO Miles, History of the Supreme Court, unpublished, at 1-3.

⁹ 1933 (Cth)

¹⁰ on 9 December 1933; a copy of the original Act is available online at www.foundingdocs.gov.au

seal¹¹, so Supreme Court of the Australian Capital Territory was chosen. In 1938, the name of the Territory was formally changed to the “Australian Capital Territory”¹².

On 25 January 1934, the Honourable Lionel Lukin, a Judge of the Federal Court of Bankruptcy, was appointed as judge of the Supreme Court. The Supreme Court first sat on 13 February 1934 at Acton House, which had been Canberra’s first Church of England rectory¹³. The location was chosen following Sir Walter Burley Griffin’s designation of Acton as “the site for the provisional administration and establishment of the City area”.¹⁴ Acton House also housed the Police Station; the police force having been established 7 years earlier¹⁵.

However, Acton House proved inadequate for the purpose and in 1935 the Court moved to Hotel Acton. Here the Supreme Court sat in the Hotel’s dining room.¹⁶ Justice Lukin remained at the helm of the Court until 1943, witnessing the rather nomadic Supreme Court move again, in 1941, to the Patents Building in the suburb of Parkes¹⁷.

The first matters over which his Honour Justice Lukin presided were two matrimonial cases. In fact, the first 11 cases to come before the Supreme Court related to matrimonial disputes¹⁸. In the first two matters, the husband sought, and was granted, an order for restitution of conjugal rights¹⁹. His Honour, found that the wives did not want to live

¹¹ Mr B.R. Maguire QC, transcript proceedings of the Ceremonial Sitting on the occasion of the 50th Anniversary of the Supreme Court, Monday, 13 February 1984, at T16.

¹² by an amendment to the *Seat of Government Acceptance Act*.

¹³ Woolcock Withycombe, SM, *Ethos and Ethics: A History of the Law Society of the Australian Capital Territory 1933-1993* Canberra: The Law Society of the Australian Capital Territory, 1993, description under photograph following p28.

¹⁴ ACT Supreme Court Building and Precinct, Stage 1: Heritage Assessment, March 1996 at 10.

¹⁵ On 27 September 1927: Woolcock Withycombe, SM, *Ethos and Ethics: A History of the Law Society of the Australian Capital Territory 1933-1993* Canberra: The Law Society of the Australian Capital Territory, 1993, at 13.

¹⁶ See Documenting Democracy at www.foundingdoc.gov.au

¹⁷ ACT Supreme Court Building and Precinct, Stage 1: Heritage Assessment, March 1996 at 10.

¹⁸ The Honourable J Miles AO, ‘History of the Supreme Court of the Australian Capital Territory’, unpublished, at 13.

¹⁹ See *Canberra Times*, ‘Orders For Restitution of Conjugal Rights’, 13 February 1934.

with their husbands, and made the usual order that the wife return to her husband within 21 days²⁰. Thankfully, such applications are now a matter of history.

On 29 August 1934, Justice Lukin heard the first recorded appeal from the Court of Petty Sessions which related to “allegations of illegal gambling activities”.²¹ For the Crown appeared Sir Robert Garran,²² and for the defence, Mr Clive Evatt.

Justice Lukin is remembered as both genial and patient, and as a repository of “good will to all except defaulting bankrupts”.²³ Upon his retirement, his Honour had served on the bench of Australian courts for some 33 years²⁴ and provided a venerable archetype of a judicial officer. He was succeeded on November 18, 1943 by Sir Thomas Clyne, who was himself succeeded in 1945 by the Honourable Brigadier William Simpson who remained a judge of this Court until 1960.

To give you an indication of the volume of work of the Supreme Court in the early 1940s, archival records reflect that in both 1942 and 1943, 28 cases came before the Court. In 1944, the number of Supreme Court matters had increased to 43, 19 of which were heard by the Supreme Court vested with the jurisdiction of the Supreme Court of the Territories of Papua and New Guinea.²⁵

²⁰ See *Canberra Times*, ‘Orders For Restitution of Conjugal Rights’, 13 February 1934.

²¹ The Honourable J Miles AO, ‘History of the Supreme Court of the Australian Capital Territory’, unpublished, at 13.

²² The Honourable J Miles AO, ‘History of the Supreme Court of the Australian Capital Territory’, unpublished, at 16. Garran was later appointed a special magistrate of the Court of Petty Sessions.

²³ Citing comments of Mr Ham on behalf of the Victorian Bar in ‘Personalia: Retirement of Judge Lukin’ *The Australian Law Journal* 17 (1943) 254.

²⁴ J. C. H. Gill, ‘Lukin, Lionel Oscar (1868 - 1944)’, *Australian Dictionary of Biography*, Volume 10, [Melbourne University Press](http://www.adb.online.anu.edu.au/biogs/A100164b.htm), 1986, pp 167-168; at 167 available online at <http://www.adb.online.anu.edu.au/biogs/A100164b.htm> ; He had also served as a judge of the Queensland Supreme Court, being, in 1910, the first Queensland-born Supreme Court judge, and as a judge of the Commonwealth Court of Conciliation and Arbitration in the 1920s. He was appointed the first Federal Judge in bankruptcy in 1930, and the first judge of this Court in 1934

²⁵ Australian Archives Series No. A433/1942 Item No 50/297.

The demands of a growing jurisdiction provided impetus for the establishment of a permanent Supreme Court building, and it was in 1963 that the building in which we now gather was completed and opened²⁶. The building was officially opened by then Prime Minister, Sir Robert Menzies, and the first sitting of the Court occurred on 9 May of that year²⁷. At that time the building housed quite the complement of services, including the Registrar of Titles, Births, Deaths and Marriages, the Companies Office, and parts of the Court Reporting Service.²⁸ The Supreme Court sat in courtrooms 1 and 2, and the Magistrates Court in courtrooms 3 through 6, though initially the Conciliation and Arbitration Commission sat in 6. What is now our Sheriff's office was then occupied by the Registrar for Births, Deaths and Marriages. For some years, civil marriage ceremonies were conducted in the Supreme Court marriage room which could cater for 20 seated guests.²⁹

A design feature of each courtroom is the timber panelling and furnishings provided by one of the 6 Australian States. This unique contribution to the building is acknowledged by the placement of the Coat of Arms of the donating State at the entry to each courtroom. This courtroom is replete with Red Cedar from New South Wales, and for those of you watching from Courtroom 2, that courtroom features Mountain Ash from Victoria.

This building was also one of the first in Canberra to feature an internal courtyard housing a glass atrium.³⁰ The design of the building is intended, and I quote its architects, to “express the traditional dignity of Court design in terms of contemporary

²⁶ Neave, L, *The ACT Law Courts Building: Heritage Study*, Canberra: 1998, at 15.

²⁷ Speech delivered by Higgins CJ, Ceremonial Sitting, 31 January 2003.

²⁸ Neave, L, *The ACT Law Courts Building: Heritage Study*, Canberra: 1998, at 15

²⁹ *Canberra Times* 'From one registry office bride to another' 8 June 1971.

³⁰ Neave, L, *The ACT Law Courts Building: Heritage Study*, Canberra: 1998, at 39

materials and building techniques and present day economics”³¹. As such it is representative of the architecture of that period and has been Heritage listed.³² The location of the Court is also of significance, being that designated for “municipal courts” by Walter Burley Griffith in his plan of Canberra.³³

This building was state of the art when it opened in 1963. However, it is now inadequate for the needs of the time³⁴, and this extends to a lack of, or ill functioning, technical equipment. Whilst the quality of justice administered in this Court is not diminished by the problems of the building and technology employed therein, it is at times strained, and I echo the Honourable Justice Connolly’s words³⁵ when I say I hope that community confidence is not eroded by these long standing difficulties. It is noteworthy that this Court once stood at the forefront of court based technological advancement: it was the first court in Australia to adopt a two-track recording system to record all proceedings in the building.³⁶ Indeed, Master Harper recently demonstrated the adaptability of this Court to the technological climate in which we live by allowing, in what appears to have been an Australian and International first, service of a default judgment via Facebook.³⁷ The objective for this Court, in respect of its jurisprudence, case management, building and technological capability, is to be at the forefront of worlds best practice.

³¹ Yuncken, Freeman Brothers, Griffith and Thompson, the Melbourne based Architectural Firm briefed with the design, in their Architectural plans, as extracted in Neave, L, *The ACT Law Courts Building: Heritage Study*, Canberra: 1998, at 15.

³² Neave at 41; see also its entry on the Australian Heritage Database, available online at:

http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place_detail&place_id=019700

³³ <http://www.idealcity.org.au/>; <http://www.naa.gov.au/about-us/publications/fact-sheets/fs95.aspx>

³⁴ Speech delivered by Higgins CJ, Ceremonial Sitting for the Swearing in of Higgins CJ and Connolly J, 31 January 2003 at T15.

³⁵ Speech delivered by Higgins CJ, Ceremonial Sitting for the Swearing in of Higgins CJ and Connolly J, 31 January 2003 at T23.

³⁶ Neave, L, *The ACT Law Courts Building: Heritage Study*, Canberra: 1998, at 39

³⁷ For news reports of this decision see, for example, <http://news.ninemsn.com.au/article.aspx?id=697610>
<http://www.theage.com.au/news/technology/web/australian-court-serves-documents-via-facebook/2008/12/12/1228585107578.html>

The poor condition of this building is well documented and may be seen as part of its historical legacy. In the 1990s heavy rainfall would regularly flood the basement. In 2007 a hail storm further tested the building's resolve to survive. The failure of the air conditioning system continues regularly to confront staff and users of the Court. It had proved sufficiently troublesome and newsworthy to warrant press coverage some 40 years ago³⁸.

To return to the history of this Court, in the 1960s 6 years passed without a resident judge, as Justice Simpson, who retired in April 1960, was not succeeded until June 1966 when Sir Reginald Smithers QC and Sir John Kerr QC were dually appointed as full-time judges of this Court. In the intervening 6 years, the entire work of the Court was discharged by additional judges. In November 1966, after 4 months on the bench, Justices Smithers and Kerr moved from being full-time judges to additional judges, and the Court was again without a resident judge. In August 1967, this situation was remedied by the appointment of the Honourable Russell Fox QC, who became the first Chief Judge of this Court in 1977. The appointment of Justice Fox enabled the Supreme Court to return to sitting 5 days a week, prior to this the commitments of the additional judges in the Commonwealth Industrial Court had necessitated Monday being a non-sitting day.³⁹

In 1971 Justice Fox delivered the decision of *McNamara v Duncan*⁴⁰ what was reported at the time as being a "historic decision" that "rocked Australian football circles"⁴¹. His Honour awarded \$6000 damages, plus costs, for the cause of action of trespass to the

³⁸ See for example, *Canberra Times*, "Court Workers Smoked Out" 30 August 1966; *Canberra Times*, "Breakdown in Air System at Courts to be Checked" 29 October 1966.

³⁹ *Canberra Times*, 2 August 1967.

⁴⁰ (1971) 26 ALR 584

⁴¹ *Canberra Times* 7 April 1971.

person of an Eastlakes AFL footballer who was, during a game, injured by an opposing Turner player.

To return to the workload of the Court, in 1970, 1325 matters were initiated in the Supreme Court, of which 935 proceeded to hearing⁴². There were 126 criminal matters in 1970, with break, enter and steal being the most prevalent offence. This considerable increase since the 1940s stressed the need for an additional resident judge. In 1971, the *Supreme Court Act* was amended to enable the appointment of Sir Richard Blackburn OBE, who was sworn in on 10 August 1971⁴³ in an historic ceremony which also included the first admission of two legal practitioners to practice in the Territory⁴⁴. Prior to this, applications for admission to practice in the ACT were made to interstate courts⁴⁵. That day was also the first time that 3 judges – Justices Fox, Blackburn and Kerr - had sat together in this Court⁴⁶. In February 1972, the volume of contested matters in the Supreme Court resulted in Justice Fox sitting on Saturdays to deal with criminal matters in which a plea of guilty had been entered⁴⁷. However, this should not be taken as an indication that Justice Fox lacked humour. Indeed, a report in the *Canberra News*⁴⁸ supports the contrary view. It was reported, and I quote, that:

Most judges are prone to understatement, and Canberra's Mr Justice Fox is no exception. In a case yesterday involving a man alleged to have called a police sergeant a "fat slob", Judge Fox noted dryly: "That would have been a fairly courageous thing to have done in a police station."

In March 1972, the Honourable Francis Xavier Lockington Connor AO QC was appointed as the third resident judge of this Court.

⁴² Commonwealth of Australia, Attorney General's Department, Planning and Development Section, 'Summary of Cases Before the Supreme Court of the ACT, 1970' November 1971 S.71/1466

⁴³ Justice Blackburn was also appointed Chairman of the Law Reform Commission for a three year term, meaning his time was shared between his two appointments.

⁴⁴ *Canberra Times* 'Judge Welcomed on Historic Day' 10/8/91.

⁴⁵ *Canberra Times* 'Welcome for Second Judge' 5/8/71.

⁴⁶ The Honourable J Miles AO, 'History of the Supreme Court of the Australian Capital Territory', unpublished, at 20.

It was in September of 1972 that a truly remarkable event in the history of this Court and our Territory occurred. Justices Fox, Blackburn and Connor, sitting as the full Bench of the Supreme Court, held, in the decision of *Golden-Brown v Hunt*⁴⁹ handed down on 12 September 1972, that the *Trespass on Commonwealth Lands Ordinance 1972*, which sanctioned the removal of the Aboriginal tent embassy, was inoperative as its gazettal had not complied with notification requirements⁵⁰. Justices Blackburn and Connor suggested in their joint judgment, that this may have “highly inconvenient consequences.”⁵¹ It rather did. All other Commonwealth Ordinances since 1930 suffered from the same defects in notification and were therefore inoperative. This situation was remedied by the Federal Government passing legislation validating Territory Ordinances 2 days later (14 September 1972).

That decision represented and continued the long tradition of judges of this Court (and elsewhere) steadfastly discharging their duty as guardians of individual rights. One other such instance was provided a year later by Justice Connor, who, in the context of a murder trial, famously relied upon an unpublished draft Bill abolishing the then-mandatory death sentence for murder. His Honour announced that the accused would not be subject to capital punishment following his conviction. Later that year the Whitlam Government passed the *Death Penalty Abolition Act*⁵², which abolished the death penalty and substituted life imprisonment for it.

This tradition has been further enhanced by the *Human Rights Act 2004* (ACT) which mandates an approach to statutory interpretation that is consistent with human rights.

⁴⁷ *Canberra Times* ‘Supreme Court to sit on Saturday’ 5 February 1972.

⁴⁸ On 16 November 1971.

⁴⁹ (1972) 19 FLR 438.

⁵⁰ in the *Seat of Government (Administration) Act 1910* (Cth).

⁵¹ At 451.

The Act empowers the Supreme Court, upon satisfying itself that a Territory law is not consistent with a human right, to make a declaration of incompatibility.⁵³

In 1977, Justice Fox became the first Chief Judge of this Court. He held that position for 7 months, being succeeded by Sir Richard Blackburn, who then became the Territory's first Chief Justice when, in 1982, the title of Chief Judge was changed to that of Chief Justice. Chief Justice Blackburn retired, due to ill health, in 1985. His Honour was a highly respected jurist and has been honoured with an annual lecture in his name.

Upon Justice Fox's retirement in 1977, the Honourable Douglas McGregor QC was appointed; he was succeeded in 1980 by the Honourable John Kelly QC. The Honourable John Gallop AM QC RDF was appointed to this Court in May 1982, serving on the bench for 18 years. In 1985, upon Sir Richard Blackburn's retirement from this Court, the Honourable Jeffrey Miles AO QC was appointed as the Court's second Chief Justice. Chief Justice Miles held that position for 17 years, retiring in 2002.

In 1984, the Supreme Court celebrated its 50th anniversary. On this occasion, repeated calls were made for the appointment of a forth resident judge, and a new Supreme Court building. Over the last 25 years, much change has beset the Court, and the number of lodgements to the Supreme Court has again increased to 2462 in 2008.

⁵² 1973 (Cth).

⁵³ *Human Rights Act 2004* (ACT) Pt 4; NB: this is a power conferred upon the Supreme Court exclusively; see, for example, in respect of the ACT Administrative Appeals Tribunal: *Dunne/Barden and ACT Department of Education & Training* [2007] ACTAAT 26 (17 December 2007) at [44].

In 1986, the Canberra Court of Petty Sessions became the Magistrates Court,⁵⁴ and in 1996, the Magistrates Court building opened, ending the long tradition of housing both courts in this building.

In 1988, the Commonwealth government, which then administered this Court, enacted legislation creating the position of Master of the Supreme Court.⁵⁵ In 1972, the Court had expanded to 3 resident judges, and the growing population of the Territory, and workload of the Court, necessitated the appointment of an additional judicial officer.⁵⁶ The three Masters - Alan Hogan, Terry Connolly and my present nephew, David Harper - have served this Court with distinction, and they have made – and, no doubt, Master Harper and his successors will continue to make – a valuable contribution to the jurisprudence of the Court.

Four years later, on 1 July 1992, the responsibility for the Supreme Court was transferred from the Commonwealth of Australia to the Australian Capital Territory⁵⁷. This transfer vested responsibility for the Supreme Court in the people of the Territory as an incident of its democratic governance. This occurred two years subsequent to the Magistrates Court being so transferred⁵⁸. As then Attorney-General, later Master and Judge of this Court, his Honour Justice Connolly, remarked:

[T]his is a significant day for the territory, it marks our full transfer of the responsibilities of self government. It also marks, I hope, a point for other

⁵⁴ The Honourable J Miles AO, 'Law Courts Building Coat of Arms', unpublished, at 1.

⁵⁵ *Statute Law (Miscellaneous Provisions) Bill 1988* (Cth)

⁵⁶ Mr Staples (jagajaga), Minister for Housing and Aged Care, Parl. No. 35, 25.5.1988, p 2941. in his second reading speech to Bill - Minister for Housing and Aged Care, Mr Staples - the "pressing need for an additional judicial officer on the Court"

⁵⁷ *ACT Supreme Court (Transfer) Act 1992* (Cth)

⁵⁸ Transcript of proceedings of the Ceremonial Sitting on the occasion of the transfer of the Supreme Court responsibility for the Supreme Court of the ACT from the Commonwealth of Australia to the Australian Capital Territory, Wednesday, 1 July 1992 at T8, the Honourable J Miles AO.

*states and territories by our open acknowledgment and legislative guarantee of the importance of the independence of the judiciary*⁵⁹.

Remaining responsive to an evolving community is one of the greatest challenges facing a Court. Reform of civil procedure and the harmonisation of the rules of the ACT Law Courts are examples of the Court modernising its practice and procedure in response to community needs. Since 1937, rule making power has been vested in the Supreme Court, whilst the Magistrates Court lacked equivalent power. This resulted in divergence in the rules of the Courts. The Rules Harmonisation Project culminated in the enactment of the *Court Procedures Rules 2006* (ACT), which consolidated the rules and procedures of both courts into one piece of subordinate legislation. The rules modernise and simplify court procedures, and have adopted, as far as possible, innovations to assist litigants, including plain English language drafting techniques. The Rules bring this jurisdiction into line with Australian best practice, and improve access to justice⁶⁰. I acknowledge the efforts of Justices Connolly and Refshauge in ensuring the success of this project.

Five years after the transfer of responsibility, in 1997⁶¹, the ACT Government made its first judicial appointment to the Supreme Court, appointing the then Director of Public Prosecutions, Ken Crispin QC. In 2000, his Honour Justice Gray was appointed filling the vacancy left by the retirement of Justice Gallop. Following the retirement of Chief Justice Miles in September 2002, Master Connolly became the 4th judge and Master Harper was appointed to the resulting vacancy.

⁵⁹ Transcript of proceedings of the Ceremonial Sitting on the occasion of the transfer of the Supreme Court responsibility for the Supreme Court of the ACT from the Commonwealth of Australia to the Australian Capital Territory, Wednesday, 1 July 1992 at T3, the Honourable T Connolly.

⁶⁰ See the Explanatory Statement to the *Civil Procedures Bill 2004*, available online at http://www.legislation.act.gov.au/es/db_11553/current/pdf/db_11553.pdf which enumerates the advantages of harmonisation.

⁶¹ 26 September 1997

In 2008, this Court was brought into line with superior courts of record around the nation with the commission of its first female judge, her Honour Justice Penfold. At the ceremonial sitting on the occasion of the 50th anniversary of this Court, then Attorney-General, Senator Gareth Evans stated⁶², and I quote:

But whatever lies ahead, the record of the past can give us nothing but confidence for the future, manned as this Court is – whereas perhaps in the future it will be womaned – by a fine body of judges.

This quote remains apt 25 years on, and the appointment of Justice Penfold – signifying the long overdue gender diversification of the bench - is truly reason for celebration. Her appointment will contribute to ensuring that the judiciary is responsive to the community whilst being demonstrably independent and competent⁶³.

Now, it would be remiss of me not to take this opportunity to also mention Justice Refshauge, who was appointed at the same time as Justice Penfold, and who has made a marked contribution to the height diversification of the bench.

In 2001, the ACT Court of Appeal was established⁶⁴. The creation of a separate intermediate appellate court as a division of the Supreme Court was not universally supported,⁶⁵ but has proved crucial to the administration of justice in the Territory. Prior to this, in a system peculiar to this jurisdiction, appeals from the Supreme Court were heard by the Full Court of the Federal Court of Australia.⁶⁶

⁶² At 9.

⁶³ See also Evans, S and Williams, J 'Appointing Australian Judges: A New Model' (2008) 30 *Sydney Law Review* 295.

⁶⁴ by the *Supreme Court Amendment Bill 2001* (ACT); On 14 October 2002, the Federal Government enacted complementary legislation providing that appeals from the Supreme Court be heard by the ACT Court of Appeal being the *Jurisdiction of Courts Legislation Amendment Act 2002* (Cth) [no. 70, 2002].

⁶⁵ See Law Society response to the Curtis Paper.

⁶⁶ by virtue of the *Federal Court of Australia Act 1976* (Cth)

The Court of Appeal is headed by a President responsible “for ensuring the orderly and expeditious discharge of the business of the Court of Appeal”.⁶⁷ I recognise the contribution of the Honourable Justice Crispin, our inaugural President, and his Honour Justice Gray, our current President, who have discharged the duties of this office in an exemplary manner.

Special mention must also be made of the continuing and invaluable contribution of the additional judges of this Court. 57 additional judges that have been appointed to this Court since 1958. I reiterate the sentiment of Sir Richard Blackburn who, at the 50th anniversary of this Court, commented that the devoted service of the additional judges is of inestimable value to both the Court and the Territory. Chief Justice Blackburn said, and I quote, “*Not only have they disposed of a substantial amount of the Court’s business ... but they have significantly contributed, out of their wide and varied experience, to the total experience of the Court.*” The calibre of additional judges is unquestionable. One need only note that the current Chief Justice of the High Court of Australia, Chief Justice French, who shares the bench with me today, was an additional judge of this Court.

I am honoured to also have their Honours Justices Graham, Lander, Spender, Moore and Cowdroy OAM on the bench today, and I hope this tradition continues.

⁶⁷ *Supreme Court Act 1933 (ACT)*, s37G(1).

On 30 June 2008, the ACT's first authorised Law Reports were launched⁶⁸. The ACT Law Reports contain, and accurately record, significant decisions of the Court, producing a permanent resource of the common law of this jurisdiction.

You will be pleased to know that the last topic I wish to canvas today is the changing attire of the Judges of the Supreme Court. As Yves St Laurent quipped, "Fashions fade, style is eternal", and this Court aims to obviate fashion faux pas by making key modifications to the judicial wardrobe. Such a fashion statement by the bench should come as no surprise to many of you who shared the bar table with current and former judges of this Court – and their then flamboyant attire – in the 60s and 70s.

The fashion movement of the bench began in 2002, when the judges of this Court ceased the practice of wearing wigs in civil matters. This was followed in 2003 by the cessation of the practice of wearing wigs "in any cause before the Court".⁶⁹

As you may have noticed, the change of attire does not end with horsehair. Today also marks the unveiling of the new Supreme Court judicial robes, the first robes specifically designed for this Court. And they look rather distinctive, if I do say so myself. The new robes are based loosely on the design of the Federal Court robes, reflecting the fact that many Federal Court judges sit as additional judges of this Court. The coloured band running down one side of the front of the robe and continuing down the back of the robe uses the three colours of the ACT flag (white, gold and blue), which in turn combine the livery colours of the City of Canberra (blue and white) and the sporting colours of the

⁶⁸ See, Speech delivered by Higgins CJ at the Launch of the ACT Law Reports, 30 June 2008 available online at http://www.courts.act.gov.au/supreme/content/about_us_speeches.asp

⁶⁹ Supreme Court, Practice Direction No 4/03 'Wigs' 22 Aug 2003, available online at: <http://www.courts.act.gov.au/supreme/content/PracticeDirectionsNotesToPractitioners/Practice%20Direction%204%20of%2003.pdf>

ACT (blue and gold). The three horizontal tucks in the robe, of varying size, reflect the variety of work handled by the Court and the several levels of original and appellate jurisdiction exercised by the Court.

Finally, the work of the Court is only possible by the combined efforts of the Registrar and her staff, the Sheriff and Sheriff's Officers, the library staff, chambers staff, and, of course, the members of the bar and legal profession. I thank you all for your dedicated service to this Court.

The commemoration of the 75th anniversary of this Court is an opportunity to recognise its historical, cultural, social, and architectural significance. The Court has been graced with distinguished jurists, who have made an enduring contribution by the quality of the legal principles they have articulated and their dedication to achieving justice in the Territory. However, the measure of the law is not its judges, history, buildings or legal principles, taken in isolation; it is the extent to which the justice system is able to achieve just outcomes for those who come before it. As the honourable history of this Court attests, one can be confident of the quality of justice delivered in its name.

**ADDENDUM:
LIST OF APOLOGIES FOR
75TH ANNIVERSARY CEREMONIAL SITTING**

Group 1: Present additional judges

Justice D M Ryan
Justice B Tamberlin
Justice S Marshall
Justice A North
Justice M Stone
Justice A Bennett AO
Justice J Dowsett
Justice R Edmonds
Justice S Rares
Justice A Besanko
Justice J Mansfield
Justice R Buchanan

Group 2:

Justice WMC Gummow, AC (High Court)
Justice M D Kirby, AC CMG (High Court)
Justice K M Hayne AC(High Court)
Justice J D Heydon (High Court)
Justice S M Crennan (High Court)
Justice S Kiefel (High Court)

Group 3:

The Hon Robert McClelland MP, Federal Attorney-General
Senator Gary Humphries, Senator for ACT
Senator Kate Lundy, Senator for ACT
Mr Bob McMullan MP
Ms Annette Ellis MP

Group 4: ACT Magistrates Court & Tribunals

Mr Shane Madden, Magistrate
Ms Karen Fryar, Magistrate
Ms Lisbeth Campbell, Magistrate
Mr Robert Todd AM

Group 5: Former Judicial Officers

The Hon J Allsop (President, NSW Court of Appeal)
The Hon R Madgwick QC
The Hon M Weinberg (Victorian Court of Appeal)

The Hon M Wilcox QC
The Hon M Beazley AO (NSW Court of Appeal)
The Hon Michael Foster QC
The Hon Ian Sheppard AO QC
The Hon R Northrop QC
The Hon R V Gyles AO QC
The Hon Philip Evatt DSC QC
The Hon Russell Fox AC QC
The Hon Sir Edward Woodward AC OBE QC
The Hon Cecil Pincus QC
The Hon J von Doussa QC
The Hon T Morling QC
The Hon J D Davies QC
The Hon G E Fitzgerald AC, QC
The Hon K J Carruthers QC