

like Starke, he refused to **disqualify** himself from hearing the challenge to the legislation.

Williams found life on the High Court demanding. He served initially under **Latham**, who worked hard to achieve harmony among the Justices (see **Personal relations**). That process was assisted by the **retirement of Evatt**, whom Williams replaced, and who had suffered a bitter relationship with his colleague Starke. The work was arduous, and was made even harder by the fact that the Court had managed its **business** with six members since 1930. In 1946, that changed when a seventh Justice, **Webb**, was appointed, though he did not take up his seat on the Court until 1948. In the next decade, following the retirement of the elderly Rich and Starke, Williams began to find himself surrounded by men of similar backgrounds and interests to himself. When **Dixon** was elevated to the position of **Chief Justice** in 1952, the new Chief was able to bring out the best in the members of his team, including Williams.

Williams had to learn to deal in a practical sense with constitutional problems, which in large measure at that time concerned the defence power, industrial disputes, and the guaranteed freedom of **interstate trade and commerce**. He approached all his work by applying the analytical technique then the mark of the equity lawyer: logic and precision were its hallmarks.

In his eulogy to Williams, Dixon spoke of the energy and unremitting application that characterised Williams' work and the careful, methodical, and thorough investigation he applied in addressing the heaviest case (but see **Dixon diaries**). These techniques did not necessarily sit comfortably with the broader considerations necessary for the working of a living Constitution. He relished equity appeals and intellectual property appeals in which, like other Justices at that time, he sat at first instance. His experience in valuation law was well recognised. His reasoning in *Murdoch's Case* (1942), *McCarthy v FCT* (1944), and *Abrahams v FCT* (1944) influenced valuation law for many years.

In *McCarter v Brodie* (1950), a road transport case, Williams—perhaps defensively—explained his reasoning in *Australian National Airways v Commonwealth* (1945), the first section 92 case in which he had sat. He said that he had attempted to reconcile the conflicting statements by which at various times the **Privy Council** had seemed to approve both what Isaacs had written in *James v Cowan* (1930) and what Evatt had written in *R v Vizzard; Ex parte Hill* (1933). In the *Bank Nationalisation Case*, regulation of interstate trade and commerce had been accepted by the Privy Council as compatible with its absolute freedom. Thus, in *McCarter*, Williams concluded that a state could enact all legislation reasonably required for the safety, maintenance, and preservation of public roads and could make a reasonable charge for their use. With the majority, he upheld legislation designed to protect the state's railways. He said, adopting the words of Lord Porter in the *Bank Nationalisation Case*, that whether an enactment was regulatory although it included prohibition presented a problem often 'not so much legal as political, social and economic'.

In *Hughes & Vale v NSW (No 1)* (1953), Fullagar retorted that the new ground that had emerged in *McCarter* (which Williams had foreshadowed in *Australian National Air-*

ways)—that the states, because they provided facilities for transport, must have power to control the use of such facilities in any manner thought fit—had no real foundation 'except expediency'. While a Constitution must be interpreted against a political, social, and economic background, this could not mean that it was proper to give to a particular provision one meaning where bankers and airline operators are concerned and another where carriers by land are concerned.

The exchange reflected the growing refinement of artificial doctrine relating to section 92, which finally collapsed in *Cole v Whitfield* (1988). The contrasting approaches of Williams and Fullagar perhaps reflect a contrast between the views of those (like Dixon and Fullagar) who were masterly exponents of the then-emergent doctrine, and the approach of a Justice attempting to apply ordinary principles of reasoning and accepted methods of **statutory interpretation** and **precedent**.

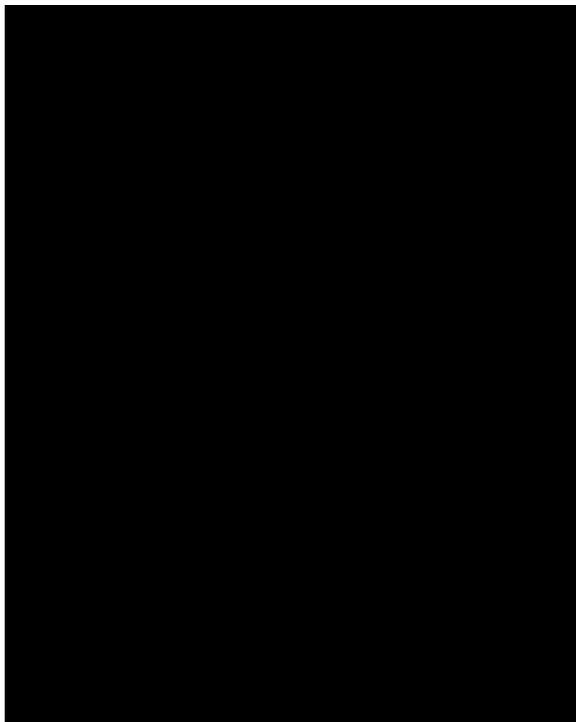
Dixon and Fullagar were classical Greek scholars. Williams, who was a Latin scholar but knew no Greek, in his later years on the Court sat beside Dixon, often with Fullagar on his other side. Williams was not impressed by the habit that Dixon and Fullagar developed of passing notes to each other across him in Greek. He also deplored the persistent practice of the Privy Council, for instance in the *Bank Nationalisation Case*, of continuing to sit with only five judges even when hearing an appeal from the High Court consisting of five or more Justices. He was proud of the fact that from May to August 1952, when both Dixon and McTiernan were absent, he was Acting Chief Justice of the Court.

Williams was knighted in 1954. Thereafter, his health began to fail, and in 1958, at the age of 68, he retired. He had set himself modest targets on his **appointment**, and he had met these aims. He had been a conscientious craftsman who had helped to maintain the prestige of the Court and its reputation as a civilised institution. Dixon set the tone of the Court, but Williams had always displayed an equable temperament. He died shortly after his seventy-fourth birthday.

When **Windeyer** was sworn in to replace Williams, he said that 'all who practised before [Williams] as a judge gratefully appreciated his considerate courtesy, recognised the range of his learning, especially of the doctrines of equity, and respected the thorough care and scholarship which his judgments reflect'. But Williams did not find the work on the High Court particularly congenial. Towards the end of his career, he expressed regret that he had left the NSW Equity Court.

GRAHAM FRICKE
SIMON SHELTER

Wilson, Ronald Darling (b 23 August 1922; Justice 1979–89), born in Geraldton, WA, was the first Western Australian to be appointed a Justice of the High Court. His father was an English-trained solicitor who migrated to Australia in about 1912 and set up practice in Geraldton. There were only two or three competitors in the town at that stage. His was a typical country practice of those days—creaking staircase and old leather chairs. Unfortunately, he suffered a stroke in 1929 or 1930, when Wilson was only seven, and was thereafter totally disabled and confined to a nursing home in Perth until he died five years later. He took in a partner, but the practice disintegrated and the bank foreclosed on the Wilson



Ronald Wilson, Justice 1979–89

home in 1936. Wilson remembers helping to bury his father's library in the backyard of their home (including a complete set of English law reports) before the house was sold. Wilson has often wondered if the new owners of the house ever tried to start a garden in the backyard and what fertiliser they needed to overcome the learning buried therein. It would have been hopeless to try to sell a law library in the aftermath of the Depression.

Wilson left school in 1936, having completed what was then described as the Junior Certificate (equivalent to about year ten in today's schools). He started work as a messenger in the Geraldton courthouse, becoming a permanent public servant as a junior clerk on his fifteenth birthday in August 1937. He transferred to Perth in 1939 and continued in the state Public Service (Crown Law Department) until he enlisted for war service in November 1941. In the meantime, he had acquired enough Leaving Certificate subjects to enable him to matriculate into the university on his return to civilian life in February 1946, although not into law, as he did not have Latin among his certificates.

As far as he recalls, Wilson did not have a strong sense of commitment to law. He had enjoyed flying in the RAAF in England during the war, where he flew spitfires. He thought of training to join the clergy, so long as he could then work as a flying padre in the north. He enquired of the Church if it had any plans to establish such a ministry. The answer was negative, so his thoughts turned to law.

As he could not enrol as a law student, he enrolled in arts and then transferred into law at the end of 1946, when he had completed first year. It was a great period to be at university, and the law school had more than its usual number of

mature, bright, and hard-working students. Wilson was one of the brightest, and ultimately its most distinguished, graduates when he became a High Court Justice in 1979.

Wilson continued his employment in the Crown Law Department, and on completion of his LLB honours degree in December 1949 was articled to the Crown Solicitor. On admission, he moved into the state prosecuting section, addressing his first jury in a criminal case in April 1951. Thereafter, he never thought seriously of leaving the Crown service and entering private practice, although he was urged to do so by more than one judge. The reason was simple: he enjoyed advocacy—and many good briefs in WA, including many constitutional briefs, were to be got from the Crown. During his years with the Department, he obtained a wide experience both as a Crown Prosecutor—ultimately becoming the Chief Crown Prosecutor—and as Crown Counsel. He accordingly acquired a great knowledge of both criminal law and civil law. In 1956, he was awarded a Fulbright Scholarship, which enabled him to complete an LLM degree at the University of Pennsylvania. He was appointed QC in 1963. He remained a member of the Department for the next 20 years until his appointment as Solicitor-General of WA in 1969.

Wilson's ten years as the Solicitor-General of WA were rewarding for him. As the leading counsel for the state in the High Court, he acquired a sound knowledge of constitutional law and was prominent among the counsel appearing before the Court. The study of constitutional law had always been an interest for him; in 1967, he wrote, with Peter Durack, a paper entitled 'Do We Need a New Constitution?' It was presented to the Law Council Convention in that year with a negative answer. It was a controversial period for the future of the federal system, and Wilson addressed the conference with great verve and confidence.

At the end of 1975, the High Court decided the *Seas and Submerged Lands Case*. It immediately engaged the attention of all the states as it held that their sovereignty did not extend to the territorial sea and sea bed. Negotiations were set in train to restore the interests of the states and the Northern Territory. The negotiations were long and difficult, and Wilson played an important role. He was appointed to the High Court before they were successfully completed.

In addition to his demanding legal career, Wilson devoted considerable time to the affairs of the Presbyterian Church and later the Uniting Church. From 1951 to 1956, he was Honorary Secretary of the WA Council of Churches. In 1964–65 he was Moderator of the Assembly of the Presbyterian Church in WA and Moderator of the WA Synod of the Uniting Church from 1977 to 1979.

In May 1979, Wilson was sworn in as a Justice of the High Court. It was not unexpected, as he had been considered for some time (see **Appointments that might have been**). He had never been in private practice, nor a member of an independent Bar. His was the first appointment after the introduction of the requirement for consultation between the Commonwealth and state Attorneys-General about a High Court appointment. His name had been put forward by the WA Attorney-General and was supported by Barwick. The appointment was widely applauded.

Wilson joined an experienced and strong-minded Bench, though he did so at a time of some tension between Barwick

and the *puisne* Justices about the expectation that, with the Court's move to Canberra, the Justices would also move their homes there. Wilson became entangled in this when Cabinet decided to support Barwick at the end of 1979. The difficulty was soon resolved, and Wilson was able to retain his home in Perth, from which he travelled to sittings of the Court. He was assisted by the provision of chambers for him in the Perth Supreme Court building.

The operation of the Court during Wilson's time appears to have been free of voting blocs, although some Justices were more conservative than others, and Wilson was frequently in the minority on issues relating to the scope of Commonwealth legislative power. There also seems to have been a lack of tension in the Justices' personal relations after the issues surrounding the move to Canberra were resolved. There were many joint judgments, though the Justices who chose to participate in them varied greatly. Wilson was often a party to a joint judgment, including the unanimous judgment of *Cole v Whitfield* (1988), which has largely cured the long-running sore of section 92 of the Constitution as to freedom of interstate trade. He also participated in a large number of criminal appeals.

In addition to *Cole v Whitfield*, the Court dealt with a number of important constitutional cases during Wilson's term. In *Queensland Electricity Commission v Commonwealth* (1985), another unanimous decision, the Court struck down a Commonwealth law that discriminated against Queensland by singling out its electricity authorities for special treatment in relation to the settlement of industrial disputes (see *Inter-governmental immunities*).

Both *Koowarta's Case* (1982) and the *Tasmanian Dam Case* (1983) raised a major issue for the future of federalism. They concerned the scope of the external affairs power.

Koowarta was the last High Court decision on this issue which, in the writer's view, had any semblance of restraint in its interpretation. The case concerned the application of sections 9 and 12 of the *Racial Discrimination Act 1975* (Cth) to actions occurring only in Australia. It was decided 4:3, with Stephen the only member of the majority who did not go so far as to hold that the existence of any treaty obligation gave rise to an external affair. Stephen rather held that the particular matter of racial discrimination was a matter of international concern. Wilson dissented, and relied on the forceful view of Dixon that federal legislation giving effect to a treaty must be based on some matter 'indisputably international in character' such as a convention on international civil aviation (*R v Burgess; Ex parte Henry* (1936)). Wilson wrote: 'In my opinion, the power in Section 51(xxix) does not extend to enable the Parliament to implement every obligation which Australia assumes in its international relations.'

The *Tasmanian Dam Case* put an end to the restrained view of the external affairs power. Again, the Court was divided 4:3, but this time the majority Justices all adopted the broadest view of the power, and again Wilson dissented. In doing so, he gave a strong warning that

an expansive reading of section 51(xxix) so as to bring the implementation of any treaty within Commonwealth legislative power poses a serious threat to the basic federal polity of the Constitution. Such an interpretation, if adopted, would result in

the Commonwealth Parliament acquiring power over practically the whole range of domestic concerns within Australia.

He then cited the many treaties that were ripe for the picking. His views have been prophetic.

One of Wilson's last cases was *Mabo (No 1)* (1988). It decided, again 4:3, that section 10 of the *Racial Discrimination Act* overrode a Queensland law purporting to extinguish native title rights being sought by the plaintiffs. Whether such rights actually existed was not determined until *Mabo* (1992). Nevertheless, the first decision has had great significance for the growth of native title. Wilson dissented. He did so on a more restricted interpretation of section 10 than that of the majority.

Wilson took part in a number of other important judgments, including *Todorovic v Waller* (1981) (damages); *R v O'Connor* (1980) (effect of intoxication on criminal intent); *Williams v The Queen* (1986) (arrest); the *Northern Land Council Case* (1981) (limit of Crown immunity); and *Actors Equity v Fontana Films* (1982) (corporations power). His judgments were well crafted, displaying in particular, unusually careful attention to the argument of counsel. This feature of his judicial style reflected not merely his conservatism but also his lack of affectation.

Wilson retired in February 1989, shortly after he became the National President of the Uniting Church of Australia for a three-year term. He was Chancellor of Murdoch University from 1980 to 1995. In 1990, he became President of the Human Rights and Equal Opportunity Commission (HREOC) for a term of seven years. He was Deputy Chairman of the Council for Aboriginal Reconciliation (1991–94), and President of the Australian Branch of the World Conference on Religion and Peace (1991–95). In 1997, he was elected President of the Australian Council for Overseas Aid. His report for HREOC on the stolen generation of Aboriginal children, *Bringing Them Home*, was a profoundly moving experience both for him and for many members of the community. Freed of the constraints of judicial office, Wilson has displayed a passion and commitment far removed from the conservatism of his judicial opinions.

He has been married to Leila since 1950. They have five children and nine grandchildren. He has received a number of honorary degrees and honours (CMG, KBE, and AC) for his extensive services to the law and the community.

PETER DURACK

Windeyer, (William John) Victor (b 28 July 1900; d 23 November 1987; Justice 1958–72). Of Australian families which boast a strong tradition in the law, one outstanding family is the Windeyers. Of Swiss origin (the first Windeyer going to England in about 1735), Charles Windeyer (1780–1855) arrived in Australia in 1828. He had been a London law reporter—the first recognised reporter of the House of Lords—and in NSW became Senior Police Magistrate and the first Mayor of Sydney. Each generation since has served the community in the law and other fields. Richard Windeyer (1806–47), the son of Charles, had been admitted to the English Bar before he migrated; he became a leading barrister in Sydney and a Member of the NSW Legislative Council. His son William Charles Windeyer (1834–97) was a