

**HIGH COURT OF AUSTRALIA**

**CEREMONIAL SITTING**

**IN MEMORY OF THE LATE  
THE HONOURABLE SIR ANTHONY MASON AC KBE GBM KC**

**AT**

**CANBERRA AND BY VIDEO CONNECTION**

**ON**

**MONDAY, 15 JUNE 2026, AT 2PM**

This is a ceremonial sitting to commemorate the life and public contribution of Sir Anthony Mason AC KBE GBM KC, the 28th Justice of the High Court of Australia and 9th Chief Justice of Australia, who died on 17 March 2026 at the age of 100.

Joining current members of the High Court of Australia on the bench in courtroom no 1 of the High Court Building in Canberra this afternoon are two of Sir Anthony's successors as Chief Justice of Australia, the Honourable Murray Gleeson and the Honourable Robert French, together with former Justices of the High Court, the Honourable Mary Gaudron, the Honourable Michael Kirby, the Honourable Kenneth Hayne and the Honourable Geoffrey Nettle. The Honourable William Gummow, who was the immediate successor to Sir Anthony as a member of the Court, is seated in the courtroom.

Justice Gleeson regrets that she is unable to sit with us today. Former Chief Justice, the Honourable Susan Kiefel, has sent her apologies, as have former Justices Sir William Deane, Sir Daryl Dawson, the Honourable Michael McHugh, the Honourable Ian Callinan, the Honourable Susan Crennan, the Honourable Virginia Bell and the Honourable Patrick Keane.

The memory of Sir Anthony Mason is honoured by the presence in the courtroom of: the Governor-General of Australia, her Excellency the Honourable Sam Mostyn; the Governor of New South Wales, her Excellency the Honourable Margaret Beazley; the Chief Justice of New Zealand, the Right Honourable Dame Helen Winkelmann; the former Chief Justice of New Zealand, the Right Honourable Dame Sian Elias; the President of the Fiji Court of Appeal, Justice Isikeli Maitaitoga; the Chief Justice of Hong Kong, the Honourable Andrew Cheung, the former Chief Justice of Hong Kong, the Honourable Geoffrey Ma, Justice Roberto Ribiero of the Hong Kong Court of Final Appeal; and former Justice of Appeal of the Hong Kong Court of Appeal, the Honourable Maria Yuen.

The memory of Sir Anthony Mason is also honoured by the presence in the courtroom of a number of current and former judges of other Australian courts. Appropriately acknowledged as a group at the outset are the Chief Justice of New South Wales, the Honourable Andrew Bell, and Judges of Appeal the Honourable Kristen Walker and the Honourable Stephen McLeish of the Supreme Court of Victoria. A common characteristic of the members of that group is that each, like me and like Judge of Appeal the Honourable Mark Leeming of the Supreme Court of New South Wales, had the privilege of serving as an associate to Sir Anthony Mason.

Present also are the Chief Justices of the Federal Court of Australia and the Federal Circuit and Family Court of Australia, the Honourable Debra Mortimer and the Honourable Will Alstergren; the Chief Justices of Western Australia and Victoria, the Honourable Peter Quinlan and the Honourable Richard Niall; Judge of Appeal Jeremy Kirk of the Supreme Court of New South Wales; Justice James Stellios of the Federal Court of Australia; the Honourable Andrew Greenwood, former Justice of the Federal Court of Australia; and the Honourable Mary Finn, former Judge of the Family Court of Australia.

The Court acknowledges the presence at the bar table and in the well of the court of the Honourable Michelle Rowland, the Attorney-General of the Commonwealth; the Honourable Mark Dreyfus KC, the former Attorney-General of the Commonwealth; the Solicitors-General of the Commonwealth, South Australia, the Northern Territory, Queensland, Victoria, Tasmania and Western Australia; the President of the Australian Bar Association; the Presidents of the Bar Associations of Queensland, Victoria, South Australia, the Northern Territory, Tasmania and the ACT; the President of the Law Council of Australia; and the Presidents or representatives of the Law Societies of the ACT, South Australia, Queensland and New South Wales, and Gavan Griffith KC, former Solicitor-General of the Commonwealth.

The Court welcomes the many other former associates, staff, friends and admirers of Sir Anthony Mason who are present in the courtroom and who are watching online. Appropriate for special acknowledgement amongst those present is Professor Geoffrey Lindell, a long-time friend of Sir Anthony, a frequent collaborator with Sir Anthony on scholarly projects and the editor of *The Mason Papers*, comprising selected papers and speeches of Sir Anthony Mason, published in 2007.

The Court especially welcomes members of the Mason family. Those who are present in the courtroom include Sir Anthony's son David and daughter-in law Katharine; grandchildren Kate, Emma, William and Alice; and great-grandchildren Charlie and Leo. Those unable to be present but who are watching this ceremony online include Sir Anthony's son Michael and daughter-in-law Anna.

Anthony Frank Mason was born on 21 April 1925. He was born in Sydney, where he would grow up and where he would live almost the entirety of his life. He was educated at Kincoppal – Rose Bay and at Sydney Grammar School. He served for two years in the Royal Australian Air Force towards the end of World War II, training initially in Australia and later in Canada as a navigator. He afterwards completed his studies at the University of Sydney from which he graduated with first class honours in arts and law.

He was articled with Clayton Utz & Co in Sydney and served as associate to Justice David Roper of the Supreme Court of New South Wales. He was admitted to the New South Wales Bar in 1951, reading with Ken Asprey who would go on to become a Judge of the Supreme Court of New South Wales and a founding member of its Court of Appeal. Justice Asprey's former pupil was destined later to sit with him for a time as a member of that Court. But that is a later part of the story.

As a junior barrister, Anthony Mason was an immediate and unqualified success. He quickly developed a large practice principally in equity, commercial law, corporations law and constitutional law. He developed a reputation as "an opponent to be reckoned with, though always fair and friendly".<sup>1</sup> Within three years of his admission to the bar, at the age of only 29, he appeared unled before the High Court presided over by Chief Justice Sir Owen Dixon in *The Queen v Davison*.<sup>2</sup> The judgment in that case was very much a reflection of the learned argument he presented. The judgment remains a leading authority on the nature of judicial power.

The next year, he appeared again before the High Court, this time led but this time unsuccessfully. The case was *The Queen v Richards; Ex parte Fitzpatrick and Browne*.<sup>3</sup> His clients in that case were a newspaper proprietor and a journalist who had been gaoled for contempt of Parliament by resolution of the House of Representatives. The resolution had been passed without him as their counsel having been afforded an opportunity to make submissions to the House on their behalf. The denial of procedural fairness left him with what he described as a "sense of outrage" which remained "undimmed" even at the time of his retirement from the High Court some 40 years later.<sup>4</sup> The experience no doubt contributed to the formation of his strong views on the importance of procedural fairness which he came to express judicially in a series of cases beginning with *Kioa v West*.<sup>5</sup>

Whilst maintaining his own busy practice, Anthony Mason was an active and collegiate member of the New South Wales Bar, serving on its Council and being credited with influencing several of its rising stars. Amongst them were Bill Priestly, Roddy Meagher and Murray Gleeson.

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<sup>1</sup> Transcript of Proceedings, "On the Occasion of the Swearing In of Mr Justice Mason as a Justice of the High Court of Australia" (Sydney, 8 August 1972) at 5.

<sup>2</sup> (1954) 90 CLR 353.

<sup>3</sup> (1955) 92 CLR 157.

<sup>4</sup> Mason, "A New Perspective on Separation of Powers" (1996) 82 *Canberra Bulletin of Public Administration* 1 at 5.

<sup>5</sup> (1985) 159 CLR 550.

Roger Gyles QC would later opine that his influence on this younger group was "mostly for the good".<sup>6</sup> He was for some years Challis Lecturer in Equity at the University of Sydney, a position previously held by Sir Frederick Jordan and by Justice Roper and which has since 2004 been held by Justice Leeming. As Challis Lecturer in Equity, he counted Bill Gummow and Mary Gaudron amongst his students. At his own swearing-in ceremony in this courtroom the day after Sir Anthony's retirement as Chief Justice, Justice Gummow recounted how he had turned to his former teacher for advice when he himself was considering going to the New South Wales Bar. Sir Anthony, in Justice Gummow's words, "was not extravagantly enthusiastic" but explained after a pause that he had been "cautious on a similar occasion with one, Murray Gleeson, and Gleeson [seemed] to be getting on well enough".<sup>7</sup>

Having spent 13 years as a junior counsel, Anthony Mason's professional life was to change dramatically. Within the space of two days, he was commissioned by the Governor of New South Wales as a Queen's Counsel in and for that State and was appointed by the Governor-General to the office of Solicitor-General of the Commonwealth. That office had then been newly separated from the office of the Secretary of the Attorney-General's Department and had been reconstituted as that of the Second Law Officer of the Commonwealth under the *Law Officers Act 1964* (Cth).

As Solicitor-General of the Commonwealth, Anthony Mason QC performed the core function of advising and appearing as counsel for the Commonwealth principally in the High Court. He was also involved in significant law reform. He led the Australian delegation to the

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<sup>6</sup> Transcript of Proceedings, "Ceremonial Sitting on the Occasion of the Swearing-In of the Chief Justice the Honourable Sir Anthony Mason, KBE and the Swearing-In of the Honourable Mr Justice Toohey and the Honourable Justice Gaudron as Justices of the High Court of Australia" (Canberra, 6 February 1987) at 12.

<sup>7</sup> Transcript of Proceedings, "Ceremonial Sitting on the Occasion of the Swearing-In of The Honourable Justice William Montague Charles Gummow as a Justice of the High Court of Australia" [1995] HCATrans 97.

United Nations Commission on International Trade Law, serving for a time as Vice-Chairman of the Commission. He was centrally engaged, including as a member of the Administrative Review Committee, in the early development of the legislative reform package which would eventually result in the enactment of the *Administrative Appeals Tribunal Act 1975* (Cth), the *Ombudsman Act 1976* (Cth), the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and the *Freedom of Information Act 1982* (Cth).

In 1969, having spent five years as Solicitor-General of the Commonwealth, Anthony Mason QC was appointed a Judge of Appeal of the then relatively recently established Court of Appeal of the Supreme Court of New South Wales. In that capacity, he came to have what he would later describe as "the purifying experience of being overruled by the High Court".<sup>8</sup>

After three productive years on the Court of Appeal, and to the surprise of no-one, he was appointed a Justice of the High Court, a position which brought him a customary knighthood. So, in 1972, began the period of nearly 23 years in which Sir Anthony Mason would serve as a member of the High Court, the first 14 and a half years as a Justice and the last eight as Chief Justice.

There is much that remains instructive in the judgments which Justice Mason authored in his first decade on the Court. His explanation of the nature of Commonwealth Executive power in the *Australian Assistance Plan Case*,<sup>9</sup> his explanation of the reach of Commonwealth legislative power in *Murphyores Inc Pty Ltd v The Commonwealth*,<sup>10</sup> his assimilation of taxation legislation into the mainstream of statutory interpretation together with Wilson J in *Cooper Brookes (Wollongong) Pty Ltd*

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<sup>8</sup> Mason, "Reflections on the High Court: Its Judges and Judgments" (2013) 37 *Australian Bar Review* 103 at 103.

<sup>9</sup> *Victoria v The Commonwealth and Hayden* (1975) 134 CLR 338.

<sup>10</sup> (1976) 136 CLR 1.

*v Federal Commissioner of Taxation*,<sup>11</sup> and his exposition of the principles of contractual construction in *Codelfa Construction Pty Ltd v State Rail Authority (NSW)*<sup>12</sup> are prime examples.

That said, there is no novelty in the observation that the most impactful of Sir Anthony Mason's judgments were produced in and following the mid-1980s after he had been joined on the bench by Sir Gerard Brennan and Sir William Deane. His groundbreaking expositions of the nature of a non-delegable duty of care in *Kondis v State Transport Authority*<sup>13</sup> and of the nature of a fiduciary duty in *Hospital Products Ltd v United States Surgical Corporation*,<sup>14</sup> both decided in 1984, have been demonstrated by subsequent adoption in Australia and elsewhere to have been of that character. Asked in an interview in 1994 whether his judicial approach had changed over time, Sir Anthony did not deny that it had but responded by saying that the extent of the change had been somewhat exaggerated. He said that, given the length of time that he had then been a judge, he would have been worthy of criticism had his views remained static.<sup>15</sup>

The so-called "Mason Court" – a "useful shorthand"<sup>16</sup> for what is more accurately referred to as the High Court during the period from the appointment of Sir Anthony Mason to the office of Chief Justice in 1987 through to his constitutionally mandated retirement in 1995 – has been described by no lesser figure than Sir Maurice Byers QC as one of "the most gifted and courageous High Courts in our history".<sup>17</sup> The Honourable John Doyle, when Chief Justice of South Australia, wrote of the period as having been "characterised by a series of landmark decisions evincing not

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<sup>11</sup> (1981) 147 CLR 297.

<sup>12</sup> (1982) 149 CLR 337.

<sup>13</sup> (1984) 154 CLR 672.

<sup>14</sup> (1984) 156 CLR 41.

<sup>15</sup> Walker, "Mason, Anthony Frank" in Blackshield, Coper and Williams, *The Oxford Companion to the High Court of Australia* (2001) at 460.

<sup>16</sup> Brennan, "A Tribute to Sir Anthony Mason" in Saunders (ed), *Courts of Final Jurisdiction* (1996) at 10.

<sup>17</sup> Noted in Dillon and Doyle, "Mason Court" in Blackshield, Coper and Williams (eds), *The Oxford Companion to the High Court of Australia* (2001) at 461.

only significant doctrinal development but also broad changes in the approach taken by the Court".<sup>18</sup>

Foundational to that posture of the Mason Court were two structural changes which had been legislated shortly before Sir Anthony took office as Chief Justice. One was the introduction in 1984 of a general requirement for special leave to appeal to be granted by the High Court as a precondition to an appeal to it, a measure which empowered the High Court to manage its workflow by focusing on cases considered most deserving of its attention. The other was the ultimate abolition by the *Australia Act 1986* (Cth) of all appeals from all Australian courts to the Privy Council, a measure to which Sir Anthony Mason referred in his swearing-in speech as "a landmark in our legal history" as a result of which the High Court came to have for the first time in its history "exclusive final responsibility for declaring what is the law for Australia" and an "obligation" together with other Australian courts "to shape principles of law that are suited to the conditions and circumstances of Australian society and lead to decisions that are just and fair".<sup>19</sup>

The landmark decisions of the Mason Court are too numerous to catalogue on an occasion such as this. There are some, however, which have proved to be of such profound and enduring significance that they cannot go unmentioned.

The first is *Cole v Whitfield*,<sup>20</sup> which Sir Anthony himself identified as "the most important constitutional decision of [his] time".<sup>21</sup> The decision brought unprecedented clarity of meaning and certainty of operation to the enigmatic text of s 92 of the Constitution against the background of the previous 140 attempts to do so by the High Court and the Privy Council having resulted in

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<sup>18</sup> Dillon and Doyle, "Mason Court" in Blackshield, Coper and Williams (eds), *The Oxford Companion to the High Court of Australia* (2001) at 461.

<sup>19</sup> (1987) 162 CLR ix at x.

<sup>20</sup> (1988) 165 CLR 360.

<sup>21</sup> Mason, "Reflections on the High Court of Australia" (1995) 20 *Melbourne University Law Review* 273 at 273.

what Professor Sawyer fairly described a decade before as "gothic horrors and theological complexities".<sup>22</sup> The decision cut through those horrors and complexities in a confidently expressed unanimous joint judgment which, in the words of Sir Gerard Brennan who was one of the co-authors, "might rightly be considered to stand as testimony to the multiple judicial qualities of Chief Justice Mason".<sup>23</sup>

The second decision is *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs*,<sup>24</sup> which acknowledged the role of Ch III of the Constitution in limiting the permissible scope of executive detention. The third is *Australian Capital Television Pty Ltd v The Commonwealth*,<sup>25</sup> which recognised the constitutionally implied freedom of political communication subsequently unanimously endorsed in *Lange v Australian Broadcasting Corporation*.<sup>26</sup> The fourth is *Mabo v Queensland (No 2)*,<sup>27</sup> which momentously departed from 150 years of precedent in declaring the common law of Australia to recognise customary native title. Following on from the fourth, the last I will mention is *Western Australia v The Commonwealth (Native Title Act Case)*,<sup>28</sup> which unanimously upheld the constitutional validity of the protective legislative response to *Mabo* enacted by the Commonwealth Parliament in the *Native Title Act 1993* (Cth).

Like Sir Garfield Barwick before him, Sir Anthony Mason displayed as Chief Justice a hitherto rare willingness to engage with the public, seeking to demystify the High Court and to promote awareness of its role and functions. This culminated in an interview he gave on the Australian Broadcasting Corporation's *Four Corners* program in 1995 shortly before his retirement

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<sup>22</sup> Sawyer, "Book Review" (1977) 8 *Federal Law Review* 376 at 377.

<sup>23</sup> Brennan, "A Tribute to Sir Anthony Mason" in Saunders (ed), *Courts of Final Jurisdiction: The Mason Court in Australia* (1996) at 13.

<sup>24</sup> (1992) 176 CLR 1.

<sup>25</sup> (1992) 177 CLR 106.

<sup>26</sup> (1997) 189 CLR 520.

<sup>27</sup> (1992) 175 CLR 1.

<sup>28</sup> (1995) 183 CLR 373.

from the office of Chief Justice.<sup>29</sup> In the words of David Jackson QC, Sir Anthony was "a leader in endeavouring to give a more open 'face' to the Australian judiciary".<sup>30</sup>

To say that Sir Anthony Mason retired from the High Court and from full time judicial office in 1995 is to state a verifiable historical fact. To imply that he was then retired would be wholly misleading. At the age of 70, a new and extraordinarily productive period of life was just beginning.

From 1994 until 1999, he served as Chancellor of the University of New South Wales. During the same period, he served as Chairman of the National Library of Australia and held appointments as a National Fellow in the Research School of Social Sciences at the Australian National University and as Goodhart Professor in Legal Science at the University of Cambridge.

Overlapping with those roles and continuing beyond was the role he once modestly described as that of "an Itinerant Judge in the Asia-Pacific region".<sup>31</sup> He served between 1995 and 1999 as a Judge of the Supreme Court of Fiji and between 1996 and 1999 as President of the Court of Appeal of the Solomon Islands. He became a Non-Permanent Judge of the Hong Kong Court of Final Appeal upon its founding in 1997 and served continuously in that capacity until finally retiring from the Court and, with it, from judicial life just after his 90th birthday in 2015.

Sir Anthony received for his service as a Non-Permanent Judge of the Hong Kong Court of Final Appeal the Grand Bauhinia Medal of which he was immensely proud. The citation

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<sup>29</sup> Reproduced in Lindell, *The Mason Papers* (2007) at 398.

<sup>30</sup> Jackson, "Sir Anthony Mason AC, KBE" (1995) 69 *Australian Law Journal* 610 at 611.

<sup>31</sup> Mason, "Reflections of an Itinerant Judge in the Asia-Pacific region" (2000) *International Journal of Legal Information* 311.

described him as having been "one of the pillars of the Court".<sup>32</sup> A former Chief Justice of the Court, Geoffrey Ma, who I have noted is present today, described Sir Anthony on Chief Justice Ma's own retirement in 2021 as "one of the wisest, ablest and best lawyers [he] ever had the fortune to meet and work with".<sup>33</sup>

Sir Anthony Mason was a judge's judge. More specifically, he was an ultimate appellate judge's ultimate appellate judge. One of the themes to which he repeatedly returned in his writing and speaking was the need for the law to be responsive, and transparently responsive, to alterations in societal circumstances. Another was the proper functioning of a collegiate court of final jurisdiction. The two themes were inherently related.

At the time of his swearing-in as Chief Justice, Sir Anthony openly embraced the concept of "judicial creativity" as a concept "designed to promote the interests of justice". He referred to "judicial freedom of choice" not as being at large but as being "restrained by ... efforts to ensure that judicial development of the law, though responding dynamically to the needs of society, is principled, orderly and evolutionary in character".<sup>34</sup> Consistently with those views, he had earlier referred to the doctrine of precedent as "an exercise in judicial policy which calls for an assessment of a variety of factors in which judges balance the need for continuity, consistency and predictability against the competing need for justice, flexibility and rationality".<sup>35</sup>

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<sup>32</sup> Press Release, "2013 Honours List" (Government of Hong Kong, 1 July 2013), reproduced in Gageler, "Hong Kong Honours Former Chief Justices" (2013) 87 *Australian Law Journal* 647 at 647.

<sup>33</sup> Ma, "Speech by The Honourable Chief Justice Ma" (Farewell Sitting, 6 January 2021, Court of Final Appeal) at 12.

<sup>34</sup> (1987) 162 CLR ix at x.

<sup>35</sup> Mason, "The Use and Abuse of Precedent" (1988) 4 *Australian Bar Review* 93 at 111.

Both at the time of his swearing-in as Chief Justice<sup>36</sup> and at the time of his retirement from that office,<sup>37</sup> Sir Anthony reflected on the peculiar role of the High Court within the Australian legal system. He stressed that each member of the High Court, as a collegiate court, has a responsibility to be faithful to his or her considered view of the law. But he also stressed that the ultimate responsibility of the High Court is to declare the law, which is the collective responsibility of the institution as a whole. Sir Anthony would later link this institutional responsibility to declare the law to what he described as its "institutional responsibility to clarify the law". He explained this institutional responsibility to clarify the law to be "the justification for the existence of a second-tier appellate structure" and noted that "[t]he requirement for a grant of special leave to bring an appeal to the High Court is in itself a recognition of this responsibility".<sup>38</sup>

There remains to mention Sir Anthony Mason's contribution to legal writing and lecturing, which Professor Lindell observed nearly 20 years ago would "rival those of even the most successful legal academics".<sup>39</sup> Sir Anthony appreciated and encouraged academic contribution to the development of the law, and his appreciation was appreciated by those whom he encouraged.

Revealing in that respect is that the fiftieth anniversary of his appointment to the High Court was celebrated by the publication in 2022 of a collection of essays in his honour edited by Professors Barbara McDonald, Ben Chen and Jeffrey Gordon which was contributed to by some 29 academic and other authors whose age-range spanned at least three generations. The title chosen for the collection, *Dynamic and Principled: The Influence of Sir Anthony Mason*, was a fitting summation of its subject-matter and the publication itself was a testimony to that influence.

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<sup>36</sup> (1987) 162 CLR ix at x-xi.

<sup>37</sup> (1995) 183 CLR v at vi-vii.

<sup>38</sup> Mason, "Reflections on the High Court: Its Judges and Its Judgments" (2013) 37 *Australian Bar Review* 102 at 110.

<sup>39</sup> Lindell, *The Mason Papers* (2007) at 1.

Sir Anthony Mason lived his long life generously and to the full. He was a friend and confidant of many, a wonderful conversationalist and a prodigious correspondent. He remained to the end mentally acute, intellectually curious and socially engaged, even as his physical health declined. His characteristic wit and wisdom were on full display at a celebration hosted by the High Court last year to mark his one hundredth birthday. He spoke on that occasion of the High Court having been "at or near the centre of [his] world for a great part of [his] life". He spoke of feeling "a great sense of pride in the High Court of which [he] had been a Justice for so long".

The legacy of Sir Anthony Mason is to be found in his judgments and extra-judicial writings. But not only there. It is to be found in the resilience of the institutions he helped to shape and the legal culture of openness and of excellence he did so much to foster. We many who are gathered in person and online on the occasion of this memorial sitting of the Court he headed celebrate that legacy with gratitude, with admiration and with affection.