



Australian Heritage Database

Places for Decision

Class : Historic

Identification

List: National Heritage List
Name of Place: High Court of Australia (former)
Other Names: Federal Court
Place ID: 105896
File No: 2/11/033/0434

Nomination Date: 13/06/2006
Principal Group: Law and Enforcement

Status

Legal Status: 15/06/2006 - Nominated place
Admin Status: 16/06/2006 - Under assessment by AHC--Australian place

Assessment

Recommendation: Place meets one or more NHL criteria
Assessor's Comments:
Other Assessments: :

Location

Nearest Town: Melbourne
Distance from town (km):
Direction from town:
Area (ha):
Address: 450 Little Bourke St, Melbourne, VIC 3000
LGA: Melbourne City VIC

Location/Boundaries:

450 Little Bourke Street, Melbourne, comprising the whole of Allotment 13B Section 19, City of Melbourne.

Assessor's Summary of Significance:

The former High Court Building is important as the first headquarters of the High Court of Australia. It operated from 1928 to 1980, a time when many Constitutional and other landmark judicial decisions were made affecting the nation's social and political life. The whole of the building and its interior design, fitout (including original furniture) and architectural features bear witness to these events.

As the first purpose built building for the home of the nation's High Court, it combines the then budgetary austerity of the Commonwealth with a skilled functional layout, where the public entry is separated from the privacy of the Justices' chambers and the Library by the three central Courts, in a strongly modelled exterior, all viewed as a distinct design entity. The original stripped classical style and the integrity of the internal detailing and fit out of the Courts and Library is overlaid by sympathetic additions with contrasting interior Art Deco design motifs. The additions retain access to natural light for the three Courts and the original strongly modelled stripped classical style is replicated in the façade treatment of the later additions and influenced the design of a later adjacent building.

The High Court is the apex of Australia's judicial system being the highest court of appeal and the interpreter of the Constitution. As the home of the High Court for over fifty years the former High Court building provided important judicial services. It functioned as the principal registry of the High Court from 1928 to 1976. Important cases were researched in its library, heard and decided in its Courts. Court Room One, which accommodated the Full Bench was the place where a number of Constitutional and other landmark judgements were made.

The former High Court is associated with early operation of the Federal Court system from 1977 to 1999 and the gradual expansion of the Commonwealth's constitutional power which now determines the judicial and political landscape in Australia.

The former High Court building is significant for its associations with judges who have had a profound effect on the nature of the High Court as an institution and judges that have made landmark decisions which changed the political and social fabric of the nation such as *Sir Isaac Isaacs* – Chief Justice and Governor General and *Sir Owen Dixon* – Justice, Chief Justice and considered the greatest legal advocate of his time.

The Chief Justice's chambers and the adjacent Library and their internal design and fit out demonstrate the nature of the accommodation that reflects the status of the Chief Justice and the close connection between the Chief Justice's chambers, the Library and the Courts. The Justices' chambers are a direct physical link between some of the greatest jurists of the nation with the operations and decisions of the High Court.

Draft Values:

<i>Criterion</i>	<i>Values</i>	<i>Rating</i>
A Events, Processes	The former High Court Building is important in the course of Australia's history because it was the first headquarters of the High Court of Australia. It operated from 1928 to 1980, a time when many Constitutional and other landmark judicial decisions were made affecting the nation's social and political life. The whole of the building and its interior design, fitout (including original furniture) and architectural features bear witness to these events.	AT

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Commonwealth with a skilled functional layout, where the public entry is separated from the privacy of the Justices' chambers and the Library by the three central Courts, in a strongly modelled exterior, all viewed as a distinct design entity. The original stripped classical style and the integrity of the internal detailing and fit out of the Courts and Library is overlaid by sympathetic additions with contrasting interior Art Deco design motifs. The additions retain access to natural light for the three Courts and the original strongly modelled stripped classical style is replicated in the façade treatment of the later additions and influenced the design of a later adjacent building.

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H Significant people

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Sir Isaac Isaacs – Chief Justice and Governor General
Sir Owen Dixon – Justice, Chief Justice and considered the greatest legal advocate of his time.

The Chief Justice's chambers and the adjacent Library and their internal design and fit out demonstrate the nature of the accommodation that reflects the status of the Chief Justice and the close connection between the Chief Justice's chambers, the Library and the Courts. The Justices' chambers link some of the greatest jurists of the nation with the operations and decisions of the High Court.

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Historic Themes:

Nominator's Summary of Significance:

The former High Court of Australia is of outstanding national historical significance because of the important role it has played in Australian history. It is significant as the first headquarters of High Court in Australia and the only building in Australia constructed exclusively for the use of the High Court of Australia until 1980. The judgements delivered by court, and its interpretations of the Australian Constitution, have been significant in the Commonwealth's ascendancy over the States, and have therefore affected the history of the nation. It is significant for its associations with the highest level of Australian legal administration from the 1920s to the 1970s and for its close associations with the constitutional history of Australia. It demonstrates Melbourne's important role in Federal Government until the development of Canberra.

Description:

The former High Court is a two storey symmetrical red brick building in a stripped classical style, which its architect John Smith Murdoch called the Modern Renaissance style. The symmetry and order of the plan reflect Murdoch's interest in Beaux-Arts principles of design. The most distinctive features of the building are its austere facade with abstracted classical detailing and lack of ornate decoration, its symmetrical projecting and receding bays, the horizontal rustication of the brickwork, the projecting concrete stringcourses and the square brick pilasters. The central projecting bluestone front entrance porch is made up of simplified Doric pilasters and entablature.

The three double height court rooms are spread across the transverse axis of the building (with Court no I in the middle), dividing the public spaces (entrance, witness rooms and public administration offices) at the front from the library and symmetrically arranged justices' rooms at the rear. Circulation is provided for by means of symmetrically arranged pairs of corridors. Octagonal skylights are placed at the points where the corridors intersect (these were raised above lightwells during the 1935 additions).

The 1935 addition placed a second storey on the original single storey building, above the front offices and the two wings of justices' rooms at the rear (not over the courtrooms or library). This did not seriously affect either the ground floor planning or the stylistic integrity of the building. The first floor was designed to match the original, and maintains the original rhythm of the wall massing and windows, the articulated banding and projecting stringcourses. A cornice and parapet was added, as well as an ornamental frieze, iron balustrading and terracotta cresting to the south central bay, which are slightly more elaborate than Murdoch's original detailing.

The restrained interior detailing of Murdoch's High Court reflects the simplicity of the exterior, and is typical of the period and style. The elaboration of the decoration is in keeping with the hierarchy of spaces and has been retained through subsequent alterations. The walls and ceilings are painted cream, and have simple rectilinear classical detailing, including abstracted pilasters and coffered ceilings. Contrasting with the bare starkness of the walls are the mellow timber details. To reflect the symbolic importance of the courtrooms and justices' rooms these have timber panelling. Most of the floors are parquet. The geometric detailing of the interiors reflects some contemporary Art Deco influences, especially in the square and

rectilinear mouldings and lines on the walls and ceilings, and the door furniture and fixtures. While sympathetic to the original design, this influence is stronger on the first floor, for example in the plaster moulds framing the skylights and the chromium plated railings of the balustrades around the lightwells and along the stairs.

Analysis:

CRITERION (a) The place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history.

The High Court has played a major role in Australian government and the life of the nation. The period that the High Court sat principally in the Little Bourke Street building was an important phase of constitutional history in Australia. The High Court interpreted the Constitution from 1928 to 1980 in this building and was the arbiter of disputes arising from the Constitution.

The High Court was a place where one could experience a 'sense of history being made' (Heath 1999). The High Court building performed a significant social function to the nation for more than fifty years due to its provision of judicial services, including operating the Principal Registry for this peripatetic Court from 1928 to 1976 when the Registry was transferred to the newly completed Commonwealth/State Law Court complex in Queen Square opposite St James' Church in Sydney.

The High Court's interpretation of the Constitution contributed to Australia's development as a nation. The High Court was an important part of the constitutional system and the larger institutional framework of governance at a critical period and for most of Australia's 'century of nationhood' (Galligan 2004). Many landmark cases were heard by the High Court during these years and resulted in an expansive interpretation of the Commonwealth's enumerated powers. Important cases included: the First and Second Uniform Taxation Case (1942 and 1957), the Bank Nationalisation Case (1947), the Melbourne Corporation Case (1947), the Communist Party Case (1951) and the Boilermakers' Case (1956). During the Second World War, the High Court determined a number of issues that related to the extent of the Commonwealth's defence powers as prescribed in the Constitution. The judgments generally widened the Commonwealth's powers in time of war or immediate threat of war (Australian High Court 2006).

Courtroom One was purpose designed for sittings of the full bench of the High Court, in addition to the landmark cases heard in this courtroom. 36 of the 39 day hearing for the Bank Nationalisation Case took place in Court One, and the judgment for the Communist Party Case was delivered in Court One. A number of other important cases were heard in this courtroom, for instance the interlocutory application and the subsequent appeal for the Patrick Stevedores Operations No 2 Pty Ltd v Maritime Unions of Australia were heard in Court One. The Royal Commission of Inquiry into Communist Party activity in Victoria took place in Court Two between 20 June 1949 and 6 March 1950 (Heath 1999:126-127). .

The judgements delivered in the High Court and the interpretations of the Australian Constitution were significant for their expansive interpretation of Commonwealth power. It was largely the High Court that was responsible for affecting the balance of

legislative power between the Commonwealth and the states (CPM 1996:15)

The High Court's early immigration rulings played a significant role in determining the nature and composition of the emergent Australian community (Blackshield et al 2001). Cases such as *Chia Gee v Martin* (1905), *Robtelmes v Brennan* (1906) and *Potter v Minahan* (1908) show that its interpretations of the federal parliament's immigration power under the Constitution played a vital role in shaping Australia's social and cultural identity. The High Court's determinations on which people were or were not 'immigrants' for the purposes of the dictation test reflected a general acceptance of the Australian Government's 'White Australia policy'. At the level of statutory interpretation and administration of the law, cases like *Kisch (R v Wilson, (1934))* when the High Court ruled that the dictation test given to Kisch was invalid, the Court demonstrated its responses to changing community values and developments in international law (Blackshield et al 2001:332, 397).

The High Court building is superficially architecturally modest in contrast with the flamboyant architecture of the Victorian gold boom period of the late 19th Century. However, careful observation reveals the beginnings of the modernist functional architectural style, where internal activity is reflected in the massing form and external elevations. This feature is represented by the plan, the massing and the juxtapositions of the Courts, the Library and the Justices' chambers. As the first purpose built building for the home of the nation's High Court, it is important for reflecting the economic austerity of the period and a conservative yet confident image characteristic of all the early Commonwealth buildings.

The High Court of Australia (former) building has outstanding value to the nation against Criterion (a).

CRITERION (b) The place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history.

The former High Court building, Melbourne is one of three purpose built high court buildings, the others being the High Court building, Taylor Square, Sydney and the High Court of Australia, Canberra, which has operated as the home of the High Court in Australia since 1980. The function of these places determines their possession of uncommon aspects but this is not regarded as sufficient justification for the former High Court to be regarded as having outstanding heritage value against this criterion.

The High Court of Australia (former) **does not have** outstanding heritage value to the nation against Criterion (b).

CRITERION (c) The place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history

Designed by a well known architect who also designed a number of other 'Inter-War Stripped Classical' style buildings, the former High Court building was a standard

office block construction for its time. Documents, plans and records for a number of Murdoch designed buildings are held in Canberra. As a result, the former High Court building per se does not hold potential to yield information on either 1920s construction techniques, or Murdoch's designs, that would be significant at the national level.

The legal cases conducted, the decisions made by the Court, and administrative arrangements while the Court was in residence in the Melbourne building are recorded in the court's records, and are accessible from the present High Court building in Canberra. Accordingly the building does not have potential to add to knowledge of Australian legal processes at a level that would be nationally significant.

The High Court of Australia (former) **does not have** outstanding heritage value to the nation against Criterion (c).

CRITERION (d) The place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of: a class of Australia's natural or cultural places; or a class of Australia's natural or cultural environments.

The former High Court building in Melbourne is one of three purpose built High Court buildings in Australia. There are too few samples to regard 'High Court buildings' as a class of Australian cultural place in their own right. If they are regarded as part of a wider class of Australian 'Courthouse', a number of characteristics could be developed to determine the class. However, while there are overviews of courthouses in some areas of Australia, such as Bridges' review of historic courthouses of New South Wales (Bridges 1986), no encompassing comparative overview of courthouses across Australia is available. As a result, there is presently no method of comparing the High Court buildings within a class and determining the extent to which each of the buildings would meet the characteristics of that class and their importance within the class.

Accordingly, as comparative material is not presently available, it is concluded that the former High Court building in Melbourne does not reach threshold for its importance in demonstrating the principal characteristics of a class of Australia's cultural places.

The High Court of Australia (former) does not have outstanding heritage value to the nation against Criterion (d).

CRITERION (e) The place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group.

The place is not considered to reach threshold for its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group.

The High Court of Australia (former) **does not have** outstanding heritage value to the

nation against Criterion (e).

CRITERION (f) The place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period.

The former High Court building is one of the best known examples of the 'Inter-War Stripped Classical' style in Australia, designed by Australia's first Federal Government Chief Architect, John Smith Murdoch.

The High Court is an excellent and early example of the work of John Smith Murdoch, the then Director General Works and Chief Architect (1925-29). The Inter-War Stripped Classical style is a simplified classical style which retains the elements of architectural orders, minimises ornamentation and has a strong emphasis on the horizontal line. However, in this regard it is similar to other buildings of the time that were designed by Murdoch such as Old Parliament House, the Hotel Canberra, Gorman House, and the Hotel Kurrajong in Canberra. Like these other Murdoch buildings, the design principles of the High Court depend upon a symmetrical façade divided into bays around a portal with vestigial classical columns, and entablature. However, the former High Court can be compared with Murdoch's major work, Old Parliament House in Canberra, which is considered to be his greatest architectural achievement and has been entered in the National Heritage List. The design values are recognised in criterion (a) assessment.

The place is not considered to reach the threshold of national significance for its importance in demonstrating a high degree of creative or technical achievement at a particular period.

The former High Court building **does not have** outstanding heritage value to the nation against criterion (f).

CRITERION (g) The place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.

The former High Court building in Melbourne has special association with the Australian community because of the effect of its decisions on Australia's political and social fabric.

The entire complexion of the political landscape in Australia has changed dramatically since Federation. The relationship between the States and the Commonwealth has profoundly altered from that envisaged by the fathers of Federation. In 1901 it was firmly believed that the States would retain the greater proportion of political power, while that of the Commonwealth would be confined rigidly to those areas allocated to it under Section 51 of the Constitution. That the balance of power between the Commonwealth and the States has changed so dramatically over the past century, is in large measure due to the decisions of the High Court in interpreting the Commonwealth's powers under the Constitution. The

Court's rulings have had profound impact on the development of Australian society, democratic structures, and government. However, while the former High Court building has an association with decisions in important cases, a number of landmark cases were heard either before or after the High Court's sitting in the building. The 'Engineer's Case', *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd*, which marked the first important shift in the judicial interpretation of the Constitution and significantly enhanced the powers of the federal government, was heard in 1920 prior to the Court moving into the building. Similarly, a number of landmark cases were heard after the High Court had relinquished its use of the building. The 'Franklin Dam' case, *Commonwealth v Tasmania* (1983) 57 ALJR 450, which applied an expansive interpretation of the Commonwealth's external affairs powers, was heard in 1983 after the Court had moved to its new headquarters in Canberra in 1980. The 'Mabo cases', *Mabo v Queensland (No1)* (1988) 166 CLR 186; *Mabo v Queensland (No2)* (1992) 175 CLR 1, in which the High Court overthrew the doctrine of terra nullius as it applied to Australia and which were a significant step forward in the cause of Indigenous land rights in Australia, were also heard after the Court had moved to Canberra.

That these landmark cases were decided either prior to or after the use of the Melbourne building, does not support the view that the building is outstandingly significant to the nation for its special association with the Australian community for social and political reasons.

The former High Court building **does not have** outstanding heritage value to the nation against Criterion (g).

CRITERION (h) The place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history.

The place has a special association with exceptional Justices of the High Court who have importance in Australia's judicial history.

Chief Justice Sir Isaac Isaacs retired to take up his appointment as the first Australian born Governor-General of Australia in 1931, having served as a member since 1906. Isaacs was elected as a member of the first Commonwealth Parliament in 1901, and in the 1903 election was returned unopposed. In 1905, Alfred Deakin appointed him Attorney-General, and in the succeeding years Sir Isaac introduced a number of important legislative measures, including the Judiciary Act 1903 which increased the number of High Court Justices from three to five (Fricke 1986: p.45). Appointed to the bench of the High Court as a puisne judge on 12 October 1906, he sat on some of the most important cases heard by the Court over a 35 year period. He was Chief Justice for a period of 42 weeks before becoming Governor-General in 1931. Sir Isaac Isaacs' judgement in the 'Engineer's Case', particularly his interpretation of sections 51 and 107 of the Constitution and their effect on both the legislative powers of the Commonwealth and on State powers, gave impetus to developing nationalism and centralism (Fricke 1986: p.48) and to the swing in the balance of power between the Commonwealth and the States. His major contribution to the law was in formulating doctrines that facilitated the growing centralism of the developing

federation (Fricke 1986: p.50).

The place is also important for its association with Sir Owen Dixon –described as 'a Bradman of the judiciary': 'a judicial genius ... of the common-law world' comparable to other 'giants in the legal history' of their countries such as John Marshall, Oliver Holmes and Benjamin Cardozo (USA) and Mansfield and Lord Atkin (England) (Fricke 1986: p.111). Sir Robert Menzies described Sir Owen Dixon as 'the greatest legal advocate of his time' (Fricke 1986: p.122). Sir Owen Dixon had a profound influence on the legal and constitutional doctrines of Australia through his appearances in the High Court and Privy Council and as a Justice and Chief Justice of the High Court. He served on the High Court for 35 years and was Chief Justice for 12 years from 1952-1964. His period on the bench, both as a puisne judge and as Chief Justice are regarded as the 'Golden Age' of Australian judicial excellence, attracting the admiration of common law courts around the world. Lord Denning, then Master of the Rolls for the Judicial Committee of the House of Lords, said of the High Court during this period that it "established a reputation that overtopped even that of the House of Lords" (quoted in Hull 2003: p.92). Sir Owen Dixon's tenure also marked a change in approach by the High Court to constitutional litigation. Statistically constitutional litigation is the smaller segment of the Court's jurisdiction. It is of profound importance to the development of the nation. Sir Owen Dixon was determined to adopt what he called a legalistic approach to constitutional questions. He recognised that constitutional issues could not be regarded in a vacuum but had to be considered in their broader political context (Fricke 1986: p.120). In constitutional law, Sir Owen Dixon was responsible for the development of a body of coherent principle on section 92 (a section that had troubled the previous Latham Court) which provided that trade, commerce and discourse between the States should be absolutely free, when the Court eventually agreed with what had been Sir Owen Dixon's minority judgement as a puisne judge in *R v Vizzard; ex parte Hill* (1933) 50 CLR 30 (Hull 2003: p.92). Sir Owen Dixon also made notable contributions to Australia including: as Australian minister in Washington during the Second World War where he played a critical role in reminding America of the strategic importance of Australia and obtaining vital war supplies and troops for Australia's defence; and a mediator for the United Nations Security Council in the dispute between India and Pakistan in Kashmir (1954).

The Justices' chambers, their location adjacent to the Library and the symmetrical vestibule access to the Court rooms are significant design features of the building. Sir Owen Dixon's chambers are significant for their association with one of Australia's most venerable Chief Justices. The same chambers are associated with all the other High Court Chief Justices before the Court moved to Canberra and Chief Justices of the Federal Court from 1980 until 1999.

The former High Court building was the first home of the Federal Court after its establishment in 1976. The Federal Court demonstrates the gradual expansion of the Commonwealth's constitutional power, which now determines the judicial and political landscape in Australia. The former High Court building is associated with judges of the Federal Court and its role in Australia's justice system.

The former High Court building has outstanding heritage value to the nation against Criterion (h).

CRITERION (i) The place has outstanding heritage value to the nation because of the place's importance as part of Indigenous traditions.

There is no evidence to suggest that the former High Court building has an importance as part of Indigenous traditions that are nationally significant.

The former High Court building **does not have** outstanding heritage value to the nation against Criterion (i).

History:

The institution of the High Court

Federal Law was established in Australia in 1901 by an Act of the British Parliament, the *Constitution of Australia Act 1900* (the 'Constitution'), which laid out the structure of governance for the new nation. Amongst other things, it provided for a Federal supreme court which was to be called the 'High Court'. In doing so the Constitution set out the jurisdiction of the High Court, and gave the Court two major functions which have been immensely powerful in shaping the Australian nation: to hear and determine appeals from the highest State Courts; and to interpret the Constitution (Hull 2003: p.3). The Constitution also gave the High Court other powers. Most importantly, it has the power to hear controversies between the States, matters where the Commonwealth itself is a party, matters involving treaties, and also gave the Parliament the power to give the Court jurisdiction in matters arising under laws passed by the Commonwealth Parliament.

The Constitution also lays out the powers of the Commonwealth Parliament and sets those out under the 'heads of power' in Section 51 of the Act. In 1901 it appeared that the Commonwealth's powers would be lesser because they were listed in the Constitution, implying they were limited. On the other hand, the States appeared to have wide powers because they could pass laws on any matter that was not legislated on by the Commonwealth within its defined list, and this implied a wide range. Over the decades, however, the High Court has interpreted that division of powers in a way that has continued to increase the influence of the Commonwealth Parliament at the expense of the States (Hull 2003: pp.4-5). The High Court's role under the Constitution of hearing appeals from State Supreme Courts has contributed greatly to national cohesion (Hull 2003: p.5). While, through its determination of some of Australia's most important legal cases the High Court's interpretation of the Constitution and the general law has influenced the social, political and economic development of the nation (Hull 2003: p.18).

The first reported case considered by the High Court of Australia, *Dalgarno -v- Hannah* [1903] HCA 1; (1903) 1 CLR 1 (11 November 1903), was about a telephone wire that had fallen on a cabman, injuring him and damaging his cab. The telephone wire was owned by the Commonwealth. The cabman was awarded £200 in the Supreme Court of New South Wales, and the Commonwealth sought leave to have the decision overturned by the High Court. The case was a significant and symbolic start for the High Court, as it involved an ordinary Australian in a case that was subject to an appeal by the Australian Government against a decision made by the Supreme

Court of New South Wales. Ever since, the High Court has been dealing with the rights and duties of Australians to each other, and applying the rule of law to its national and State governments. Further, the case was an appeal from the Supreme Court of a State in the Australian Federation. Three years before these States had been colonies of Britain and their citizens' final court of appeal had been the Privy Council in London. The case had further significance as the events giving rise to it and the decision by the Supreme Court of New South Wales took place before the High Court came into existence. The Australian Constitution, which came into force on 1 January 1901, provided for the establishment of the High Court in Section 71, but the new Federal Parliament did not get around to passing legislation to constitute the court until 25 August 1903. The Commonwealth argued that as the High Court did not exist at the time of the decision being appealed, it had no jurisdiction to hear the appeal. The High Court disagreed, stating that the Court's jurisdiction comes from the Constitution itself, not from an Act of Parliament. At the outset, therefore, the High Court made it clear that its authority comes from the Constitution and that the Court itself is the authority for interpretation of that Constitution. That it did this in a case brought by an ordinary cabman reveals something further. The High Court might seem to be an all-powerful interpreter of the Constitution with the authority to tell governments what they can do and what they cannot do. But it is constrained. It can only deal with matters that come before it. It cannot, of its own motion, state what the law is or what are the limits of a government's power. It can only authoritatively declare the law sufficient to decide the case before it, and no further (Hull 2003: p.1).

Melbourne was to be the nominal headquarters of the Commonwealth Government until a new Federal capital was developed. As one of the institutions of the new Federal compact, the High Court also began in Melbourne. The Court was an abstraction which required fleshing out by the Commonwealth Parliament and Executive, and this was achieved with the passing of the *Judiciary Act 1903* and the appointment of the first judges. But even then no-one had given serious practical attention to a place or places where the judges of the Court might sit or where they and their staff might work. The great champion of the High Court, Attorney-General Alfred Deakin, thought it essential that the Court should sit in all the capitals or even in other cities. He told Parliament:

"I do not mean a High Court that is to sit at the Federal Capital alone, or at a State capital never to be seen outside it. I mean a court whose judges will undertake circuits."

That view was also reflected in the *Judiciary Act 1903*, which set up the Court. It stated:

"Sittings of the High Court shall be held from time to time as may be required at the principal seat of the Court and at each place where there is a District Registry." (Hull 2003: p.35)

The first sitting of the High Court of Australia took place in the Banco Court of the Supreme Court in Melbourne on 6 October 1903. The Justices comprised three people who had been prominent in the Federation movement of the 1890s: the Chief Justice Sir Samuel Griffith, former Premier and former Chief Justice of Queensland; Sir Edmund Barton, the first Prime Minister of Australia and leader of the Australian Constitutional Conventions of the 1890s which led to Australia becoming a Federation in 1901; and Richard O'Connor, a former Minister of Justice and Solicitor

General of New South Wales and the first Leader of the Government in the Senate.

There was an opinion held by many at the time that the High Court would prove to be redundant, with little work to do and no real status. This was reflected in the fact that the Court used State courtroom facilities, and no purpose built accommodation was provided until 1923. It is also reflected in the fact that Justices of the Court were not required to move to Melbourne on appointment, in keeping with the peripatetic nature of the Court's operation. The Court's itinerant nature drew both applause and attack from within and outside the Court. It was a strain on the justices, particularly in the days before air travel, and it was costly. But it meant that litigants were spared the expense of sending their lawyers to Sydney or Melbourne or engaging new lawyers in those cities. It also gave a sense of national legal unity (Hull 2003: p.36). Even after the move of the High Court to its permanent home in Canberra, the debate continued over whether or not hearings should be held in other cities. As Attorney-General and after his appointment as Chief Justice in 1964, Sir Garfield Barwick made it clear that he thought that once the court moved to Canberra its sitting in State capitals should end. But the construction of a permanent building for the High Court in Canberra did not end hearings in other capitals, even though air travel had become easier by 1980. The new building in Canberra gave the Court, its Justices, library and registry staff permanence and better facilities, but since moving the Court has continued sittings in other capitals. Only about two-thirds of the Court's sittings are in Canberra. It sits once a year in Adelaide, Brisbane and Perth, usually for between two and four days each, and in Hobart every two to three years. And it sits regularly in Sydney and Melbourne to hear applications for special leave. In Adelaide and Hobart the Court still uses space provided by the State Supreme Courts, but in the other capitals it uses the facilities of the Commonwealth Law Courts buildings (Hull 2003: p.39).

From the first the Justices demonstrated the authority of the High Court over the State Supreme Courts and showed that the Court was a powerful and necessary arm of the Commonwealth. A major question in the Constitutional Conventions held during the 1890s concerned the creation of a High Court. Delegates argued vociferously over the role of the court and the drafting of the words in the Constitution to create it. Appeal to the Privy Council was one of the most contentious issues. Federation was to create a nation and the act of federation would, as a practical political matter, have to be approved by the people of each of the colonies. But as a legal and constitutional matter, the federation could be achieved only through the passage of legislation through the British Parliament. The court the Constitution created, therefore, could be seen as either a new national court or as part of an imperial system of courts, the apex of which was the Privy Council in London. Some delegates to the Constitutional Conventions saw a final appeal to the Crown as a birthright. But others were keen on a national court. The result was an ingenious combination of words that gave the appearance that the High Court of Australia was in a court structure which had the Privy Council at its head, but which provided the groundwork for the High Court to develop into a supreme national court. That development went hand-in-hand with a change in attitude and interpretation, which saw the Australian Constitution not as an Act of the Imperial Parliament and deriving from the authority of that Parliament, but as a document approved by the people of Australia in the referendums leading up to Federation (Hull 2003: p.2). The ambiguity of wording in the Constitution enabled the High Court to extend its influence over State Courts, as the Constitution provides for appeals to the Privy Council, if the Privy Council granted leave to appeal, but

permitted Parliament to restrict the matters in which an appeal could be sought. Further, the Constitution provided that appeals from the High Court on disputes over the limits of State and Commonwealth power could only go to the Privy Council if the High Court gave permission. The High Court, after just one case, simply never gave permission again. The High Court gave leave to appeal to the Privy Council in 1912 in the case of *Colonial Sugar Refining Co Ltd v Attorney-General (Cth)* (1912) 15 CLR 182, but the Privy Council did not answer the constitutional questions put to it. In 1975 the Australian Parliament abolished appeals to the Privy Council in matters of federal jurisdiction and this was followed by the abolition of appeals directly from State courts in 1985 and 1986. The latter was done by Acts of both the Parliament in London and the Commonwealth Parliament at the request of each State. So for two decades the High Court has been at the apex of a system of national court jurisdiction (Hull 2003: p.3).

The Court quickly gained an international reputation for judicial excellence. However success led to an increase in the court's workload, and in 1906 two more Justices were appointed: Sir Isaac Isaacs and Henry Bournes Higgins. In 1913 the number of Justices was increased to seven. These increases, and the consequent increase in judicial staff, resulted in greater calls on space in State court facilities, and greater resentment amongst state legal practitioners at the Commonwealth's first call on State court facilities.

Construction of the first High Court buildings

Until the 1920s the High Court had no building of its own, and used existing courts in the various state capitals: the Equity Court facilities in Melbourne; part of the Darlinghurst Court House in Sydney; a room in the State Supreme Court in Perth; and temporary accommodation in the existing courts in the other state capitals. These facilities soon became inadequate. As the workload and the standing of the High Court continued to rise, the Commonwealth Government accepted the need to provide it with new buildings in Sydney and Melbourne.

In Sydney the Court had sat in rooms at the (now) District Court in Taylor Square at Darlinghurst. Although additional space for newly appointed Justices of the High Court was provided by alterations and additions to the District Court building in 1907, 1913, 1914, and in 1921, by 1920 Chief Justice Sir Adrian Knox was commenting: "Until we get another court of our own it will be impossible to arrange the work to the best advantage." (PWD 1985: 4.1.4)

New purpose built accommodation was constructed for the High Court adjacent to the existing District Court buildings. The new building was free standing and constructed in stone to the west of the main court complex from which it was separated by a small garden and to which it was connected by a stone wall designed to blend it into the façade of the main building (PWD 1985: 4.1.4). Intended to blend in with the Old Colonial Grecian style of the original District Court buildings designed by Mortimer Lewis, it contained many of the design and planning principles of the Lewis building such as the central court space and the dominant entry façade (PWD 1985: 4.1.4). The High Court building at Taylor Square opened in 1923 (High Court www.hcourt.gov.au).

Similarly in Melbourne, accommodation within the existing State courts became

increasingly cramped, and in 1920 a formal request was made by Sir Robert Garran, Secretary of the Federal Attorney General's Department, to the Commonwealth Department of Works to prepare plans for a new High Court in Melbourne on land adjacent to the Supreme Court in Little Bourke Street which had been leased by the Commonwealth from the State Government since 1909 (Blackshield et al 2001: p.71).

Tenders were called in 1926, and that of Thompson & Cholmers for £36,580 was accepted. Work was held up however by discussions between the State and Commonwealth regarding the terms of the lease. Eventually it was decided that the Court was to be built at the cost of the Victorian Government and under its supervision, on the understanding that the Federal Government would undertake a long term tenancy. The Commonwealth would be responsible for the cost of all maintenance and alterations, and had the option of either buying the land and buildings or renewing the lease after thirty years. Construction was completed in January 1928 and the new building was illustrated and described in the *Law Institute Journal* (March 1928).

The first sitting of the High Court in Melbourne occurred on 20 February 1928, with no formal ceremony (Blackshield et al 2001: p.72). This may have been because of relations between the States and High Court at the time. The States had always been the decision-making bodies in Australia, and regarded Federation as having diminished their powers, a fact resented by the States and the legal profession. The inconvenience caused by the priority given to the High Court for rooms in the existing State court building when it was sitting in Melbourne was also resented.

The opening may have been inauspicious yet counsel in the first case certainly was not. R G Menzies KC, the future Prime Minister and WK Fullagar, a future member of the High Court appeared for the appellant. Owen Dixon K C, a future Chief Justice of the High Court appeared for the respondent (Objection 2006:4).

The architect: John Smith Murdoch (1862-1945)

John Smith Murdoch, the first Commonwealth Architect, was responsible for the design of the Melbourne High Court building. One of Murdoch's aims as Commonwealth Architect was to promote a unified Commonwealth through the design of Government buildings throughout Australia.

John Smith Murdoch was born in the highlands of Scotland in 1862, the son of a middle-class farming family. He trained as an architect with the firm of Matthews & Mackenzie in Edinburgh, an eminent practice with a special interest in 'Beaux-Arts' design (ADB n.d.). The 'Beaux-Arts' movement developed at the Ecole des Beaux-Arts in Paris in the 19th and early 20th centuries. Its design principles were based on harmoniously proportioned elements developing into a well proportioned Classical whole. The development of the style, particularly in Europe and the United States, was instrumental in promoting the revival of Baroque and Neoclassical styles, which were to find their way to Australia (Curl 1992: p.47).

Murdoch migrated to Victoria in 1884, and worked for six months with Reed Henderson and Smart in Melbourne (ADB n.d.). The architectural principal of the firm, Joseph Reed, was at that time one of Melbourne's leading architects and was largely responsible for the movement in church architecture away from the Gothic

Revival style towards the simpler Romanesque and Lombardian Baroque styles. Influenced by the principles espoused by Ruskin and Pugin in Britain, Reed visited northern Italy to examine for himself Renaissance and Romanesque architecture. His design aesthetic would have reinforced the Beaux-Arts principles in which Murdoch was trained in Edinburgh. Subsequent to working with Reed, Murdoch became a draughtsman with Queensland's Department of Mines and Works during 1885-7, and after that again worked briefly in private practice. He rejoined the public service and by 1902 had become a district architect, designing numerous customs houses, court houses, post offices and other government buildings (ADB n.d.). These works were characterised by his Beaux-Arts principles and by the integration of the Australian 'Federation' style with the Edwardian Baroque. The inherent political symbolism developed by Murdoch in these public buildings played a significant role in his later work. In 1904 Murdoch joined the Commonwealth Department of Home Affairs, Melbourne, and became Australia's first Commonwealth Architect. His role at this time however was largely to administer the transfer of works from the states and establish new regulations for Commonwealth works (ADB n.d.). During this period and during a trip to Europe and the USA in 1912-13 he developed an interest in the new forms of architecture there, particularly the open plans and the Beaux-Arts inspired classicism of American government architecture.

Murdoch was a member of the reviewing board for the national capital design competition and was involved with the early development of Canberra. He was Chief Commonwealth Architect 1919-1929 and during this time developed a more streamlined architectural style, though still in accord with Beaux-Arts principles, which he called 'Modern Renaissance'. This became the standard style of all official Commonwealth architecture in Australia (ADB n.d.). He was responsible for the design and construction of many of early Canberra's most important buildings, such as the provisional Parliament House, the Secretariat Offices, the power house and the Hotel Canberra, as well as buildings in other states: the General Post Office in Perth (1923) and Spencer Street Post Office and the High Court of Australia (1925) in Melbourne. He laid out Forrest Place in Perth, and Anzac Square in Brisbane.

As Director-General of Works from 1927, Murdoch transferred to Canberra with the department in 1927. He retired in 1929 and was appointed for six months to the Federal Capital Commission. He was a fellow (1914) and councillor (1925-1930) of the Royal Victorian Institute of Architects, a fellow (1926) of the Royal Institute of British Architects and foundation member of the Royal Australian Institute of Architects. In 1927 he was appointed a Companion of the Most Distinguished Order of St Michael and St George (CMG). He died at Brighton, Melbourne on 21 May 1945.

The High Court building in Melbourne

The new High Court building was described as being simple and dignified in treatment. It was then a single storey Inter-War Stripped Classical style building of Melbourne brick with Footscray bluestone dressings and a flat reinforced concrete roof (Blackshield et al 2001: p.72). Architects applauded the stripped classical style used by Murdoch for Commonwealth buildings in the inter-war period.

Traditionalism was a major influence in architecture in the early twentieth century, and many architects adopted classical forms, though simplified and abstracted to suit

more modern tastes. It was not unexpected that a simplified classical style would be used for early Commonwealth buildings. Classicism symbolised the idealised values of the past, and was considered appropriate for public buildings, and the impressive symmetrical forms of Beaux-Arts classicism continued to be a dominant mode. Like Murdoch's other buildings, the High Court building is characterised by a symmetrical façade divided into bays, deeply recessed windows and an entrance portal with vestigial columns and classical entablature, and generally a strong emphasis on the horizontal line (Blackshield et al 2001: p.72).

The internal design principles rest on a series of internal pavilions, linked by corridors lit by natural light (Blackshield et al 2001: p.72). The building was divided into three main parts: the offices and public spaces at the front along Little Bourke Street, which were separated from the Justice's area and library at the rear by three court rooms. The centre of the building is occupied by three courts. The Number One Court, which had been especially fitted up for the use of the Full Court, is 35 feet in width and 22 feet in height; the other two courts are each 30 feet wide and 20 feet in height. The walls of the court-rooms are panelled throughout to a height of 10 feet with Tasmanian oak. The interior was considered to be impressive, and the library, with its floor to ceiling bookshelves, had a cosy atmosphere, with armchairs and the only open fireplace in the building (the rest of the building had hydronic heating, with boilers in the basement). The bench fronts and gallery of each court were also panelled in Tasmanian oak. Maple was used for the fittings and seats. The Number One Court included the Royal Arms in the panelling, behind the chair of the Chief Justice. The design of the court room benches was considered innovative and a new style in design in Australia. The benches were concave, and placed 2 feet 6 inches above the level of the floor. It is thought that this height would prove an advantage, both to the judges and the counsel in the special circumstances attending the conduct of High Court work, in which not only is there usually lengthy and involved legal argument, but there is also the handing of numerous documents and exhibits. The concave shape of the Bench had the merit of bringing the judges sitting on the extreme right or left into comparatively close proximity to the barrister's table - an important factor when there is often a Bench of up to seven judges. It had the further advantage that the justices can readily attract each other's attention to a particular point or document.

A number of alterations have been made to the building since the 1920s. In 1933 it was necessary to divide some rooms by adding partitions, possibly to the area referred to as 'clerical' in the 1925 plan. The building was in the early years regarded as cramped and inadequate, and the Justices lobbied for improvements. In 1935 it was announced that the Commonwealth was to undertake alterations, with improved facilities for the High Court and to accommodate minor Federal judicial bodies, including the Patents Office, the office of the Official Receiver and the Melbourne offices of the Federal Crown Solicitor. It was proposed to construct an extra storey with a tiled roof at the front and rear, linked by passageways on either side of the courts, with justices' offices in both front and rear and administrative offices also at the front. Plans were drawn up under the supervision of H J Mackennal, chief architect for the Victorian Public Works Department. In June 1935 a tender for £20,000 was accepted from W C Byrne & Sons Pty Ltd of Richmond. It is thought that the decision to enclose the loggia north of the library, so increasing the size of the library, was taken after work had commenced. In 1944 Harold Bloom, Works Director, prepared plans for additional offices, and in 1946 further additions were

made to the first floor offices. Plans for new stairs to the basement were prepared in 1951, and further works were carried out in 1977, 1986 and 1992.

The Constitutional importance of the High Court

During the Second World War the High Court was called upon to determine many issues related to the extent of the Commonwealth's defence powers as prescribed in the Constitution. The results generally widened the Commonwealth's powers in time of war or immediate threat of war, at the expense of those of the States. The situation was found to be different however during peace time. In the famous '*Communist Party Case*' of 1951, for instance, the Court ruled invalid an attempt by the Parliament to invoke its defence powers (in the light of the Korean conflict then in progress) to declare the Australian Communist Party an unlawful association.

Many cases of great importance in Australian history were heard in the former High Court building between 1928 and 1980. Amongst others, these included:

Uniform Taxation Cases: South Australia v Commonwealth (Uniform Tax Case No.1) and Victoria v Commonwealth (Uniform Tax Case No.2) (1942)99 CLR 575

The High Court ruled that the uniform tax scheme of 1942 which comprised four pieces of federal legislation was valid. This resulted in a significant increase in Commonwealth power and control over the States and facilitated the start of a reconstruction of the federal system. Prime Minister Menzies subsequently used the Commonwealth's monopoly of the power both to levy income tax and to make grants to the States, to reconstruct the character of Australian federalism.

Melbourne Corporation v Commonwealth (1947) 74 CLR 273

The *Melbourne Corporation Case* arose from an attempt by the Chifley Government to nationalise the banking system. The Government introduced legislation to prohibit banks other than the Commonwealth Bank to conduct banking business on behalf of the States or their authorities. The Corporation of the City of Melbourne challenged the validity of the legislation and the High Court ruled it invalid. The Government then pursued its policy with the *Banking Act 1947*. The case establishes that implications can be drawn from the federal character of the Constitution.

Bank of New South Wales v Commonwealth (Nationalisation Case) (1948) 67 CLR 1 (HC); (1949) 79 CLR 497 (PC)

The *Bank Nationalisation Case* was one of Australia's most significant cases. Three state governments (WA, SA and Victoria) and 11 private trading banks challenged the validity of the *Banking Act 1947*. The legislation was designed to enable the Commonwealth to create a government monopoly over banking and to take over any private banks incorporated in Australia. It was a central plank in the Chifley Government's socialism agenda to nationalise sections of Australian industry. The High Court ruled that the legislation was invalid.

The case was argued in Court No 1 in 1948. The then counsel who appeared in the matter were some of the finest legal minds in the nation. GE Barwick KC, FW Kitto KC, AR Taylor KC, DI Menzies, HV Evatt KC, were all Chief Justice or Justices of the High Court. Arthur Dean KC, EF Hudon KC, ADG Adam, TW Smith, Gregory Gowans and CI Menhennitt who also appeared were all later Victorian Supreme Court judges. JA Spicer, RM Eggleston, BB Riley were federal judges. JD Holmes KC and

BP Macfarlane were NSW Supreme Court judges.

Australian Communist Party v Commonwealth (1951) 88 CLR 1

The Menzies' Government's first significant pieces of legislation were the *Communist Party Dissolution Act* (1950). In the years after the Second World War, communism was viewed by many as a dire threat to Australian democracy. The legislation was prefaced by nine recitals in which the federal Parliament set out its view of communism and sought to expose the Australian Communist Party as a peril to the Australian nation. Dr Herbert Vere Evatt, representing the communist led Waterside Workers' Federation and its communist official, James Healy, challenged the legislation. The High Court ruled that the legislation was invalid in 1951. The *Communist Party Case* was a landmark decision in Australia's constitutional and political history. The case was important in reaffirming attitudes to democracy in Australia and peoples' rights to associate peacefully.

R v Kirby; ex parte Boilermakers' Society of Australia (1956 7) 94 CLR 254; 95 CLR 529

The *Boilermaker's Case* concerned a challenge by the Boilermaker's Society of Australia to provisions in the *Conciliation and Arbitration Act 1904* which empowered the Commonwealth Court of Conciliation and Arbitration ('Arbitration Court') to issue orders of compliance with awards and to punish disobedience of these orders as contempt of court. The High Court ruled that the Arbitration Court could not be invested with the judicial power of the Commonwealth. The case resulted in the creation of the Commonwealth Conciliation and Arbitration Commission for arbitral functions and the Commonwealth Industrial Court for judicial functions in the field of industrial relations.

The *Boilermaker's Case* was heard in Court One. It was also the scene of the final part of the Tate Case. Tate's execution for the murder of a vicar's housekeeper had been fixed to take place at Pentridge Gaol at 8.00am on 1 November 1962. Hours before the execution was to take place, the Court restrained the Chief Secretary, Sir Arthur Rylah from carrying out the execution 'entirely so that the authority of the Court could be maintained and that it could have another opportunity to consider it' as Sir Owen Dixon put it on the day (Objection 2006:6).

The first instance interlocutory application in the *Patrick Stevedores Operations v The Maritime Union of Australia* was argued in Court No 1. The Appeal from the decision to the Full Court of the Federal Court was also heard in that Court and only then did the matter go on to the High Court.

As one reporter noted at the time, the hearings in Court 1 gave a sense of history being made. Much jostling of seats occurred to watch argument between WR Burnside QC for the Union and JE Middleton QC for Patricks unfold. For the first time a judgement of the High Court was televised live, enabling viewers to experience the atmosphere for which Court 1 has been renowned (Objection 2006:6).

The building also held the chambers of six Chief Justices of the High Court, Sir Adrian Knox from 1928-1930, Sir Isaac Isaacs from 1930-1931, Sir Frank Gavan Duffy from 1931 -1935, Sir John Latham from 1935-1952, Sir Owen Dixon from 1952-1964 and Sir Garfield Barwick from 1964-1980.

In June 1980 the High Court of Australia transferred to Canberra.

Post 1980 use of the Melbourne building

The Federal Court first occupied the High Court building in February 1977, and occupied it wholly after the High Court transfer to Canberra in 1980. It was created in 1976 by the *Federal Court of Australia Act 1976*, to free the High Court from some of its workload. It settles particular disputes, such as Trade Practices disputes and appeals from Federal Territories. During 1991-2 substantial work to provide additional accommodation was undertaken in consultation with the Australian Heritage Commission. This was carried out using the same materials and style as the earlier sections, and many of the original features of the building were restored.

Condition:

The High Court building is in very good condition. Since its initial construction there have been various additions and alterations. Of Murdoch's 1920s single storey building the original layout and some of the original features survive, particularly the court rooms and corridors. The addition of the first and second floors in 1935 altered the Murdoch building's original massing but matched the original in style. The building has not been altered significantly since 1935.

The integrity of the interiors of the courts, the library, corridors, vestibules with the light wells and justices' chambers is very high. Spaces which were visited such as the Registry office on the ground floor have been altered sympathetically to understand the original configuration. The integrity and intactness of the furniture and fittings in the courts and library is very high. There is minimal introduction of new furniture. The lights in all three courtrooms however are intrusive elements.

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