PRIME MINISTER

89/95

STATEMENT BY THE PRIME MINISTER, THE HON P J KEATING MP

APPOINTMENT OF GOVERNOR-GENERAL

The following announcement has been made from Buckingham Palace:

> "Her Majesty The Queen has graciously approved the appointment of the Honourable Sir William Deane AC KBE to be her Governor-General of the Commonwealth of Australia. Sir William will be sworn in as Governor-General on 16 February 1996 after the Honourable Bill Hayden vacates the office."

I warmly welcome Her Majesty's appointment of Sir William Deane as Governor-General to succeed Mr Hayden. Sir William has had a career of great distinction in the law and is at present a Justice of the High Court of Australia.

Sir William will be sworn as Governor-General on 16 February 1996. Although the appointment is at the Queen's pleasure Sir William has agreed that it would be appropriate for it to terminate on 31 December in the year 2000.

Sir William was born in Melbourne in 1931. He has pursued a career in the law, being called to the Bar in 1957 and becoming Queen's Counsel in 1963. In 1977, shortly after being appointed to the Supreme Court of New South Wales, he was appointed to the newly established Federal Court of Australia. He became a Justice of the High Court in 1982.

Lady (Helen) Deane received her schooling at Kincoppal Convent in Sydney. After leaving school she became an articled clerk with a Sydney firm of solicitors and studied law part-time at Sydney University. She graduated in law in 1958 and practised as a solicitor with one of Sydney's leading law firms.

Sir William and Lady Deane were married in 1965. They have two adult children, a son and a daughter.

On behalf of the Government and people of Australia, I extend very sincere congratulations to Sir William and Lady Deane.

CANBERRA
21 AUGUST, 1995

HIGH COURT OF AUSTRALIA

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CHAMBERS OF JUSTICE DEANE

Naturally, my wife and I are moved by the confidence shown in us by our country. The appointment is a very great honour and we approach it with humility and an awareness of the responsibility it entails. We hope to serve Australia well. In that regard, we are conscious of the dignity and distinction with which the present Governor-General and Mrs Hayden have discharged and are discharging the duties of office.

On my swearing in as a Justice of the High Court more than thirteen years ago, I pointed out that the source of all government authority and legitimacy in a true democracy such as Australia is the people. I then made a commitment to serve all the people of this country to the best of my ability as a judge of their highest court. I now extend that public and unqualified commitment of service to cover the office of Governor-General under our Constitution during the period of my appointment.

DEGREE OF DOCTOR OF LAWS, (HONORIS CAUSA)
Presented by the Vice-Chancellor and Principal Professor D McNicol 1990

William Patrick Deane

Chancellor,

I have the honour to present Sir William Patrick Deane for admission to the degree of Doctor of Laws *(honoris causa)*.

William Patrick Deane was born in Sydney in 1931. His family moved to Canberra a couple of years after his birth and he was educated at St Joseph's College, Hunter's Hill and at the University of Sydney. While at the Law School of this University he was one of the student founders of the Sydney Law Review, a development that came about very much under the influence of Professor Julius Stone. He had a very busy time as a student, on the Law Review, with the University Squadron, as a member of the SRC, the Union Board of Directors and so on. With all these activities, and working part-time in the Tax Department in third year and as an articled clerk in fourth year, he confesses to having been a "terrible crammer". But the cramming obviously worked. He shared the University Medal in his year, but rather than the usual corollary, a scholarship to attend an English university, he accepted a Rotary Foundation scholarship to study at Trinity College Dublin. He then went on to the Hague Academy of International Law, gaining the Diploma *cum laude*. In fact he was the first attender at the Academy from outside continental Europe to receive that honour. Since the diploma itself is rarely awarded by the rigorously civiliancontinental jury to someone from a common law country, the "*cum laude*" clearly meant what it said. He then spent some time at Louvain and Paris working respectively with Charles De Visscher and with Georges Scelle, probably the two greatest European international lawyers of the time.

On his return to Sydney he was employed by one of Sydney's large firms of solicitors and was also plunged into lecturing part-time in international law, during Julius Stone's absence overseas. He recalls that Stone left him free to teach the subject as he saw it. He was later the Teaching Fellow in Equity and Succession. He went to the Bar in 1957, as long intended. At a time before Wentworth and Selborne Chambers had been built, chambers were simply impossible to get. With Dean Shatwell's and Professor Stone's unofficial encouragement, he spent his first months at the Bar closetted in a rent-free room in the Law School building - an unusual additional return for his part-time lecturing.

After nine years at the Bar, he took silk. As Queen's Counsel, he appeared in many of the leading legal cases of the time. He was appointed to the Equity Division of the Supreme Court of New South Wales and then, in 1977, to the Federal Court of Australia. While on the Federal Court he was also President of the Trade Practices Tribunal. In 1982 he was appointed to the High Court and made KBE. In 1988, he was made a Companion of the Order of Australia.

In the period since his appointment to the High Court he has become an acknowledged intellectual leader of the Court, and a major force behind many of its decisions in fields such as constitutional law, equity and tort. In constitutional interpretation in particular he has been influential, whether as a member of the majority or, on some occasions, in dissent. He approaches the Constitution as a social compact between the Australian people through the Federation referenda, not as an Act of Parliament, and certainly not as an Act of the Imperial Parliament. As a social compact, the Constitution is, in his view, a flexible document, which can usually be adjusted to changing situations by acceptable legal method. Thus most of the criticisms of the Constitution are in his view misplaced, although it is true that party politics has made section 128, the principal intended avenue for change, nearly unworkable. As a social compact, the Constitution both expresses and implies rights inherent in the members of the Australian community, rights which decisions such as that in the Street case, on the inter-State admission of barristers, reveal, are much more extensive than the narrow or legalistic interpretation had allowed.

He has also taken a leading role in developing the Court's jurisprudence in old areas such as negligence and emerging areas such as unjust enrichment, constructive trust and equitable estoppel. But he worries that ordinary people can no longer afford to go to law, that the development of the law in the High Court may simply be forging weapons for the intimidation of those, who cannot afford to litigate, against those who can. To remedy this requires changes in the legal profession, both in structure and in attitudes. Here, he believes, legal education has a major role. The old professional system of education had many advantages, but full-time legal education, combined with study of another degree, enables the modern law school to harness the idealism as well as the intellect of its students.

Chancellor, as his own work reveals, idealism is not the prerogative of the young or of the recently learned. It is transparent both in Mr Justice Deane's judgments and in his attitude to the role of law in Australian society. Chancellor, I present to you an acknowledged intellectual leader of the High Court, and one of the Law School's most distinguished graduates, for admission to the degree of Doctor of Laws ***(honoris causa)***, Sir William Patrick Deane.

An Interview with SIR WILLIAM DEANE, AC, KBE

It is Sir William Deane's practice not to give interviews. He dislikes personal publicity and is of the opinion that what he has to say about law he can say in his judgments; that they are the appropriate vehicles for his views. It is also his general practice to decline invitations to speak in public. That is a pity, for his Honour is eloquent and interesting.

However, his Honour agreed to depart from his usual practice to refuse to give interviews for Blackacre. He tells us it is the first time he has done so and will probably be the last, but not, we trust, because he found the experience too awful.

Sir William Deane is a delightful man. He possesses, amongst other qualities, a disarming humility. In response to being asked his impressions of his job, he replied "I don't think that being a judge of the High Court for a brief period of time in this corner of the world in this part of the universe is such a big deal and I don't think that five hundred years from now that it is very likely that there will be anyone at all in possession [of] or reading any judgment that I wrote. So the answer is, I don't go home at night and think what a great job I'm doing".

William Patrick Deane was born in Melbourne in 1931. His family moved to Canberra a couple of years after his birth. After primary school in Canberra, he obtained his Secondary schooling at St. Joseph's College in Sydney. In his final year there he decided to study law. In fact, Justice Deane confessed, "It was more a process of elimination, which I think was very common in those days for people doing law. I wanted to go into a profession, possibly that seemed the thing for people from middle class backgrounds to want to do". He recalls that his father, who was an engineer, "was pleased, but didn't push me that way". His Honour has acknowledged publicly the role of his parents, who "went without many things to meet the costs and demands of my education but who did not live to the stage where I could offer them material evidence of my gratitude" (Swearing in Speech, High Court)..

His Honour's memories of university are mixed ones. In those days the combined Arts/Law Course at Sydney involved two years studying Arts on the University campus and four years studying law at the Law School. He found the two years in Arts quite exhilarating. Attending Law School between 1950 and 1953, he remembers that "The Law School in Phillip Street was a very depressing place in those days. I used to spend as much time as I could at the university...The great majority of the students were part time students; they were articled. A lot of the students were ex-servicemen who were really only concerned with getting through as quickly as possible. As a result, there was almost no corporate life at the Law School."

"I don't think that being a judge of the High Court for a brief period of time in this corner of the world in this part of the universe is such a big deal"

Nevertheless, university life was a hectic one. He held various offices in the Sydney University Law Society, including Secretary and Vice president. He was on the SRC and the Union Board of Directors (which the law students managed to "stack" in order to obtain better facilities at Law School). In addition he worked part time in the Tax Department during third year and was articled in the fourth year. Add to this flying with the university squadron and playing sport and the result was, his Honour confesses, that "I tended to indulge in the practice of cramming for exams as much as anybody else did in those days". However, as it has been pointed out, the cramming must have worked, for he topped both History and Political Philosophy in his second year in Arts and shared the University Medal for Law in his year.

Of lecturers, Justice Deane remembers that the ones who influenced him most were (in the order in which they taught) Professor Currey in Constitutional History, Professor Shatwell in Legal History, Professor Stone "of course" and Professor Morison. The association with Professor Stone was a long and fruitful one and the influence lingers, undoubtedly.

Professor J. Stone.

Professor Dr. W. L. Morison.

After graduating the young Deane spent nine months in the advising section of the Attorney-General's department, where he came under the direct influence of the then Solicitor-General Professor Bailey, who was "very kind" to Deane. Following that he proceeded, on a rotary scholarship, to Trinity College, Dublin, where "In theory I was studying International Law. But the truth is that I had a wonderful year".

His departure for Trinity had been delayed by the almost complete loss of the sight of his right eye in the last rugby match he ever intended to play. After Trinity, Justice Deane went, "partly at Professor Stone's prompting" to take the courses and exams at the Hague Academy. At this distinguished institution he was awarded the Diploma cum laude, becoming only the sixth person in the history of the Academy, and the first outside Continental Europe, to have gained it. The exam was "a bit frightening", partly written and partly oral, the latter part being conducted in public by a "jury" of five. His honour then spent some time at Louvain and Paris working respectively with Charles De Visscher and George Scelle, probably the two greatest European international lawyers of the time. Naturally, all of this "pleased Julius Stone" and led him to ask Deane to conduct his lectures in International Law during the Professor's absence overseas for the whole of 1956 and part of 195 This began Justice Deane's teaching association wi Sydney University Law School. The associatic continued for eight years as teaching fellow Equity and Succession.

His Honour's decision to go to the Bar w "something that just seemed to happen". It appea to have been characterised by the same absence deep examination of alternatives that was the nor of the day. He recalled that "[T]here was much le an inclination on the part of most part time lecture who were practising barristers to encourage la students to question the correctness of the reasoni in cases. Also there was almost no emphasis on th many avenues in which legal education can b applied outside the practice of the law...I woul think that notwithstanding the efforts of people lik Shatwell and Stone and Morrison and Currey mo of us left the Law School thinking that the obvio path to pursue was professional success and in tho days real professional success was seen as lying the Bar and that's just the way it worked. Lookir back I think that has been unfortunate".

From all accounts his Honour's career at the Bar was a phenomenally successful one. As Mr McHugh Q.C. (as he was then) said on the occasion of Justice Deane's swearing in to the High Court, his Honour was "one of the most able counsel the Australian legal system has ever produced". He went to the Bar in 1957 and, just nine years later, at the age of 35, was appointed Queens Counsel. His honour, in response to our question, opined that the qualities needed to be successful at the Bar varied depending on the type of law, but that "If you're going to go into the practice of "Lawyers' law" in the sense of, for example, appearing in the High Court on a regular basis, I think, apart from the obvious need for intelligence and basic legal knowledge, the main ingredients are hard work; honesty with the court you are appearing before so that you get their confidence; and oddly enough, a degree of humility so that you can appreciate the importance of listening, not only to what your opponent says but to the questions you are asked so that you can appreciate that there are in most cases points of view other than your own. If you go in to a case in an appellate court with the conviction that you are completely right and any contrary view is irretrievably misconceived, you are never going to convince anybody of anything".

When at the Bar his Honour practised largely in the areas of taxation, trade practices, commercial law and constitutional law. It was largely on the strength of these areas of the law that his Honour made his name. It has been pointed out that it is a mistake to suppose that his Honour's practice was confined to this class of case, for he "was equally at home in front of a jury in a criminal trial" (Mr McHugh Q.C. on the occasion of Justice Deane's swearing in to the High Court). Yet it is not without a touch of irony that one hears, as the Vice Chancellor said of Sir William earlier this year that his Honour "worries that ordinary people can no longer afford to go to law, that the developments of the law in the High Court may simply be forging weapons for the intimidation of those, who cannot afford to litigate, against those who can". However, Justice Deane is acutely conscious of the irony.

In response to being asked what he would say to someone considering entering the profession today, his Honour said, "I would say the sort of thing that young people have always, with a degree of justice, seen as involving a touch of hypocrisy in that I'd say that what the law needs now more than anything else is a degree of commitment to community service that I didn't show when I was setting out. It seems to me that the important areas of the practice of law these days, if you put aside constitutional cases which are in a particular category, are not the absurdly expensive commercial disputes between big companies fighting with their shareholders' money. It is the area where the law touches the life of ordinary people and I think that the area of legal aid has to be expanded so that the Law is available to ordinary people. I think that the Aboriginal legal aid area is one that holds tremendous attraction in terms of fulfilment of something worthwhile. But as I say, these are comments which the younger generation going into law are perfectly entitled to close their ears to when it comes from the generation that has allowed law to move down its current path".

"barristers and even more so ex-barristers that talk about their ex-cases are amongst the most boring people that there are".

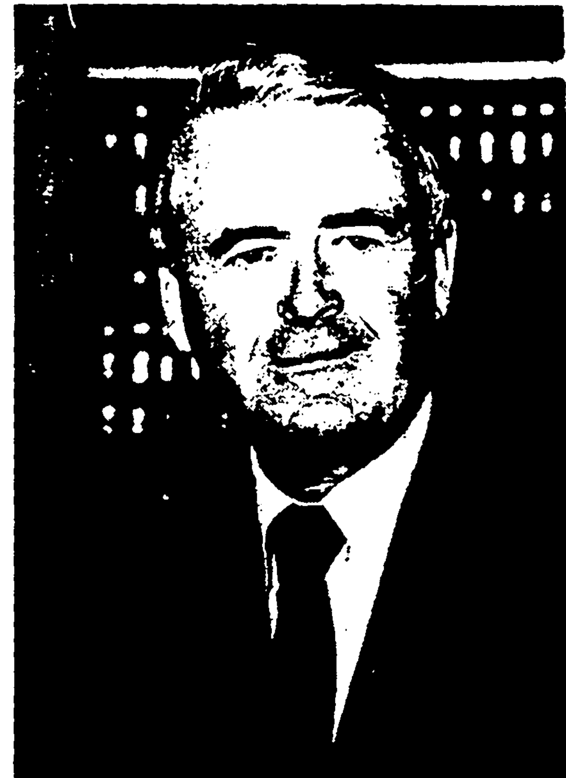
Sir William admits to having "loved the Bar". He consciously avoided speaking of any particular cases in which he was involved, being of the belief that "barristers and even more so ex-barristers that talk about their ex-cases are amongst the most boring people that there are". However, he did comment on the sort of work he found personally unfulfilling : "...[I]n my later years at the Bar I hardly ever appeared for individuals. That had the advantage that you didn't become particularly involved personally in a case. It had the disadvantage that you didn't really have the feeling that you were doing anything great for society or anything else..."

And also that which he found satisfying: "In the early years of the Trade Practices Commission I was the silk under the general retainer to the Commonwealth and I stayed under general retainer for the first six years of the Commission. That meant that I was precluded from doing a lot of company work in that period, for private companies...but I thought that was worthwhile."

"Also, for about five or six years as a senior I was retained by the Commissioner of Tax the time in which the tax avoidance indus really flourishing and I thought that was wor The retainer was with regard to tax av matters and we seemed to be making consi progress and we won quite a few cases but t whole enterprise came tumbling down when *Casuarina v. Commissioner of Taxation* in th Court and it didn't particularly seem wor anymore."

"I think the worst sort of judge in non-jury case is the judge that s there silently nodding at you a finds against you"

In 1977, Sir William was appointed to the E division of the Supreme Court of New South W He sat for a mere six weeks before he appointed to the newly established Federal Co Australia. While serving in that office he was the President of the Trade Practices Tribuna 1982 he was appointed to the High Court appointment described by the then sha Attorney-General Evans as "safe". Sir William of his appointm



that "In one sense I think I just saw it as a change of...a significant change...of. jobs. But I was extremely happy on the Federal Court and would have been quite happy to stay there".

When asked whether the responsibility of being on the Bench weighed heavily upon him, his Honour said that it did not "weigh all that heavily. Indeed the fact that we never (or it is unusual to) sit in single judge cases means that the responsibility is always a shared one. I personally found that the responsibility was much heavier if I was sitting as a single judge in the Supreme Court in Equity and the Federal Court deciding questions of fact between people who were there giving evidence before you as human beings, than it is in deciding an important constitutional case in the High Court. In the sort of work that we do you may be wrong in many people's eyes but you ordinarily have the time to think the issues through. They are almost invariably issues of law and even though a lot of people might think your conclusion is wrong, and the decision of the court might establish that it is wrong, if you are dissenting, it is a process of reasoning that brings you there, whereas deciding a question of fact at first instance is exercising a different sort of jurisdiction which is much more final and which in many senses is a much heavier burden".

Sir William Deane was awarded an honorary doctorate this year by the University of Sydney. It was said at that ceremony that "since his appointment to the High Court he has become an acknowledged intellectual leader of the Court, and a major force behind many of its decisions in fields such as constitutional law, equity and tort...He has also taken a role in developing the Court's jurisprudence in old areas such as negligence and emerging areas such as unjust enrichment, constructive trust and equitable estoppel". Sir William says of his job on the High Court that "It's a hard job and after thirteen years on the Bench I must confess I'm sick of writing judgments but I don't think there is anything more useful that I personally could do now, though no doubt a lot of people would disagree with that". He admitted that the office is one which makes him feel "a little bit" isolated "but not to worry about. I'd feel very isolated if it weren't for my family. I don't see nearly as much of my friends as I'd like to...it's not easy, partly because of living mainly in Canberra, partly because of the writing of judgments that never seems to end, to keep in touch". His Honour went on to say that "One danger in being on the Bench for a long time (and I suppose I'm coming up a long time) is that you tend to forget that any form of questioning of counsel, even though you may intend to be helpful, can be off-putting and with a young counsel, a bit intimidating. But the approach that to avoid that risk you sit there and stay silent seems to me to be an even worse approach. I think the worst sort of judge in a non-jury case is the judge that sits there silently nodding at you and finds against you. It's a very hard road".

"I think the Court is more conscious now than it has been at any time since I've been involved in the legal profession about the desirability of a joint judgment (of a majority) if that can be done without unduly sacrificing the standard ... of the Court's judgments "

Looking back over the law during the period of his professional life, his Honour has discerned some interesting (and worrying) changes. He said "In my time at the Bar it was unusual for discovery in commercial litigation to be other than a quick process directed at the ascertainment of what were the really relevant documents. It was unusual for more than one solicitor, and extaordinarily unusual for more than two solicitors, to be engaged on a case. It was unusual for a commercial case to take more than two or three days. It was unusual for the documents going to court in a case to be more than what could be contained in the barrister's brief...and that meant it was usual for the case to be quickly decided. There were exceptions, but cross-examination of people for days would have occurred in commercial litigation comparatively rarely. That was beginning to change when I left the Bar and in my time on the Federal Court I observed people arriving to court with trolleys and it never seemed to me that it helped to identify the issues or that it added greatly to the efficiency of the litigation, as distinct from the cost of it".

In his own court, the changes have been more positive. He said, "I think the Court is more conscious now than it has been at any time since I've been involved in the legal profession about the desirability of a joint judgment (of a majority) if that can be done without unduly sacrificing the standard or quality of the Court's judgments and also without any member of the court being under pressure to compromise his own real views. The court has, in the last few years, introduced regular meetings of the judges about cases which are reserved and awaiting judgment. That has led to a formal exchange of tentative views (but on a limited scale in some cases), which is conducive to the production of joint judgments. In some cases those members of the court who are seeing a case in a similar way will agree that a particular person will write the first judgment. In other cases no consensus for a joint judgment will emerge until after a judgment has been distributed. In some cases a joint judgment will be exclusively the work of one person, in others it will be far more a co-operative effort. In the rare case it sets out from the commencement to be a co-operative effort. I don't want to be specific about cases but I would think that there would be some cases throughout the period that I've been on the court where it would be apparent that the judgment bears the traces of more than one hand - sometimes unfortunately apparent".

It seems superfluous to say that his Honour is an eloquent man. He speaks (and writes) in long, logical sentences that are sprinkled with strong adjectives. His words convey the deep conviction that obviously lies behind them. He manages to say much with a few simple words. At his swearing-in ceremony in the High Court he said "I refrain from making other than passing reference to my wife. Some things are beyond words. Our lives have long been one". In his judgments a similar eloquence is found.

We suggested to his Honour that his languag at times, almost poetic. He said "I wouldn't p such kind terms. I think there are some areas law where I feel rather strongly about things those areas I may use language which I think people would think is occasionally unduly stro

And yet the language must be only an outward manifestation of what is within, clothes for ide to speak. It has been said elsewhere that his Honour's work reveals that "idealism is not the prerogative of the young or of the recently lear It is transparent both in Mr Justice Deane's judgments and in his attitude to the role of law Australian society". It is also transparent in the impromptu words he spoke to Blackacre. He s. "I...think however that there has to be a cold, h look at the way both sides of the legal professic functioning. On the High Court we are a bit removed from the run of the mill practice of bc law and litigation but it's impossible not to be disturbed by the fact that law is obviously out o reach of ordinary people unless they qualify for aid of one sort or another. That is something w quite apart from natural concern as an individu does affect one's perception of the law, even in terms of writing judgments in the High Court because you can't help but be conscious of the f that legal developments which are aimed at ena ordinary people to obtain justice can themselve become instruments of injustice when ordinary people can't afford the luxury of litigation. In ot words, if you have a right of action in circumsta where only the wealthy can afford to take advan of it and only the wealthy can resist it it become potential instrument of injustice and that is something which of course is extraordinarily worrying in the present situation and its no answ to that to say that law has never been available t ordinary people. If it hasn't been available to ordinary people in the past it is time that the community generally and the legal profession in particular took steps to ensure that it is available

M.C.