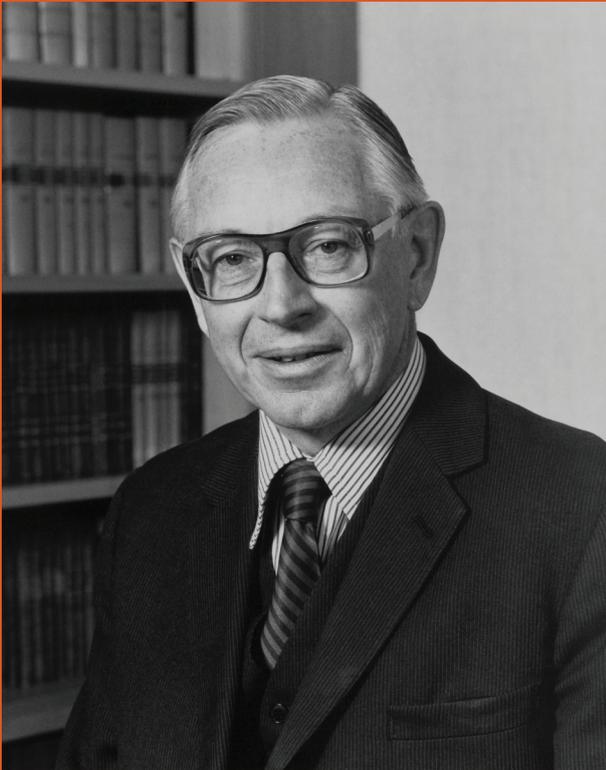


The Honourable Sir Anthony Mason AC, KBE, QC



AUSTRALIAN
CONSTITUTION
CENTRE

(b. 21.4.1925) (Chief Justice from 1987-1995)



He said relatively little, but was very good at progressing the business of argument. The combination of a commanding intelligence, vast experience, and an ability to convey by facial expression the fact that the shelf-life of an argument had expired made him very effective in that regard. At the same time he was good-humoured and encouraged even the most junior practitioners who had done their work.

By David Jackson QC

Born in Sydney in 1925, Anthony Mason attended Sydney Grammar School. He served in the Australia Airforce during WWII and afterwards studied at the University of Sydney where he obtained a BA and a LLB. Mason was admitted to the New South Wales Bar in 1951 and sometime worked as junior counsel with Garfield Barwick. He was appointed QC in 1964 and also lectured in law at the University of New South Wales.

From 1964 to 1969 Mason served as the Commonwealth Solicitor-General where he appeared regularly in the High Court acting for

the Federal Government in constitutional cases. He was heavily involved in the development of Federal Administrative Law. He was appointed to the New South Wales Court of Appeal in 1969 and was elevated to the High Court in 1972, where he was primarily considered a conservative judge. It was only in later years that he became what is known as an activist judge. He was initially opposed to a Bill of Rights for Australia, but his views changed over time and became a supporter. In 1975 Mason provided informal advice to the Governor-General John Kerr that he had the power to dismiss the Prime Minister. It is only in recent years that it has become known that Mason played a role in the dismissal.

In 1987 Mason was appointed as Chief Justice of the High Court. Two of the most important cases of Mason's career were *Cole v Whitfield* in 1988, which helped to settle 80 years of uncertainty about Section 92 of the Constitution and *Mabo* in 1992. *Mabo* overturned nearly 200 years of settled law that did not recognise the prior occupation of Australia by its Aboriginal peoples.

The Mason Court moved away from the strict legalism of earlier courts. Mason saw precedent as something that needed to be taken into account and balanced with a number of other factors. He was also known for his use of international precedents.

During Mason's period as Chief Justice the Court attire changed, with the abandonment of wigs and the adoption of less formal robes. He also increased the use of written submissions and introduced a time limit for special leave applications. Mason was also very active in the media and spoke in public quite often about the role of the Court and the Justices.

Chief Justice Mason retired from the Court in 1995 at the age of 70 and has remained active in public affairs ever since.

Chief Justice Mason's quotes in constitutional decisions that encapsulate the vision of him as Chief Justice

1. Chief Justice Mason's vision as to the role of the Constitution is most comprehensively set out in his Honour's reasons in *Australian Capital Television Pty Ltd v Commonwealth* (1992) HCA 45; 177 CLR 106. There His Honour focused on the principle of "responsible government", stating at 135-6 that:

It is essential to keep steadily in mind the critical difference between an implication and an unexpressed assumption upon which the framers proceeded in drafting the Constitution ... The former is a term or concept which inheres in the instrument and as such operates as part of the instrument, whereas an assumption stands outside the instrument. Thus, the founders assumed that the Senate would protect the States but in the result it did not do so. On the other hand, the principle of responsible government - the system of government by which the executive is responsible to the legislature - is not merely an assumption upon which the actual provisions are based; it is an integral element in the Constitution ...

The adoption by the framers of the Constitution of the principle of responsible government was perhaps the major reason for their disinclination to incorporate in the Constitution comprehensive guarantees of individual rights

...

The framers of the Constitution accepted, in accordance with prevailing English thinking, that the citizen's rights were best left to the protection of the common law in association with the doctrine of parliamentary supremacy.

...

In the light of this well recognized background, it is difficult, if not impossible, to establish a foundation for the implication of general guarantees of fundamental rights and freedoms. To make such an implication would run counter to the prevailing sentiment of the framers that there was no need to incorporate a comprehensive Bill of Rights in order to protect the rights and freedoms of citizens. That sentiment was one of the unexpressed assumptions on which the Constitution was drafted.

(Principle: rights)

2. His Honour continued at 138:

Despite its initial character as a statute of the Imperial Parliament, the Constitution brought into existence a system of representative -government for Australia in which the elected representatives exercise sovereign power on behalf of the Australian people.

... The point is that the representatives who are members of Parliament and Ministers of State are not only chosen by the people but exercise their legislative and executive powers as representatives of the people. And in the exercise of those powers the representatives of necessity are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act.

Indispensable to that accountability and that responsibility is freedom of communication, at least in relation to public affairs and political discussion. Only by exercising that freedom can the citizen communicate his or her views on the wide range of matters that may call for, or are relevant to, political action or decision. Only by exercising that freedom can the citizen criticize government decisions and actions, seek to bring about change, call for action⁹ where none has been taken and in this way influence the elected representatives....

(Principle: democracy)

3. At a lecture in 2001, Sir Anthony Mason stated that:

The rule of law is a fundamental concept or principle which informs the interpretation of the Constitution.

