The Honourable Chief Justice Susan Kiefel AC

AUSTRALIAN CONSTITUTION CENTRE

(b. 17.1.1954) (Chief Justice from 2017)

[Chief Justice Kiefel's] personal story, illustrious professional career, and ultimate distinction to which she has ascended, mark her not merely as a distinguished judge but as a great Australian. Everything [Chief Justice Kiefel] has achieved has been the fruit of those qualities of intelligence, diligence, discipline and integrity which those of us who have known her for many years, have always recognised in her.
Former Attorney-General George Brandis

Susan Kiefel was born in Cairns Queensland in 1954, where she attended primary school, before the family moved to Brisbane. She attended Sandgate State High School, but as was common for women in the late 1960's she left school at the end of year 10. She earned a scholarship to attend the Kangaroo Point Technical College to become a secretary. Kiefel went on to work in a building society, for an architect and then a group of barristers. It was here that she worked with the Queensland QC, Tony Fitzgerald, who mentored Kiefel and encouraged her to finish year 12 and take the Bar exam.

Kiefel completed year 12 at night school while continuing to work full time and then completed the Bar Course with Honours in three years. She began working as a law clerk in Brisbane and was admitted to the Bar in 1975 at the minimum required age of 21. Kiefel's practice was broad and her work in defamation, commercial and local government law was highly regarded. She was renowned as a brilliant cross-examiner. Her first unaccompanied appearance as a barrister in the High Court was on local government law.

In 1985 Kiefel completed her Master of Laws at the University of Cambridge in England. Two years later at the age of 33, she became the first woman in Queensland to be appointed Queen's Counsel. In 1990 Kiefel was appointed to the Commonwealth Human Rights and Equal Opportunities Commission and then just two years later to the Supreme Court of Queensland. In 1994 Kiefel was appointed to the Federal Court. She was a part-time Commissioner with the Australian Law Reform Commission for six years.

In 2007 Susan Kiefel was appointed as a Justice of the High Court by the Howard Government. Kiefel was appointed Chief Justice of the High Court of Australia in 2017. She is the first woman appointed to the position.

Chief Justice Kiefel's quotes in constitutional decisions that encapsulate the vision of her as Chief Justice

1. Justice Kiefel's individual opinions in constitutional decisions largely focus on the role of proportionality. For example, in JT International SA v Commonwealth [2012] HCA 43; 250 CLR 1, Kiefel J stated (at [337]-[338]) that:

> *A test of proportionality is necessary where a law purports to restrict constitutional freedoms, because although they cannot be regarded as absolute, the Constitution does not express the limits which may be placed upon them. Proportionality therefore tests the limits of legislative power. It proceeds upon an assumption that, given the existence of the freedom, the legislature could not intend to go further than is reasonably necessary in achieving the legitimate purpose of the law. Legislation which restricts a constitutionally guaranteed freedom within these bounds may therefore be said to be justified and not to infringe the freedom.*
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> *A test of proportionality necessarily looks to the measures employed, the level of the restriction they impose and the legislative purpose sought to be achieved, which is to say the proportion between means and ends…*

2. Similarly, in Maloney v The Queen [2013] HCA 28; 252 CLR 168, Kiefel J stated (at [166]) that:

> *The rationale for proportionality analysis is that no freedom, even a constitutionally guaranteed freedom, can be regarded as absolute. While some legislative restriction is permissible, a test of the limits of legislative power is necessary in order to ensure that the freedom is not so limited as to be lost. Proportionality analysis is the obvious candidate. Proportionality analysis tests a law imposing restrictions upon a guaranteed freedom by determining the reasonableness of the means employed by the statute to achieve its legitimate statutory objective.*

(Key word: proportionality)

3. At a more general level, Kiefel J has also noted the importance of the principle of representative government. For example, in Rowe v Electoral Commissioner [2010] HCA 46; 243 CLR 1, Kiefel J stated (at [411]) that:

> *The importance of the existence and maintenance of voting to the system of representative government upon which the Constitution is based must not be underestimated.*

(Principle: democracy) (Key word: representative government)

4. Her Honour, however, also emphasised (at [386]) that "the Constitution does not mandate any particular electoral system, but leaves the choice as to the features of that system to Parliament" and that (at [419]):

> *It is necessary to bear in mind that, at the time of federation, democracy was not a perfectly developed concept. No one view prevailed. If the framers of the Constitution did have a view about what was the most appropriate electoral system, they did not express it in the Constitution.*

(Principle: what is the Constitution?)

5. Writing in the Monash University Law Review in 2010 Justice Susan Kiefel stated:

> *It has been suggested that the current test of discriminatory protectionism is not sufficient to protect the interests of free trade within the Commonwealth. The adoption of unreasonable measures by one state could have the practical effect of restricting its part of the national market to trade from other states, whether or not it receives any advantage from them. An example given of a measure discriminating against trade but without any protectionist effect is where a state halves the imports of another state of a product it does not produce. This would restrict the free flow in goods and services to the detriment of the national economy, but without providing any corresponding benefit to the legislating state.*

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