

2014

Foreword to Peter Johnston's article

Peter Wyvill

Follow this and additional works at: <http://epublications.bond.edu.au/blr>

This Article is brought to you by the Faculty of Law at ePublications@bond. It has been accepted for inclusion in Bond Law Review by an authorized administrator of ePublications@bond. For more information, please contact [Bond University's Repository Coordinator](#).

Foreword to Peter Johnston's article

FOREWORD TO PETER JOHNSTON'S ARTICLE

ALISTAIR WYVILL*

Professor Peter Johnston, the author of the first article in this Volume of the *Bond Law Review*, passed away on Australia Day this year after a short illness. He was an extraordinary lawyer and an extraordinary person. In his most recent curriculum vitae, in addition to the article you see below, he listed his current research interests and articles in preparation as follows:

Parliamentary Privilege and the Prosecution of Members of Parliament; The Constitutional Duty to Give Reasons for Administrative Decisions; The Constitutionality of the Use of Defence Force for Civil Law Enforcement and Border Protection; The French Claim to Western Australia in 1772; Northern Fisheries Borders with Indonesia; Islands and Reefs on the North West Shelf; Offshore Application of the Australian Industrial Laws on the North West Shelf; Commonwealth Electoral Law (Secret Ballot, the 2013 WA Senate Election, and a Western Australian Take on Party Political Donations); A Short Comment on Proposed Reforms to the Racial Vilification Law; International Law Protection of Petroglyphs in North-West Australia; The Historical Development of Environmental Law in Western Australia.

(For those who are wondering, a 'petroglyph' is a pictogram and logogram image created by removing part of a rock surface by incising, picking, carving, and abrading.)

Not many 72-year-olds would have the energy or the capacity to pursue such a smorgasbord of academic interests, and all of this on top of a heavy professorial teaching load. But Peter appears to have been used to this pace, having taught at universities in Australia, North America and the United Kingdom over an academic career spanning almost 50 years. The article below, on my count, is his 52nd academic publication.

For Peter, however, that still was not enough. Throughout most of his adult life he also practised as a lawyer, spending seven years at the Commonwealth Attorney-General's Department in Canberra and then 41 years at the Bar in Perth. He appeared in the High Court on twelve occasions and in superior courts on many others. And that is not to mention the numerous decisions Peter wrote as a Deputy President of the Administrative Appeals Tribunal and as an Inquiry Commissioner for the Commonwealth Human Rights Commission.

* Senior Counsel, William Forster Chambers, Darwin.

I had the great privilege of leading Peter in *Emmerson* which, sadly, proved to be his last appearance in the High Court. As you will see from the clarity with which he summarises our arguments below, his assistance was invaluable. His energy — as I expect you can predict — was inexhaustible. He was on all occasions polite, modest, kind and inclusive of everyone in our team. He was a delight to work with.

In one of his most recent articles, Peter concluded by saying that

[w]hether or not a society chooses to enshrine fundamental rights in a constitutional document, a strong judiciary anchored firmly in the rule of law has a vital role to play in preserving fundamental rights. Here, the ‘Rule of Law’ is not just an empty, rhetorical euphemism, nor simply a procedural concept without moral substance. It can be seen as an organising principle ensuring limitations on arbitrary state power. As such, it is an indispensable instrument of democracy.¹

Some may suggest that the decision in *Emmerson* is a sharp reminder of both the rarity and the importance these days of voices like Peter’s.

Whether or not that is the case, he will be missed.

¹ ‘Litigating Human Rights In Western Australia: Lessons From The Past’ (2013) 15 *University of Notre Dame Australia Law Review* 111, 151.