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THE STATE OF THE AUSTRALIAN JUDICATURE IN 2025

Stephen Gageler

In his second The State of the Australian Judicature address, delivered at the opening of the Australian Legal Convention held at the High Court in November 2025, Chief Justice Gageler explains the purpose of the Convention as being to facilitate dialogue between the many parts of the Australian legal system on the contemporary challenges facing the system and the potential for coordinated responses. Chief Justice Gageler introduces the main themes to be explored throughout Convention, including: public confidence in the judicature; the use of artificial intelligence in the legal system; First Nations justice; access to justice; responses to family and sexual violence; the well-being of the judicature, practitioners, academics and students; and the future of legal education and training. 30

AUSTRALIA’S CLIMATE CHANGE LEGAL OBLIGATIONS

John Basten

The International Court of Justice has spelled out States’ responsibilities and obligations under the climate change treaties and customary international law in terms which rejected Australia’s submission that it was not responsible for greenhouse gas emissions from the production and burning overseas of exported fossil fuels. That raises an urgent issue as to the relationship between customary international law and domestic law. The common assumption is that, based on the doctrine known as dualism, is that customary international law has no domestic operation

until adopted by statute. This paper contends that the assumption both lacks nuance and is contrary to authority. Rather, customary international law forms part of the common law in Australia, unless inconsistent with statute, and should be applied and enforced domestically. 40

HALE AND MANSFIELD: COMMON LAW RESILIENCE AND COMMON LAW INNOVATION

Stephen Gageler and Helen Winkelmann

Sir Matthew Hale and Lord Mansfield stand as two of the most influential Chief Justices in the history of the English common law. Each shepherded the common law through a time of disruption: Hale through the political disruption of the English civil war and restoration; Mansfield through the technological disruption of the industrial revolution. Hale is celebrated for his resilience in upholding the core values of the common law; Mansfield for his innovation. Together, they reflect the best of the common law tradition and its potential to respond to the needs of the age. Writing centuries later, Chief Justices Gageler and Winkelmann reflect upon the lives and times of Hale and Mansfield, highlighting their distinctive yet complementary contributions to the common law tradition and drawing upon their legacies to reflect on how a judiciary within that common law tradition might be expected to address contemporary global challenges. 57

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1946 to 1961	–	Mr (later Sir) Nigel Bowen
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1967 to 1973	–	Mr (later Justice) Philip Jeffrey
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1992 to 2016	–	The Hon Justice P W Young AO
2016 to present	–	The Hon Justice François Kunc

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