

Foreword

The Hon Chief Justice Stephen Gageler AC

Bill Gummow is, and has been for some 60 years, a formidable influence on the content and trajectory of Australian law. In ascending and cumulative order of significance, his influence has been as an Australian legal practitioner (for 10 years as a solicitor at Allen Allen & Hemsley and for another 10 years as a barrister at the New South Wales Bar), as a teacher of law (for a total of more than 40 years at the University of Sydney and for more than 10 years at the Australian National University), as an author of distinctively Australian legal texts (with Roddy Meagher and John Leane of the first three editions of the pioneering and iconoclastic *Equity: Doctrines and Remedies* first published in 1975, with Roddy Meagher of four editions of *Jacobs' Law of Trusts in Australia* published between 1971 and 1997, and alone of *Change and Continuity: Statute, Equity, and Federalism* published in 1999). Ultimately and most impactfully, it has been as a judge of the Federal Court of Australia between 1986 and 1995, a Justice of the High Court of Australia between 1995 and 2012, and a Non-Permanent Judge of the Court of Final Appeal of Hong Kong from 2013 and continuing to the present.

The selection of his speeches and extra-judicial writings contained in this volume spans almost the entirety of the 40 years in which his influence has been predominantly as a judge. The earliest in the selection comprises a proposal first published in 1988 for reforms to legal education, written from the perspective of someone who had already by then been a solicitor, a barrister, a judge and a teacher. The latest comprises a strong and deeply considered critique presented at an online symposium only in March 2026 of the conceptual architecture of the law of restitution that came to prevail in the United Kingdom but has recently been subject to challenge, reiterating a position he has long held and frequently defended. Amongst the other speeches and writings that have been selected for inclusion are to be found: penetrating insights into prominent legal personalities and landmark cases; sophisticated and sustained expositions of legal method and legal doctrine; innovative and profound explorations of fundamental legal concepts; and intense and often searing criticisms of specific contemporary legal developments. Noticeably absent from any of the speeches and writings that have been selected, or from any other speech or writing noted in the bibliography and capable of having been regarded as a candidate for selection, is anything that might be labelled as whimsical or rhetorical or that might be dismissed as insubstantial or as merely derivative or descriptive.

Evident throughout the selection is the muscular erudition that has characterised Bill Gummow's distinctive style on and off the bench. Here, as in all he has written and said judicially and extra-judicially, is to be seen: an embracing of legal complexity; a distaste for legal mythmaking or eulogising; a fidelity to the truth about the episodic and untidy nature of the development of legal institutions and legal ideas; a recognition

FOREWORD

of the multifaceted and inherently dynamic inter-relationship between equitable principle, common law doctrine and statute; a meticulous attention to statutory text, to historical provenance, to constitutional structure and to societal context; an unwavering commitment to maintaining the vitality and adaptability of equitable principle; a disdain for grandiose common law theorisation; an outright rejection of compartmentalisation of legal concepts; and an acknowledgement of the inevitability of judicial choice, and with it an espousal of the principled and disciplined application of judicial discretion.

Of all the writings selected for inclusion in this volume, perhaps the most revealing is the paper titled “Remedies” first presented at a conference to mark the 40th anniversary of the Federal Court of Australia in which Bill Gummow recalled the statement made to him by Sir Nigel Bowen that, as its first Chief Justice, he had sought for appointment to that Court “equity minds” – a statement linked in the paper to the aphorism of Lord Millett that “Equity is not a set of rules but a state of mind”. Bill Gummow has an equity mind. In the words of Sir Nigel Bowen, Bill Gummow is an equity mind. In this volume, the workings of that mind are powerfully and instructively on display.

The editor, Aryan Mohseni, might one day be ascribed the same epithet. His introduction to this volume adds value by explicating and contextualising its subject matter but also by reflecting, illustrating and perpetuating its style.

Stephen Gageler
High Court of Australia
May 2026