



**Naming Ceremony for the New
Supreme Court Building**

David Malcolm Justice Centre

address

by

**The Honourable Wayne Martin AC
Chief Justice of Western Australia**

28 Barrack Street, Perth
Friday, 11 March 2016

I am very pleased to have been given the opportunity to commend the Government of Western Australia for the development which is being named today. However, before taking up that opportunity, I would like to acknowledge the traditional owners of the lands on which we meet, the Whadjuk people who form part of the great Noongar clan of south-western Australia and pay my respects to their Elders past and present and acknowledge their continuing stewardship of these lands. This precinct has particular historic significance for the Noongar people. It is believed that Midgegooroo, Yagan's father, after having been denied a trial in open court and declared an outlaw by the Executive Council, was summarily executed by firing squad and buried about 100 metres from here, near what is now the Deanery, in 1833, to the "loud and vehement exultation" of some amongst the assembled crowd.

The Government should first be commended on its decision to develop this important historical precinct. The building which is being named today has, of course, been constructed very close to the precise spot at which the ceremony was held to mark the founding of our City in 1829. Given contemporary attitudes to the environment, it is perhaps regrettable that the centrepiece of that ceremony was the felling of a tree, but those hardy settlers could not be expected to have known of the effect which the large-scale clearing which followed colonisation would have upon soil salinity and atmospheric carbon. Appropriately, the tree is commemorated by the sculpture at the entrance to the tower,

which is said to stand as a symbol for the cyclic patterns of regeneration and revitalisation taking place on this site.

The redevelopment of the precinct which includes this building has enabled the refurbishment and revitalisation of some of the State's most significant historic buildings including the old Treasury building and the former Land Titles Office. The restoration of those buildings to their former glory means that they can take their rightful place alongside other vital components of the City's built heritage, including St George's Cathedral, Government House and the Supreme Court. The spaces between those important heritage buildings have been energised by contemporary buildings including the one being named today, and the City of Perth Library, configured in such a way as to encourage much greater use of the spaces adjacent to these buildings. Many food and beverage outlets have been included within the developments, and the Como hotel has added a new dimension to the range of accommodation available to visitors to our City. I have no doubt that over time this precinct will be greatly utilised and enjoyed by the many who will visit.

The Government is also to be commended for its decision to make approximately half of this new building available to the Supreme Court for use in the exercise of its non-criminal jurisdiction. I will say more of the difficulties which the Supreme Court has faced with respect to its accommodation in my remarks relating to the great Western Australian after whom the building is to be named. For present purposes it is sufficient to say that despite the limitations

imposed by the fact that the building is not a purpose-designed courthouse, I am confident that the courtroom and other associated facilities which the Court will occupy later this year will enable us to administer justice in premises which represent the current state of best judicial practice, allowing great use of natural light and vista, incorporating many areas in which the furniture can be easily reconfigured to a less adversarial and more collegiate and collaborative environment and which will welcome and hopefully put court users at their ease, rather than intimidate them.

I am also very pleased to congratulate the Government on the name which it has chosen to give to this building - the David Malcolm Justice Centre. The name provides a very fitting memorial to a great Western Australian who devoted his life to the administration of justice for and on behalf of the Western Australian community. David was not only my predecessor as Chief Justice, but was also a valued professional colleague and friend over many years. I know that he would have been very chuffed to have this building named after him. I also know that he would be equally chuffed that his daughter, Manisha, is here to speak on his behalf this morning.

David Kingsley Malcolm was born in Bunbury on 6 May 1938. He was a third generation Western Australian. The law was in his genealogy. His great-grandfather, Walkinshaw Cowan, was a Scottish lawyer who came to Western Australia in 1839 in order to take up the position of official secretary to Governor Hutt, who had succeeded Governor Stirling as the Governor of the colony. Cowan became the

resident magistrate at York in 1848. Two of his three sons, William and James, were lawyers, and James served as the Master of the Supreme Court between 1878 and 1899. James' wife, Edith Cowan, is, of course, a very significant figure in the history not only of Western Australia, but also nationally, as she became the first woman elected to a Parliament anywhere in Australia when she was elected to the seat of West Perth in 1921. Her many achievements have been commemorated in a variety of ways, including by the naming of a major university in her honour.

The only son of Walkinshaw Cowan who was not a lawyer was David Malcolm's grandfather, Lewis Cowan, who served as Collector of Customs in Western Australia at the time of Federation. His daughter, Elizabeth, was David's mother. She ran a ballet school before establishing a kindergarten. She married David's father, Colin Kingsley Malcolm, who was a livestock salesman for Elder Smith & Co, before becoming manager of the Land Department in Perth.

Time does not permit the luxury of detailed reference to David's many educational and professional achievements. He excelled at virtually everything he tried, being an outstanding student at Guildford Grammar, a school which he loved, and at the University of Western Australia where he excelled in academic, sporting and cultural pursuits, and which resulted in him being appointed the Rhodes Scholar for Western Australia in 1960. He used that scholarship to graduate from Oxford University in Law with first-class honours in 1962. He was admitted to practice in Western Australia on 21 April

1964 and became a partner at the firm then known as Muir & Williams, now known as Herbert Smith Freehills, following in the footsteps of Sir Francis Burt and John Wickham, each of whom was also to make outstanding contributions to the administration of justice in this State.

In 1967, David took leave of absence from the firm in order to take up a position at the office of General Counsel at the Asian Development Bank in Manila, which had commenced operations the year before. During his four years at the bank he worked on projects all over Asia, imbuing in him an interest in the development of the Asian region which became one of his many great passions.

David served as Chief Justice of Western Australia between 26 May 1988 and 7 February 2006 - a period of just under 18 years. I don't think it is any exaggeration to say that David changed the model for that office, along with community expectations of the role of a Chief Justice. Encouraged by his predecessor, Sir Francis Burt, he enthusiastically embraced community engagement in a variety of ways. He served as Patron of a large number of community organisations and spoke publicly on the justice system at any and every opportunity. It was kindly suggested that he would turn up and speak "at the opening of an envelope" if it provided an opportunity to improve the community's engagement with the justice system.

He was the first Chief Justice to fully engage with the media in all its forms, including talk-back radio. He secured the appointment of a media and public liaison officer who performs a vital role in

communicating the work of the Court to the community. He was vocal on a wide variety of topics broadly related to the justice system, including Indigenous disadvantage, which was another particular focus of his.

He was a champion of procedural reform and innovation. He implemented many changes which dramatically improved the efficiency of the Court, including, most significantly, case management, including the expedited list, the provision of court-based mediation, and the use of contemporary technology. Without those changes, the Court would have collapsed under the weight of its caseload.

The significance of those changes will be most evident when the courtroom floors in this building are open to the public. The emphasis on case management is reflected in hearing rooms designed specifically for that purpose and which have a less adversarial and more collegiate and flexible configuration. His emphasis on court-based mediation is reflected on the many mediation spaces and break-out suites which will be provided in this building. His emphasis on the use of technology to improve access to justice will be reflected in the state of the art audio visual and computer-based systems which we will be using.

The significant changes which David implemented extended to the criminal jurisdiction of the Court. During his term in office, victim impact statements were introduced, sensitive procedures for taking the evidence of children and other vulnerable witnesses from remote

locations by audio visual link were developed and implemented, and programmes for gender bias awareness and Indigenous cultural training for the judiciary were introduced.

David's focus on international standards of justice was also evident during his term as Chief Justice. He was largely instrumental in the preparation and adoption by the Chief Justices of Asia and the Pacific of the Beijing Statement of Principles of the Independence of the Judiciary in 1995, which was a landmark development in the promotion of the independence of the judiciary in our region.

David was also instrumental in the implementation of significant structural changes, including the creation of the State Administrative Tribunal and the Court of Appeal.

Amazingly, none of this significant effort detracted from the level or quality of his judicial performance, which was extraordinary. The calibre of his judgments attracted national attention, as is evident from his selection to preside over a case heard in the New South Wales Court of Appeal comprised entirely of judges from other States. That was because the case involved a member of the New South Wales Court of Appeal, who was later to become a member of the High Court of Australia.

Despite the success of his extraordinary energy and efforts in so many areas of endeavour, there was one tough nut that he was unable to crack. During the ceremonial sitting marking his departure from the Court, Chief Justice Malcolm observed that his one disappointment

was that the accommodation problems which were apparent at the time of his appointment in 1988 were still not resolved, almost 18 years later. His description of the reasons for the persistence of those problems made clear that they were beyond his control. I know from my many discussions with him on the subject that he took the failure of successive Governments to address these issues very personally, and was significantly affected by them. So, while there is a certain irony in the building which addresses a significant number of the issues bearing his name, it is an entirely fitting tribute and memorial to a man who made an outstanding contribution to the administration of justice in Western Australia during a life-time of service.

I would like to conclude with a few observations about the man. At the ceremonial sitting to which I have referred, speaking on behalf of the Law Society, I described Chief Justice Malcolm as having displayed "a combination of great intellect, enormous vigour, an extraordinary sense of and devotion to public duty, performed perhaps most importantly of all with an overriding sense of compassion and humanity". David's physical stature, bearing and eloquence of expression exuded a Patrician air. However, he was always comfortable with people from all walks of life, and quickly put people at their ease. His compassion and humanity was evident not only when he sat as a judge, but also through the effort which he put into working with the many community organisations with which he was involved, many of which focused on addressing disability and

disadvantage, and through the strong links which he formed with many representatives of the Indigenous community.

For all these reasons, I am very pleased to congratulate the Government on the choice of the name for this building, which will make an important contribution to the administration of justice in this State, as did the man after whom the building is now named.