

## THE HONOURABLE CHIEF JUSTICE NICHOLSON AO RFD

I do not think of Chief Justice Nicholson specifically as an expert in family law although that he surely is. His training at the Bar, his initial appointment to the Supreme Court of Victoria and his commission in the Federal Court of Australia demonstrate that he is a fine lawyer of broad and general training and experience. His background has served him well as Chief Justice, in steering the Family Court of Australia through a difficult period and in presiding in the Full Court and writing leading opinions. These have been relevant to family law but also important for the law of property, administrative law, the law governing children and the law relating to the growing impact of international law on Australian law.

Some lawyers look down on family law. I do not and it is a mark of the vision and understanding of Chief Justice Nicholson that he did not. He saw, as most ordinary citizens do, that this is one of the most important areas of the law affecting more citizens than most others. He also understood that it is a field of law at once intellectually demanding and emotionally taxing.

On the relatively rare occasions that the High Court of Australia hears an appeal on issues of family law, the Justices get an insight into the difficulties with which Judges of the Family Court must grapple every day. The divisions of opinion in the High Court in many such cases demonstrate the strong arguability of many of the issues in contest. Presiding over the Family Court, and the many appeals within it, takes a rare gift of intellectual and personal leadership. The nation, and not just the Family Court of Australia, are greatly indebted to Alistair Nicholson for his estimable service over so many years.

One aspect of his intellectual leadership I would wish to single out for mention. I refer to his perception of the growing importance of international law for the development of Australian law. For lawyers of Chief Justice Nicholson's generation this is truly a new idea. Those lawyers were raised in a legal system that treated most international law as irrelevant to their endeavours. The legal mind, once fixed in its ways, is usually difficult to rescue from ideas learned in youth.

Chief Justice Nicholson immediately saw the inevitability of the influence of international law on the field of family law, stimulated by its universal features. To some extent this perception was doubtless influenced by the fact that many areas of family law today are influenced by international law expressly incorporated into domestic law (as in the *International Child Abduction Convention*). In other respects it has been influenced by broad principles of human rights not expressly incorporated, such as those stated in the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child*.

In many of these perceptions Alistair Nicholson has been prescient. In the last two years the United States Supreme Court has embraced a similar use of international law, specifically in relation to the international law of human rights: *Atkins v Virginia* 536 US 304 (2002) and *Lawrence v Texas* 123 S Ct 2435 (2003).

In my view, Australian law will, in due course, accept a similar approach. When that happens, Chief Justice Nicholson will be honoured as an early herald of a great change in Australian legal doctrine.

To critics, Alistair Nicholson has been open-minded and attentive. To would-be bullies, he has been firm and unyielding. To litigants, he has been courteous. To the Bar, he has been patient and painstaking. To his friends, he has been loyal and supportive. To Lauris, his wife of four decades with whom he will now spend more time, and to his family, he has been a loving husband, father and guide. To the people of Australia, he has been an example of a forthwright, independent, modern Judge. I salute his achievements and his service.

MICHAEL KIRBY