

A Woman's Place
100 Years of Queensland Women Lawyers

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and
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with a Foreword by
The Honourable Mary Gaudron
Former Justice of the High Court of Australia



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Susan Kiefel



Deborah Whitehall and Helen Gregory

It often seems that elevation to the Bench in the Australian legal system occurs through a predictable process: exceptionally good results at the completion of high school, acceptance into a university law school, admission to the Bar—sometimes after a sojourn in practice as a solicitor—appointment as Senior Counsel and, ultimately, judicial office. Justice Susan Kiefel of the Federal Court took a different path.

Susan Kiefel was born in Cairns in tropical Queensland in the idyllic 1950s. Hers was a happy, active, outdoors childhood with much swimming in the local waterhole—in those days fortunately free of crocodiles—spending afternoons enjoying the view from the roof of the family home, jousting with her older brother, or arranging committee meetings of the local children. She was free to be herself, to discover her own identity, and to be open to challenge, even physical danger. Her parents encouraged her to make her own choices, whether they led to success or disappointment.

Susan Kiefel thoroughly enjoyed her primary school years in Cairns, and at Geebung in Brisbane after the family moved south; she particularly loved music and sport of all kinds. However, the transition to secondary education was less enlivening. Apart from Miss Bailey's English lessons at Sandgate State High School, she did not relish the secondary school stage and was not inspired to complete her secondary education, partly because vocational guidance was less developed in the late 1960s. Most girls with academic ability were encouraged to become either nurses or teachers; Susan Kiefel did not fancy either as a future career, although she did consider journalism a possibility.¹ Sport remained a joy and she became increasingly interested in the theatre. The young Susan Kiefel loved participating in community theatre, spending one season on stage with the Aspley Little Theatre before retiring to organisational positions backstage at the Brisbane Repertory Theatre.

Dreaming of financial independence,² she decided to leave school at the end of Junior (Grade Ten), a decision she later said was unwise.³ Her parents accepted her choice and suggested she consider becoming a court reporter. Fortunately, Susan Kiefel always enjoyed a close and forthright relationship with her family and their consistent support, benefits which she felt could "never be underestimated."⁴ Her father's belief that success is its own reward was ingrained in her. However, although the road she chose after leaving school was interesting and varied, it was hard. After polishing the requisite skills on a

1 John Wright, 'Woman First in State to Take Silk', *Courier-Mail* (Brisbane), 8 December 1987, 1.

2 Justice Susan Kiefel, 'Address' (Speech delivered to the Institute of Professional Secretaries and Administrators Australia, Brisbane, 13 May 1997).

3 Justice Susan Kiefel, 'Address to Year Twelve students' (Speech delivered at the All Hallows School, Brisbane, 23 July 2001), 1.

4 Transcript of proceedings, *In the Matter of the Swearing-in of the Honourable Justice SM Kiefel as a Judge of the Supreme Court of Queensland* (Supreme Court of Queensland, Justice Susan Kiefel, 16 June 1993), 14.

scholarship at Kangaroo Point Technical College, Susan Kiefel became a secretary. She worked successively in a building society, for an architect, with an exploration company and then for a group of barristers. Their work appealed to her, partly because she wanted to be her own boss—a matter of personality, as she later described it.⁵

Deciding to study law was one thing; realising that ambition was quite another. The first step was completing her secondary education at night, which required studying two subjects each year while continuing to work. Next came the Bar Board examinations. The course contained no lectures and no formal tutors, so studying relied greatly on self-reliance and a willingness to work independently, two characteristics Susan Kiefel has since demonstrated consistently. It also requires courage, a quality she later identified in the lawyers she most admired. Many of the barristers she had met supported her and assisted with discussion of the cases and issues in the Bar Board syllabus, an important initiation into the collegiality of Bar life at its best. Susan Kiefel completed the course with Honours in the minimum possible time of three years.

After working as a law clerk for the solicitors Cannan and Peterson,⁶ Susan Kiefel was admitted to the Bar in 1975 at the minimum required age of 21 years. This success required determination as well as intellectual ability. One of the many addresses she has given to encourage younger people provides an insight into the characteristics she values: “Life is a bit like a running conversation with yourself: you can do this; don’t give up; don’t be a whinger; look at the opportunity here—it’s not a burden.”⁷ A positive outlook, she says, is a critical quality, because it is essential to be enthusiastic and focused with a strong sense of self, supported by effective planning and time management.⁸

Susan Kiefel developed a broad practice during her 18 years at the Bar, although she preferred not to practise in criminal law or family law. Her work in defamation and local government law became highly regarded, as was her probate work. She found considerable work in matters involving estates: questions of probate, sometimes in solemn form, construction of wills and claims upon the estates. Local government law provided her with a first solo appearance in the High Court a few years after her admission and honed her skills in statutory interpretation, which stood her in good stead. Susan excelled in commercial law; and equity—its principles, ethical constructs and history—fascinated her. She was known to be very thorough and hard-working, relentless in her

5 Justice Susan Kiefel, above n 2.

6 Cannan & Petersen, after mergers with other firms, formed the Brisbane office of Deacons Lawyers

7 Justice Susan Kiefel, ‘Speech Night Address’ (Speech delivered at the Mansfield High School, Brisbane, 17 October 2001).

8 Ibid.

pursuit of the right answers for her clients, with skills which made it possible for her “to make seemingly complicated legal issues appear rather clearer than many can.”⁹

In 1977 Susan Kiefel appeared for the plaintiff as junior to Peter Connolly QC (later a judge of the Supreme Court), in a case which tested the boundaries of equitable relief in the era before legislation protecting intellectual property rights in plants. The original wrong—the theft of four budwood cuttings from a nectarine tree—appears relatively insignificant. Justice Dunn agreed to the request for the destruction of all the productive budwood which the defendants had propagated from those cuttings. The order was based on the finding that it would be unconscionable for the theft to yield future commercial benefits by further propagation from the original cuttings; each cutting was likened to a safe containing the formula for a unique variety of nectarine.¹⁰ This legally tricky case, and others which presented legal and evidentiary challenges, were filed in Susan Kiefel’s memory as being of equal significance as her first solo appearances before the Full Court of the Supreme Court and the High Court of Australia.

Her stature as a junior barrister was well illustrated by an anecdote on the occasion of Justice Bill Pincus’s retirement from the Bench in 2001, recalled by Pat Keane QC (now a judge of the Court of Appeal). An early morning meeting followed some hours of concentrated effort on a testing case. After perusing the young Keane’s draft outline of argument, his leader tossed it aside with the disparaging remark that it was unhelpful: “You know, that Sue Kiefel is a very helpful junior. She actually identifies the points that are likely to win the case.”¹¹ Much of Susan Kiefel’s success relied on scrupulous preparation and carefully planned tactics. A former colleague remembered her as a “brilliant cross-examiner” who always demonstrated that “cross-examination at its best does not need to be cross.” Her tactical prowess was evident in one case where she enticed a witness to demonstrate inconsistency in his own evidence. He had claimed that an injury resulted from lifting heavy objects, rather than from its actual cause, a fall; Susan Kiefel’s cross-examination elicited the real cause from the claimant’s own lips. The conclusion was inescapable that the plaintiff had lied in his original account.¹²

The Queensland Bar in the late 1970s was relatively small and it was accepted practice for senior members to assist more junior members, particularly if they demonstrated promise. Susan Kiefel recognised that that she might not have succeeded without the recommendation of more senior colleagues and remained grateful for “the advantage of access to all members of the Bar, senior and junior, for much needed

9 Transcript of proceedings, *In the Matter of the Swearing-in of the Honourable Justice SM Kiefel as a Judge of the Supreme Court of Queensland* (Supreme Court of Queensland, Robert Douglas QC, on behalf of the Bar, 16 June 1993), 9.

10 *Franklin v Giddins* [1978] Qd R 72.

11 Pat Keane QC, ‘Tributes and Recollections’ (2001) 7 *Queensland Bar News* 14.

12 *Savanoff v Re Car Pty Ltd* [1983] 2 QdR 219, 226.