



# THE FEDERAL COURT AND THE CONSTITUTION

CO-SPONSORED BY THE CENTRE FOR INTERNATIONAL AND PUBLIC LAW, ANU COLLEGE OF LAW,  
AND THE AUSTRALIAN ASSOCIATION OF CONSTITUTIONAL LAW

**DATE:** Thursday 15 March 2018

*NOTE: This is a change from the previously publicised Friday.*

**TIME:** 5.30 pm – 6.30 pm, followed by refreshments

**PLACE:** The Common Room, University House,  
Australian National University, Canberra

**RSVP:** [AALSecretariat@academyoflaw.org.au](mailto:AALSecretariat@academyoflaw.org.au) by 13 March 2018  
(not compulsory but much appreciated)

At its inception, the role of the Federal Court in the development of constitutional law was not entirely clear, nor was its relationship to other courts such as the High Court and the State Supreme Courts. Forty years on, the Federal Court has come to play a significant role, as explained in a joint paper by Federal Court Justice John Griffiths and ANU Law Professor James Stellios. Justice Griffiths presented the paper at a conference in Sydney last year to mark the 40th anniversary of the Federal Court, and this evening Professor Stellios will present it in Canberra under the auspices of the Australian Academy of Law. Commenting on the paper will be former High Court and Federal Court Justice Professor William Gummow AC.

**Presenter: Professor James Stellios, ANU College of Law, Australian National University**

James Stellios is a Professor at the ANU Law School. His primary research interest is constitutional law, and he has published widely in that field, including *The Federal Judicature: Chapter III of the Constitution* (LexisNexis, 2010) and the sixth edition of Professor Leslie Zines's classic work, *The High Court and the Constitution* (The Federation Press, 2015). He is the Director of the ANU Centre for International and Public Law, a Fellow of the Australian Academy of Law and a Senior Fellow at the Melbourne Law School. He is also a barrister at the NSW Bar and appears as junior counsel in High Court and lower court cases.



**Commentator: Professor William Gummow AC**

William Gummow AC is a Professor of Law at the ANU Law School and Sydney Law School. He is also a Non-Permanent Judge of the Hong Kong Court of Final Appeal. He is a former Justice of the High Court of Australia, serving from 1995 until his retirement from the Court in 2012. Prior to that, he was a Federal Court Judge from 1986-1995. He graduated from the University of Sydney with a Bachelor of Arts and Master of Laws. After 10 years in practice as a solicitor, he was admitted to the New South Wales Bar in 1976. He was appointed a Queen's Counsel in 1986. For 30 years he lectured part-time at the University of Sydney. He is the author and editor of several texts on equity and trusts.



# THE FEDERAL COURT AND THE CONSTITUTION

## ABSTRACT:

The development of constitutional law is the foundational enterprise of the Australian judiciary. It unites all courts in Australia, irrespective of their federal, State or territory character, or their place in the judicial hierarchy, in a common and shared project. The Federal Court plays an important role in that enterprise, and its very creation gave rise to important constitutional implications. The history of the Court's development reveals three important institutional questions faced by the Court's creation. First, the establishment of a lower federal court, of coordinate status with State Supreme Courts, presented jurisdictional difficulties. These difficulties ultimately would need a constitutional solution for the effective operation of the Federal Court. Secondly, the Federal Court was created to alleviate the High Court's workload to enable the High Court to focus on its constitutional function. What role would a lower federal court play in the development of constitutional law when the very purpose of its creation was to allow the High Court to play that role? Thirdly, many questions of constitutional law concern the scope of State power. What role would a lower federal court play in determining constitutional questions about State power? This paper addresses these three institutional dimensions of the Federal Court's creation.