

CEREMONIAL SITTING OF THE FULL COURT OF THE HIGH COURT OF AUSTRALIA
ON THE OCCASION OF THE SWEARING-IN OF THE CHIEF JUSTICE THE HONOURABLE STEPHEN JOHN
GAGELER AC
AT CANBERRA
ON MONDAY, 6 NOVEMBER 2023

Speech by Peter Dunning KC, President of the ABA

Chief Justice Gageler; Justices of the High Court; retired Chief Justices and Justices of the High Court; His Excellency, the Governor General; distinguished guests all, it is my privilege and pleasure in equal measure to offer the congratulations of the National Bar, Chief Justice Gageler, on your well-deserved appointment to this Court. It is, indeed, a rare privilege to get to speak at the appointment of the 14th – and only the 14th – Chief Justice of this Court; your Honour having become its 49th Justice in 2012.

The appointment of a new Chief Justice – and, indeed, a new Justice – to the High Court is a big day in our national history. The third arm of government plays a vital role in our modern democracy. The large crowd here today and the widespread publicity, Chief Justice, in respect of your appointment demonstrates the appointment enjoys the confidence of the community. That, in a practical sense, is every bit as important as the legislative authority that underpins this Court. That public confidence is a reflection of your Honour's contribution over a decade on this Court, the contribution of your colleagues, past and present.

Your Honour brings to the role of Chief Justice a remarkable intellectual leadership. Although constitutional law will immediately come to the lips of every lawyer in that regard, your Honour's intellectual leadership transcends that law. Your Honour brings leadership in the areas of common law, crime, commercial law, public law and in native title. And your Honour's important contribution to the law in Australia, both at Bench and Bar, in respect of native title work is an important part of the process the law plays in us finding peace with those people who have anciently inhabited our land.

Your Honour's lucid, concise exposition of principle, followed by its clear application to the case presently before you, is not only a durable legacy to your Honour's ability as a lawyer, but to the jurisprudence of this Court and, of course, to jurisprudence Australia wide. Equally important, the care with which your Honour distils principle in your judgments is important to my members. It allows us to advise our clients with clarity and certainty as best we can, in respect of the circumstances they come to see us. That is important for all people, including, indeed, especially, for those who want to stay out of court than go into it.

It is for all of these reasons that your Honour's appointment as Chief Justice received widespread professional and public acclaim. Chief Justice, you were simply the unbackable favourite for the position you have just been appointed to.

Prior to your Honour's distinguished service as a Justice of this Court, your Honour served as the Commonwealth Solicitor General, a role your Honour discharged with distinction. Many members of the Bar interacted with your Honour in the course of that role. Your Honour was involved in all of the

major constitutional cases of the day. I remember Justice Callinan, the last direct appointment from the Bar to the Court before your Honour, commenting to me and explaining what a powerful and incisive advocate you were to have appear before the Court.

Prior to your time as Commonwealth Solicitor General, your Honour spent two decades of distinguished practice at the Sydney Bar, particularly in commercial, constitutional and public law matters, but beyond that, my learned friend Dr Higgins SC, on behalf of the New South Wales Bar, will speak of that in more detail. Might I only note in passing that at the valedictory for Justice Beech Jones recently, Chief Justice Bell of the New South Wales Supreme Court referenced – and I quote – “the robust tradition of the New South Wales Bar”, unquote.

Now, true, it is, the said “tradition” is a facet of advocacy in New South Wales that is referenced by New South Wales barristers almost as frequently as it is referenced by barristers outside New South Wales. Your Honour’s calm, measured style undoubtedly provided its own contrast within the tapestry of that tradition. Your Honour’s vast legal knowledge and deep understanding of the fabric of the law and its interplays is buttressed by your Honour being a person of humility, character, fairness, compassion and dignity. Your Honour is a pleasure to appear before. We are all better barristers for having the privilege to either appear before your Honour or, at a minimum, read so many of your Honour’s judgments.

To invert an aphorism of Winston Churchill, Chief Justice, you are a modest man, but you have nothing to be modest about. You were the barrister’s barrister; you are the judge’s judge. That is apparent not only from the way in which you write your judgments, but the manner in which you conduct the cases before you. That reflects – as my learned friend, the Commonwealth Solicitor General himself noted in his speech – the vital role that courtesy and respect plays not only in the efficient dispatch of litigation before courts, but also in the isolation and explication of the issues in controversy so that the litigants, losers and winners, depart the process with the sense they have been heard. It is an indispensable aspect of justice being done and being seen to be done, and it finds no greater pillar in that regard than your Honour.

Nobody achieves as your Honour has achieved without the love and the support of family and friends. And in that particular regard, your wife, Carla, your children, Elizabeth, Frankie and Ben, and your father, John, would be justifiably proud in your achievements today and those that have led to today. They should feel likewise proud for the important involvement they have no doubt had in giving you the life that has led to such success.

Your Honour, on behalf of the Australian Bar, we wish you every happiness in leading our apex court. Your Honour comes to the Court with the respect, admiration and affection of Australia’s more than 6,000 barristers. We look forward to appearing before your Honour and wish you happy years as Chief Justice.

May it please the Court.