



Law Council
OF AUSTRALIA

Ceremonial Sitting of the High Court of Australia to mark the swearing-in of The Honourable Stephen Gageler AC as Chief Justice of Australia

**Speech delivered by Greg McIntyre,
President-Elect of the Law Council of Australia, High Court of
Australia, Canberra.**

6 November 2023

May it please the Court.

I adopt the acknowledgement of Traditional Owners by my learned friend Mr McAvoy.

Your Honour recently reflected on the concept of judicial legitimacy in the Australian Law Journal. You stated, “‘Judicial legitimacy’ I take to mean that level of public confidence which needs to exist for a competent and impartial judiciary to do its job of deciding controversies according to law without fear of favour. Judicial legitimacy depends on the public understanding and respecting the distinctiveness of the judicial function.”

Your Honour’s appointment as Chief Justice contributes to the confidence which the public, including the legal profession, hold in this Court; making it very easy for those whom we at the Bar table represent to play our part in maintaining that legitimacy by assisting in ensuring that there is a public understanding of the judicial function whenever the need arises to reinforce that.

It is to be noted that your Honour is also on record as expressing the view that the common law, by its very nature, must evolve as civil society evolves, and so, must be modified by the decisions of judges and statute law. It can never be entirely prescriptive and requires the interpretation of judges as specific cases arise. In that regard your Honour has expressed the view that “a cautious incremental approach to the law is appropriate”.

These sentiments provide reassurance, if any was needed, that with your Honour’s appointment the court remains significantly above the threshold to retain its public legitimacy.

Speaking at the ceremony to mark the retirement of former Chief Justice, the Honourable Susan Mary Kiefel AC, the President of the Law Council, Mr Luke Murphy noted that the High Court is the protector of Australia’s supreme law – The Constitution.

I read with interest an article your Honour penned for the Australian Bar Review. In this article you spoke about a 1,200-year-old Tang Dynasty camel you bought 20 years ago. Your Honour said you do not see yourself as owning this antiquity, but rather as having the privilege of looking after it.

Your Honour, we are privileged to have you looking after the highest court in the Australian judicial system and leading it in its vitally important work as protector of our supreme law.

A ‘safe pair of hands’ is a description sometimes used pejoratively to imply a lack of creativity. However, your time on this Court has established you as having a Goldilocks mix of those qualities, that is, a mix which is just right, which is a most desirable characteristic for the leader of a final appellate and constitutional Court.

On behalf of the Australian legal profession, I congratulate your Honour on your appointment and thank you for your ongoing and outstanding service to our nation.

May it please the Court.

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