



Law Council
OF AUSTRALIA

Welcome ceremony for the Hon Justice Steward

Speech delivered by Ross Drinnan, Treasurer, Law Council of
Australia at the High Court, Canberra.

1 February 2021

May it please the Court.

I acknowledge the traditional custodians of the land on which we meet, the Ngunnawal and Ngambri peoples, and pay my respects to all of Australia's Indigenous people.

As the Chief Justice noted at Your Honour's swearing-in on 1 December last year, there was considerable uncertainty as to the manner of your swearing-in and the conduct of the traditional welcome ceremony, due to restrictions of movement imposed as a result of the COVID-19 pandemic.

Although some restrictions continue, it is a special privilege to be able to welcome Your Honour's appointment on behalf of the Law Council of Australia today, some two months after you were sworn in. Such an important occasion is best honoured in person, and I am delighted that we are able to do so with your current and former judicial colleagues, family, friends, and representatives of the profession present.

Your Honour's legal career commenced as an articled clerk at Mallesons Stephen Jacques. I understand that as part of your early training you were required to work in the tax group with Michael Clough and David Wood. You came to appreciate and enjoy the intellectual challenges that the tax practice offered and you have acknowledged, and they are no doubt proud to claim, that they converted you.

Your Honour has an exceptionally diligent approach to your work. It seems that quality also finds its roots at Mallesons. I am told that your admission as a barrister and solicitor of the Supreme Court of Victoria was moved by David Wood. One might have reasonably expected that the admission ceremony would be followed by a modest lunch to celebrate the occasion. Apparently, David Wood made it plain he had no such thing in mind and that it was his expectation you would return directly to the office to complete the day's work for which you were being remunerated. Without hesitation, Your Honour did precisely that.

Another quality admired in Your Honour and described to me by a number of people who have worked closely with you over your career, is impeccable judgment and clarity of approach. You have a capacity for distilling complex facts and law to a few critical issues. You are also someone who approaches problems with an open mind and a great capacity for listening to others. Valuable skills which will be put to great use in this Court.

Your Honour has a widely acknowledged command of and experience in taxation law. Of course, to practise taxation law requires a broad understanding of private and public law. It was Chief Justice French who observed, when speaking at the Tax Institute's National Convention, the extensive intersection between taxation law and the law of contract, torts, property, corporations and partnerships, and with equity and the law of trusts.¹ Your predecessor on this Court, Justice Nettle, added criminal law to that list when addressing the Tax Bar Association.² Your Honour's learning and expertise in these important areas of the law will contribute significantly to the jurisprudence of this Court.

One important aspect of your work, particularly over the last decade, has been dealing with the complex cases which arise as a result of the tension between and application of the tax laws in different countries for businesses engaged in international trade.

¹ Chief Justice French, "Tax and the Constitution", speech delivered at the Tax Institute 27th National Convention, Canberra, 14 March 2012.

² Justice Nettle, "Applications for Special Leave in Tax Matters", speech delivered at the Tax Bar Association Annual Dinner, 29 October 2015.

You have had a significant involvement in a number of these important transfer pricing cases. I have traced this work back to the *WR Carpenter* case in which Your Honour appeared for the Commissioner of Taxation before this court.³

You appeared in the *Roche Products* case⁴ and then the *SNF* cases⁵, which among other issues examined the important question of the applicability of revenue laws to foreign multinational groups with Australian loss-making subsidiaries. You also appeared for the taxpayer in the *Chevron* case.⁶ Most recently, as a member of the Full Court of the Federal Court, Your Honour contended with the *Glencore* case.⁷ These have all been important cases in determining the boundaries of Australia's sovereign taxing power.

Your Honour's breadth of experience across the profession, first as a solicitor, at the bar and, most recently, as a judge has given you the opportunity to grapple with legal dilemmas from many different perspectives and, through those experiences, you have developed the knowledge and skills necessary to discharge your public duty in this Court.

Your Honour's intellectual curiosity, steadfast dedication to your work and professional civility will be of great service to the important work of this Court.

The Law Council of Australia again congratulates you on your appointment and looks forward to the significant contribution Your Honour will make to the administration of justice – and to the nation.

May it please the Court.

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³ *W R Carpenter Holdings Pty Ltd v Commissioner of Taxation* [2008] HCA 33

⁴ *Roche Products Pty Ltd v Commissioner of Taxation* [2008] AATA 639

⁵ *SNF (Australia) Pty Ltd v Commissioner of Taxation* [2010] FCA 635; *Commissioner of Taxation v SNF (Australia) Pty Ltd* [2011] FCAFC 74

⁶ *Chevron Australia Holdings Pty Ltd v Commissioner of Taxation (No 4)* [2015] FCA 1092

⁷ *Commissioner of Taxation v Glencore Investment Pty Ltd* [2020] FCAFC 187