

Stephen Gageler SC



On 30 May 2008 Attorney-General Robert McClelland announced the appointment of Stephen Gageler SC to succeed David Bennett QC as Commonwealth solicitor-general.

Stephen Gageler's appointment has been received with universal acclaim. He could

not have been better qualified for the job. A graduate of the Australian National University and Harvard University, he was associate to Sir Anthony Mason between 1983 and 1985, years in which the High Court delivered judgment in such groundbreaking constitutional matters as the *Tasmanian Dams* case. Following his associateship, he acted as assistant to the then solicitor-general, Gavan Griffith QC, and regularly appeared in constitutional cases before the High Court. He came to the New South Wales Bar in 1989, initially as a member of the Ground Floor Wentworth Chambers, and then, from 1991, as a member of the Eleventh Floor Wentworth Chambers. He took silk in 2000.

His practice was initially public and constitutional law but in more recent years it has broadened widely to encompass trade practices, taxation, corporations, commercial law, class actions and litigation funding. It is

no exaggeration to say that he has appeared in the vast majority of leading constitutional cases in the last 20 years. He has also acted for and advised the Government of Fiji on a number of occasions in the last decade. Significant recent cases reflecting the diversity of his practice include *Betfair v Western Australia* (2008) 82 ALJR 600, *XYZ v The Commonwealth* (2006) 227 CLR 532; *Toll v Alphapharm* (2004) 219 CLR 165; *Combet v The Commonwealth* (2005) 224 CLR 494; and *Campbell's Cash & Carry v Fostif* (2006) 229 CLR 386.

At the time of his appointment, he had one of the largest private law practices before the High Court and was noted for the clarity, precision and succinctness of his legal submissions and written and oral advice. Those qualities reflect his admiration for two significant mentors, Sir Maurice Byers QC and Sir Anthony Mason.

P G Hely: an appreciation

By the Hon R P Meagher AO QC

On 27 May 2008, the University of Sydney launched the Justice Peter Hely Memorial Scholarship. Many members of the Bar had contributed to the endowment of this scholarship. On the occasion of the launch, Roddy Meagher offered the following brief tribute.

When I saw the fliers for this event, I felt a shock at the sight of such an excellent photo of Peter Graham Hely, my close friend and barristerial colleague. One can see in his face high intelligence, a sense of seriousness beneath a sunny smile, the lips poised to utter an acerbic little epigram. His secondary school was Sydney Boys' High, a selective high school of which he always spoke with a deep devotion shared by everyone except some local politicians. After school he attended this law school, at which (incidentally) I had the pleasure of tutoring him. Despite this, he came out very well educated. His naturally sophisticated mind needed little honing.

Two of the qualities which he had in abundance, like his judicial colleague John Lehane, were a great precision of thought and a concise manner of formulating that thought. He could analyse and summarise any factual situation, however complex, into a small but accurate statement. This meant that he was a great barrister. He had an enormous practice both at first instance and at an appellate level. He appeared in a large number of very important cases. His knowledge of case law

was awesome. His written opinions were masterpieces of succinct learning. He was probably the most outstanding company lawyer of his time. He served many years on the Bar Council. He had many pupils, including two High Court judges, Justices Gummow and Heydon. He was a dominant forensic figure in the fields of company law, equity, constitutional law, administrative law and commercial law. But he was more than this, he was not only a walking monument of higher learning – he also did a spot of criminal law, and played tennis in his spare moments.

One of his qualities, and a very endearing one, was his brevity of expression. I can remember once doing a case against him before Street J. It was a rather complicated case. Going through the list we had to say whether the case was short or not short. I told Hely it was obviously not short. 'Short' was less than ten minutes; 'Not short' was more. He replied 'Nonsense, watch me'. He called it 'short' when it came on for hearing. He said: 'Your Honour, I am for the plaintiff, Mr Meagher is for the defendant. The only relevant facts are ... My submissions are 123. Mr

Meagher's submissions are 456 – is that right Mr Meagher?' I said 'Yes'. He said: 'It is now up to your Honour to decide.' Street J said: 'Yes I do decide, in favour of the plaintiff.' The whole episode took nine minutes. The only person unhappy with this was my client, who could not understand why he had lost without counsel saying anything. Hely then said to me: 'Let's have a glass of French champagne.' And, of course, with brevity went speed. No opinion was ever more than a week late, and when he was a judge no judgment lingered in arrears as in the NSW Court of Appeal. To gild the lily went a wry wit. Many more pedestrian lawyers copped a sharp sting.

His many qualities combined to make him an admirable judge. If his life had not been terminated tragically early, he would have made it to a seat on the High Court. I have not mentioned another of his qualities. He was generous to anyone, with his time, his talent and, even though he did not have much of it, with his money. We owe it to him to be equally generous to his memory, because some of you have deep pockets but short fingers.