

Chief Justice French

On 1 September 2008, Robert French was appointed chief justice of the High Court of Australia.

His Honour is the twelfth chief justice of the court, succeeding Chief Justice Murray Gleeson AC. At the time his appointment was announced, his Honour was a judge of the Federal Court of Australia, having been appointed to that court in 1986 at just 39 years of age, and having served on that court for nearly 22 years. Whilst his Honour is the third West Australian to serve on the High Court in its 105 year history (he having been preceded by justices Wilson and Toohey), he is the first West Australian to be appointed chief justice of that court.



Chief Justice French was educated at St Louis Jesuit School in Claremont in Perth, where he was dux and school captain. After completing secondary school, his Honour attended the University of Western Australia, where he graduated in science (majoring in physics) and law. Of the former it was said by the president of the Australian Bar Association, Tom Bathurst QC, at the ceremonial sitting on the occasion of his Honour's swearing in:

Despite your early dreams of becoming a great physicist, your Honour admitted that your decision to choose the law over science as a career became fairly clear-cut once you were informed by your science dean that 'You express yourself magnificently, but I am not sure you know what you are talking about.'

That would surely be the last time that your Honour has been accused of a lack of clarity.

Whilst at university, his Honour was president of the university's Liberal Club and served briefly as treasurer of the University of Western Australia Student Guild. In 1969 at the age of 22, he contested the safe Labor federal seat of Fremantle for the Liberal Party. He lost to Kim Beazley, Sr.

Upon completion of his law degree, his Honour was admitted to practice in Western Australia in 1972, where he practised initially as a barrister and solicitor for 11 years. In 1983 he was called to the bar. According to Bathurst QC, his Honour's career at the bar 'could only be described as short but spectacular'.

His Honour played a central role in establishing the Aboriginal Legal Service of Western Australia in 1973, and was its founding chairman from 1973 to 1975. He also chaired the New Era Aboriginal Fellowship, which was a vehicle for many non-Aboriginals to work with Aboriginal people to establish health, legal and other services for Aboriginal people and Torres Strait Islanders. The Justice Committee of the New Era Aboriginal Fellowship established the Aboriginal Legal Service in Perth and expanded it to serve Aboriginal and Torres Strait Islander peoples in the north and south of Western Australia. Since then, the Aboriginal Legal Service of Western Australia has continued to expand, and is now one of the (if not the) largest community based Aboriginal and Torres Strait Islander legal organisation in Australia. It provides such legal services throughout Western Australia.

Before his appointment to the Federal Court in 1986, his Honour also served on the Town Planning Appeal Tribunal of Western Australia (including as chairman), the Legal Aid Commission of Western Australia,

the Trade Practices Commission and the Law Reform Commission of Western Australia. His Honour also made a substantial contribution to the activities of the Law Council of Australia, having served as a member of the Australian Courts Committee from its establishment, and as a member and chairman of the Privacy Law Committee.

Following his appointment to the Federal Court, his Honour continued his interest in the rights of Indigenous Australians and in 1994 was appointed the inaugural president of the Native Title Tribunal, a position he held until 1998. During his time on the Federal Court, his Honour was also appointed an additional judge of the Supreme Court of the Australian Capital Territory and a permanent non-resident member of the Supreme Court of Fiji. From 2005 until his appointment to the High Court, his

Honour also served as deputy president of the Australian Competition Tribunal.

Outside of his office as a judge, his Honour chaired the Council of the Western Australian College of Advanced Education from 1988 to 1990. In that time, the college attained university status and in 1991 Justice French continued as foundation chancellor of the Edith Cowan University (as the college became), a position which he retained until 1997. In 1998, the university awarded his Honour the highest honour within its power to bestow - an honorary degree of Doctor of Laws.

His Honour has also actively participated in legal reform, including serving as a part-time commissioner of the Australian Law Reform Commission from July 2006, during which time he participated in the ALRC's Inquiry into Client Legal Privilege in Federal Investigations (ALRC Report 107) and the recently completed major review of Australian Privacy Laws and Practices (ALRC Report 108). He is also a member of the Australian Association of Constitutional Law and served as president of that association from 2001 to 2005. In July 2007, his Honour was named as one of 36 foundation fellows of the Australian Academy of Law and was selected as one of the speakers at the academy's formal launch and inaugural symposium in 2007.

Outside of the law, his Honour also has a passion for health and fitness. He runs marathons and his 'Workplace Program' on the 'Be Active' website' details some of his Honour's tips on keeping fit for those people whose job requires them to spend long periods sitting down.

In speaking at the ceremonial sitting on the occasion of his Honour's swearing in as chief justice, the attorney-general for the Commonwealth of Australia, the Honourable Robert McClelland MP, said of his Honour and his time at the Federal Court:

Your Honour brings to this court considerable experience and an outstanding reputation as a jurist.

Your Honour has developed special expertise in constitutional, administrative, native title and competition law. You are renowned for combining your technical legal excellence with a wide interest in broader social and economic issues.

As a result of your experience at the National Native Title Tribunal, your Honour has had first hand exposure to cultural diversity, and the particular problems facing indigenous Australians. Your career long involvement in these issues has extended much beyond mere intellectual appreciation. Significantly, your Honour served as the inaugural president of the tribunal from 1994 to 1998, guiding it through a period of charged public and political debate.

In concluding my remarks, your Honour, might I refer to a speech that you recently gave on the federal system at a recent conference where you said, 'Federalism is a solution to the problem of combining different political communities in a national polity while allowing them to retain their identities. There are different ways of distributing power between the components of a federation. Any such distribution will set limits to the legislative competencies. When a national policy is necessary to meet a need, perhaps not foreseen as such when the Constitution was created, the legislative and other powers necessary to implement such a policy may cross those boundaries.' Your Honour, may I wish you well in determining those boundaries.

Mr Bathurst QC (speaking on behalf of the members of the Australian Bar) concluded his remarks by observing :

Your Honour's ascension to this office is a deserved recognition of your outstanding contribution to the affairs of this nation.

The appointment of a new chief justice or, indeed, any judge of this court, often, of course, promotes great interest and speculation, both informed and less so. The fact that the media have been unable to fit you into any particular box, variously describing you as a traditionalist, an activist, a black letter lawyer, a progressive, a scientist turned jurist with a bent for science fiction, and a small 'l' liberal, demonstrates that throughout your career you have tried each case on its merits and applied the law to the facts in a careful and, where possible, compassionate manner. One cannot ask more from a judge.

The depth of your learning and the breadth of your experience eminently qualify you for the job and the challenges which lie ahead.

In reply, Chief Justice French stated :

The seat I have taken today is one of great honour. That honour owes nothing to my efforts. It comes from the place of the court under the Constitution. It comes also from the labours of the 11 chief justices who have preceded me and the judges, including those now present on the bench, with whom they have worked.

The place of the High Court under the Constitution was explained in 1902 by the first attorney-general of the Commonwealth, Alfred Deakin, giving the second reading speech in support of the Judiciary Bill:

The Constitution is to be the supreme law, but it is the High Court which is to determine how far and between what boundaries it is supreme.

The court was, he said, 'the competent tribunal which is able to protect the Constitution and to oversee its agencies'. He called it 'the keystone of the federal arch'.

In its very first judgment delivered on 11 November 1903, the first chief justice, Sir Samuel Griffith, with justices Barton and O'Connor, spoke of the court as 'the embodiment of the judicial power inherent in every sovereign state ... an essential part of the structure of the Commonwealth'.

In announcing my appointment the prime minister described this office as 'the most important constitutional office in the land'. Taken as a reference to the court as a whole, it is entirely consistent with the vision of those who drew our Constitution and created this body.

The honour that comes with a seat on this court is therefore historical and institutional. With it comes a great sense of responsibility and for me that harsh modesty which follows from a realistic appraisal of my own capacities.

Mr Attorney, Mr Ray, Mr Bathurst and Mr Colvin – you have done your best with your generous remarks to undermine that realistic appraisal. I thank you for them. You will not think me ungracious if I keep them in a proper perspective.

A proper perspective reminds all of us who occupy public office, be it parliamentary, executive or judicial, to see ourselves as other Australians see us. This will often be at best with a kind of sceptical respect.

It requires us to examine and re-examine the way in which we do things and to look for ways of doing them better. The courts are human institutions. There is always room for improvement. In the 22 years I have been a judge, I can say the effort to improve has been relentless. It will continue across all Australian courts. In the end, however, the fundamentals of our system of justice require decision making that is lawful, fair and rational. It requires each case to be decided carefully according to its merits under the law. It requires it to be decided by an independent judge with the capacity and the determination to make a decision without fear or affection, favour or ill will. Those are the fundamentals which apply equally to this court and to the busiest Magistrates Court.

The responsibility which I accept with this appointment is made lighter by the fact that I share it equally with the other justices of the court, each of whom has welcomed me warmly to their company.

Endnotes

1. http://www.beactive.wa.gov.au/whatson_beactiveday_work.asp