

**IN THE SUPREME COURT  
OF NEW SOUTH WALES  
BANCO COURT**

**BATHURST CJ  
AND THE JUDGES OF THE  
SUPREME COURT**

**Monday 20 April 2015**

**FAREWELL CEREMONY FOR  
THE HONOURABLE JUSTICE REGINALD IAN BARRETT  
UPON THE OCCASION OF HIS RETIREMENT AS A JUDGE OF  
THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **BATHURST CJ:** We are here this morning to mark the retirement of the Honourable Justice Reginald Barrett from the Court of Appeal of the Supreme Court of New South Wales.
  
- 2 Farewell ceremonies are rarely joyous occasions and this one is no exception. It is always a pity to lose a hardworking, collegiate member of a team, who is committed to public service. Today, I find the occasion all the more glum, primarily because I feel the Court of Appeal has sorely missed out in only having you for three years. In this respect I am envious of the judges in the Equity division who had you for a considerably longer period of time.
  
- 3 It was fourteen years, one month and one day ago that you were sworn in to this Court. That followed a distinguished career as a partner, first at Allen, Allen & Hemsley and second at Mallesons (as they were then called). It also followed a stint of time as general counsel for Westpac Banking Corporation.

- 4 Throughout the past fourteen years at the Court you have displayed some of the finer attributes the public could desire in a judge. You have been patient, efficient, pragmatic yet fair. This, mind you, all in circumstances where for the great bulk of your previous practice as a lawyer you had avoided going to court like the plague.
- 5 At first, you were a judge in the Equity division and in charge of the Corporations List; incidentally, one of the busiest lists in the Court. It would have been easy for things to have derailed. But, characteristically, you stayed cool, calm and collected and under your guidance things ran smoothly and indeed, quickly.
- 6 In fact, the whirlpool of speed and efficiency with which you ran the Corporations List became unbearable for some. I am told that at times litigants would approach the bench stressing how very urgent their matters were, only for you to suggest running the matter on the spot! More often than not this would be met with astonishment and then a furious back peddling as counsel endeavoured to explain that it was not quite *that* urgent after all. In my opinion, if amongst all this efficiency the robing protocol was not always strictly adhered to, then justice was not the poorer for it, and the situation was quite excusable given that you had never robed before.
- 7 In the Equity division and in running the Corporations List in particular, you were responsible for establishing many fundamental principles. These ranged from giving content to the duty of good faith in commercial contracts and leases,<sup>1</sup> deciding when and what judicial advice for managed investment schemes should be given<sup>2</sup> and explaining how to review a registrar's decision to issue an examination summons.<sup>3</sup> You also have explained, in a decision which incidentally I

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<sup>1</sup> See for instance *Overlook Management BV v Foxtel Management Pty Ltd* [2002] NSWSC 17 and *Softplay Pty Ltd v Perpetual Trustees (WA) Pty Ltd* [2002] NSWSC 1059.

<sup>2</sup> *Re Australian Pipeline Ltd* (2006) 60 ACSR 625; [2006] NSWSC 1316.

<sup>3</sup> *Wily Re Led (South Coast) Pty Ltd* [2009] NSWSC 946; (2009) 76 NSWLR 428.

had cause to rely on this month,<sup>4</sup> the types of circumstances where entering into a litigation funding agreement is “necessary” for the winding up of a company.<sup>5</sup>

- 8 In speaking of your decisions, it would, of course, be remiss of me to not mention the many decisions you made with respect to statutory demands. Your contribution in this area of the law is, like the number of your judgments on the topic, unquantifiable. I managed to count 158 decisions on statutory demands before I gave up. No doubt there were more. Unsurprisingly, by the time you came to the Court of Appeal it seemed you had said all you had wanted to say on the subject. Mercifully, you only have had cause to discuss it on two occasions.<sup>6</sup>
- 9 Your time in the Court of Appeal, as I have said before, has been all too short. However, it is evident you have been making good use of your time. In three years you have been involved in the delivery of no less than 338 judgments. You have grappled with complex equitable principles, such as the “change of position” defence,<sup>7</sup> what constitutes “detrimental reliance” for proprietary estoppel<sup>8</sup> and whether fiduciary duties or a duty of confidence has arisen.<sup>9</sup>
- 10 In short, your time at the bench has only confirmed what many of us knew before, that you were one of the leading authorities, if not the leading authority, on corporations law in this country. If your handling in the Equity division of the HIH and Centro schemes were not enough to evidence this, your pithy concurring judgment in *Gillfillan* and *ASIC*

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<sup>4</sup> *Fortress Credit Corporation (Australia) II Pty Ltd v Fletcher & Barnet* [2015] NSWCA 85.

<sup>5</sup> *Re McGrath and Another (in their capacity as liquidators of HIH Insurance Ltd and Others)* [2010] NSWSC 404; (2010) 266 ALR 642.

<sup>6</sup> *Kisimul Holdings Pty Ltd v Clear Position Pty Ltd* [2014] NSWCA 262 and *Workplace Safety Australia Pty Limited v Simple OHS Solutions Pty Ltd* [2014] NSWCA 115.

<sup>7</sup> *Citigroup Pty Ltd v National Australia Bank Ltd* [2012] NSWCA 381; (2012) 82 NSWLR 391.

<sup>8</sup> *Van Dyke v Sidhu* [2013] NSWCA 198; (2013) 301 ALR 769, affirmed by the High Court, save as to the question of burden of proof, in *Sidhu v Van Dyke* [2014] HCA 19; (2014) 308 ALR 232.

<sup>9</sup> *Streetscape Projects (Australia) Pty Ltd v City of Sydney* [2013] NSWCA 2; (2013) 295 ALR 760.

certainly was.<sup>10</sup> I know the practical instructions you gave in that judgment for directors conducting board meetings has since been relied upon both by the legal and corporate spheres.

- 11 Of course, you have shown your expertise in corporations law, not only through the judgments which you delivered but the many articles and papers you have given in this area.<sup>11</sup> I should also add that your contribution in working with Professor Austin, formerly of this Court, in the organisation of the Court's Corporate Law Conference, has also been tremendously appreciated.
- 12 Despite all your contributions to corporate law in this Court, I'd like to think your time at the bench has not all been plain-sailing familiar equitable principles for you. It appears you have also encountered some strange cases in your time. One of your very first cases in the Court of Appeal concerned calculating damages suffered by a fertility centre which had been lumbered with, what the Court at one point euphemistically called, unusable stock-in-trade.<sup>12</sup> I will however glide over the High Court's treatment of your decision in that case. I'll instead hurry on to *Beck and L W Furniture* where the High Court emphatically agreed with you, and not the judges of the NSW Court of Appeal, in the scope you gave to section 1322 of the *Corporations Act* to retrospectively validate procedural irregularities.<sup>13</sup>
- 13 However, it should not be thought that your Honour's sole contribution to the Court and to the law has been limited to matters involving corporations and securities law. Ever since a "shopping trip for some dip

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<sup>10</sup> *Gillfillan v Australian Securities and Investments Commission* [2012] NSWCA 370; (2012) 92 ACSR 460.

<sup>11</sup> See for instance, Barrett, 'Towards Harmonised Company Legislation-"Are we there yet"?' (2012) 40 *Federal Law Review* 2, Barrett, 'Thoughts on court-to-court communication in insolvency cases' (2009) 17 *Insolvency Law Journal* 4, Barrett, 'Some themes in Australian banking and finance law: 1984 to 2003 and beyond' (2003) 31 *Australian Business Law Review* 6 and Barrett, 'Acting in aid of a foreign insolvency administration: a step too far?' (2007) 25 *Company and Securities Law Journal* 3.

<sup>12</sup> *Macourt v Clark* [2012] NSWCA 367 at [48].

<sup>13</sup> *Beck v L W Furniture Consolidated (Aust) Pty Ltd* [2011] NSWSC 235.

ended in a slip”,<sup>14</sup> you have been at hand to settle the intricacies of the *Civil Liability Act*<sup>15</sup> and, when needed, section 151Z of the *Workers Compensation Act*.<sup>16</sup> In fact, in recent times I have heard you described as the leading expert on “slip and fall” cases. This is no doubt due to your empathetic nature. You have been known to become so immersed in cases, that when asked by colleagues what judgement you are working on you, have responded, “I’m on the railway track” or, more bluntly, “I’m digging a hole”.

- 14 In addition to “slip and fall” cases, you did sit, once, in the Court of Criminal Appeal.<sup>17</sup> I think it fair to say that originally when this was suggested to you, you were not entirely keen on the idea. However, you became more willing and were reassured when it was pointed out that the case in question involved considering the meaning and effect of insider trading provisions in the *Corporations Act*.
- 15 All in all, your time, both in the Equity division and the Court of Appeal, has been marked with both pragmatism and fairness. Early on you developed a habit of not interrupting, but listening, to parties. It turns out their breath would invariably run out before your patience did. To this end you seem to have taken to heart the words of an infamous barrister who bravely said “[y]our Honour, you are paid to listen, I am paid to talk, let us perform our respective duties.”<sup>18</sup>
- 16 Your silence on the bench has been difficult to interpret as it always is accompanied by a poker face. What I didn’t know when I appeared before you at the bar was that the only indicator you give as to how well submissions are being received is by your habit of silently flexing your hands under the bench. Regrettably this red flag was not discernible

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<sup>14</sup> Gardiner, ‘Coles shopper loses \$120k after slip in store’ Sydney Morning Herald (19 August 2013) reporting *Coles Supermarkets Australia Pty Ltd v Meneghello* [2013] NSWCA 264.

<sup>15</sup> 2002 (NSW).

<sup>16</sup> 1987 (NSW).

<sup>17</sup> *Joffe v R; Stromer v R* [2012] NSWCCA 277.

<sup>18</sup> Young, ‘Civil Litigation’ (1985), referred to in Bathurst, ‘Farwell speech’ (Farwell ceremony for the Honourable Justice Young, Banco Court, 23 April 2012).

from the bar table and has meant no doubt that many barristers have forged on and on for a point they would have been better to forget within minutes.

- 17 The inscrutability that you have exhibited on the bench hides the wonderful sense of humour you have in your dealings with your colleagues. You have helped contribute, to a significant extent, to the collegiate atmosphere which exists in the Court of Appeal.
- 18 This collegiate atmosphere was particularly exhibited by the loyal responses I invariably received when hunting around for some slight flaw, in what otherwise appears to be the very model of a Supreme Court judge. Your associate for the past fourteen years, Margaret Newby, could not criticise you nearly enough for my satisfaction. Having worked for five judges I was sure she would have some secret or humorous comparison to share. However I was rebuffed at every turn. Is he terrible with technology? Does he sing in chambers? Does he play Angry Birds on his iPad? To all of these, there was a dishearteningly consistent response: "No".
- 19 Your band of tipstaves also painted a picture of self-discipline, hard work and professionalism. In researching for today I had to endure many accounts of your ferocious work ethic. Apparently once one of your tippies asked if they could help you research and do work on a case. You replied, "I'd love you to cavil with this but I don't want to burden you with it." Like the tippy in question, I am still unsure if this was just genuine or genuine jest at your tippy's expense.
- 20 Your only vice seems to have been a weakness for sweets, which resulted in a constant pillaging of the chamber lolly jar. However, even this tale turned complimentary when Margaret noted you had got rid of the jar of late, due to an imposition of self-discipline. I did learn there had been uncanny impersonations in chambers, but of what and who I was left in the dark. Out of fear they would concern me, I did not press

the matter. I concluded though that clearly, like you, your chamber staff have mastered a poker face.

21 Given this apparent state of perfection, it gives me some comfort to reveal something about your future retirement to this audience. I have written evidence that upon your retirement you plan to offer statutory demand tours around the State.<sup>19</sup> These tours, you have stated, will consist of guiding the masses to places of disputed service which featured prominently in your judgments when in Equity. I do not know whether I should be concerned at your fascination with, in your words, these “tantalisingly close but unattainable” points of service.<sup>20</sup> However it is good to hear that, although you are giving up your judicial work, you are maintaining other interests. I expect of course that a good part of these statutory demand tours will be conducted on foot, so you can keep up one of your other hobbies, hiking.

22 Your retirement will also give you a well-earned chance to enjoy all your other interests. No doubt this will include singing pursuits and spending time with your two grand-children. I am sure your wife, Sue, and two sons, Tom and Hugh, are also looking forward to seeing more of you. We can hardly begrudge them this. So I will not prolong the event any longer.

23 May I thank you for all you have done over the past fourteen years and wish you the very best, both in your retirement and as a tour guide leader.

24 **THE HONOURABLE GABRIELLE UPTON MP ATTORNEY GENERAL OF NEW SOUTH WALES:** Your Honours, it is my privilege to speak today, not only as Attorney General of New South Wales but also on behalf of the wider legal profession. Today we gather to farewell his Honour Mr Justice Barrett.

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<sup>19</sup> R I Barrett, ‘Book launch’ (Speech delivered at the book launch to Farid Assaf’s second edition of ‘Statutory Demands and Winding Up in Insolvency’, 19 July 2012).

<sup>20</sup> Ibid.

- 25 Your Honour, as Attorney General I thank you for your dedicated and exemplary service over the past 14 years in this Court. Your truly distinguished and diverse legal career has spanned over 50 years, including time as a practising solicitor, legal academic, advisor to the Federal Government and a Justice of the Supreme Court of New South Wales and the Court of Appeal.
- 26 Your Honour, your career potential was evident when you graduated from Newcastle Boys' High School with maximum marks in your Leaving Certificate. You then attended the University of Sydney and graduated with a Bachelor of Arts in 1964. This was also the same year that you would commence your legal career as an articled clerk at Allen, Allen & Hemsley. In 1967 you were admitted as a practising solicitor after first achieving a Bachelor of Laws and then completing a Master of Law with First Class Honours in 1971.
- 27 Mentored by the revered Sir Norman Cowper in your early years at Allens you were also able to work amongst future Justices Gummow and Lehane as your colleagues. In an impressive short three year period you were promoted to partner in the corporations and securities law practice area.
- 28 During your career as a solicitor you returned to the University of Sydney as a part-time lecturer from 1973 to 198, guiding future lawyers and young professionals in the practicalities of applying corporate law. You also provided your time and corporate expertise to the Companies and Securities Law Review Committee as a part-time member from 1983 to 1987.
- 29 In 1991 after 27 years of employment at Allens you accepted the position of Group Secretary and General Counsel of the Westpac Banking Corporation. I am informed that this period was a particularly difficult time in the history of Westpac and that your expertise in



commercial law was highly valuable to the Board in navigating the many legal and business challenges confronting the bank during that period.

- 30 Your highly regarded reputation as an authority in commercial and corporate law was further recognised with the Commonwealth Attorney General appointed you as a member of the Companies and Securities Advisory Committee and convenor of its Legal Committee from 1991 to 2000.
- 31 As a former member of the Corporations and Markets Advisory Legal Committee, its part successor myself, I know well the vast and considered contribution that those committees have made to corporations law.
- 32 After four successful years at Westpac you then accepted an offer of partnership at Mallesons Stephen Jaques in 1995. Not long after you were also appointed to the Australian Stock Exchange Appeal Tribunal as Deputy Chair in 1997 and promoted to Chairperson in 1998 until you were called to the bench in 2001.
- 33 Appointed as judge of the Equity division in 2001 and a judge of appeal in 2012 your career in the Supreme Court has now stood an impressive 14 years.
- 34 It has often been said that your departure from practice and elevation to the bench coincided with the collapse of the largest insurance company in Australia, the HIH empire, however this may only have been a coincidence, your Honour. The avalanche of consequential complex corporations cases both in respect of HIH Insurance and many others were placed in your hands over the years as head of the Corporations List in the Equity division prior to your appointment to the Court of Appeal. These judgments demonstrate the extraordinary contribution you have made to the law of this State and of this nation, for which the community will be forever in your debt.

- 35 Throughout your career you have also demonstrated an impressive grasp of legal concepts across a wide range of legal disciplines. You brought to the bench a strong background in corporations law with expertise in a large number of areas including taxation, commercial trusts, insolvency, banking and financial institutions, as well as elder and succession law.
- 36 At your swearing in ceremony you expressed some trepidation as to whether having no experience as a barrister would hinder your ability to perform as a judge. You highlighted Sir Anthony Mason's definition of the key ingredients needed for a successful non-barrister member of the bench as being "the intellectual capacity to acquire in a relatively short time the requisite professional legal skills appropriate to judicial work". You also stated that it would be for others to determine whether you have been successful in attaining Sir Anthony's key ingredients.
- 37 However your Honour, I can state without hesitation that you have exceeded all expectations in your performance as a judicial member of New South Wales' highest court. You clearly exhibit Sir Anthony's key ingredients and have succeeded in your role as a judge in the Supreme Court and Court of Appeal.
- 38 Notwithstanding your quiet and gentle manner of presentation, the combination, I understand, of your Honour's refined dry wit and extraordinary intellect, you have, I am told, created wonderful moments of extraordinary good fun in the court, too numerous to mention here.
- 39 In recent years, I am informed, that in search of your further intellectual stimulation and to widen your breadth of legal experience you ruled over your first defamation law matter. This thirst for legal knowledge and your ability to go outside your comfort zone is a trait that has been with you for your entire legal career and an attribute your colleagues greatly admire. Those who have worked with you speak with heartfelt sincerity when they say you are greatly respected and sorely missed.

- 40 Throughout your career you have contributed significantly to the next generation of lawyers. You have lectured and tutored at the University of Sydney and worked as a consultant to the legal workshop at the Australian National University. You have also heavily invested in assisting corporate lawyers, having written broadly over the years on key areas in commercial law. Your contributions to legal literature have included membership of the editorial board of the *Company and Securities Law Journal* since 1982 and performing the role of general editor of *Robson's Annotated Corporations Legislation* from 2010. The role you have played in editing the major legal resource for Australia's corporations practitioners cannot be understated. Those detailed annotations provide essential guidance to all practising lawyers in Australia on latest cases and issues that impact on the *Corporations Act*. Having practised in banking and finance law myself and then at the Australian Institute of Company Directors I can only reiterate the gratitude of solicitors, directors, chairmen, chairwomen for the hard work that you have performed in keeping us all abreast, the community abreast, on commercial law issues over the past 33 years.
- 41 Your comments at the Admission of Lawyers in Newcastle in 2013 further demonstrated your interest in developing future lawyers. There you commented on the importance of lawyers recognising early in their career that they are part of something more than a legal system; they are active participants in the machinery of justice. This highlights your keen awareness that the law is more than purely a system of rules and regulation and that law is fundamental to ensuring a community is safe, individual rights are protected and judicial decisions are fair and impartial. As the New South Wales Attorney General I am acutely and constantly aware of this community expectation.
- 42 Your Honour, I understand that members of your family are here with us today. I look forward to meeting them. Your wife Sue, your two children, Hugh and Tom, and two grandchildren have obviously supported you strongly in your legal career. I am sure they are

incredibly proud of your achievements. I am informed that your father was an avid golfer in his retirement but you will be more likely to enjoy travelling and time bushwalking with friends than time on the golf course. I also understand that you commuted by ferry each day to and from the Court, enjoying the beautiful views our harbour has to offer. And may I suggest, with respect your Honour, that retirement provides you with a fantastic opportunity to combine your admiration of harbour views and interesting bushwalking by taking in many of the foreshore walking trails Port Jackson has to offer, particularly those around my electorate of Vaucluse and I would commend the Hermitage Walk as one you should undertake this very moment. Perhaps your Honour, as a proud grandfather of two grandchildren and a loyal family man these walks can allow your wife, your family and friends to share the beautiful harbour views that you have enjoyed on the ferry over the years each day to and from this Court.

43 Your Honour, Mr Justice Barrett, it has been a delight to have my first ceremonial duty as the new New South Wales Attorney General to participate in your swearing out. You are someone whose name has loomed large in my own professional development. Your colleagues in the Court of Appeal will greatly miss you. On behalf of the State of New South Wales I thank you for your strong and generous contribution to the Supreme Court, particularly the Court of Appeal and most importantly, your Honour, to the administration of justice in New South Wales. Congratulations.

44 **MR JOHN EADES PRESIDENT THE LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court. In February 2013 your Honour had the occasion to address the newly admitted lawyers at a ceremony held in the Newcastle Court. This was the courthouse your Honour passed by daily on your way to school and where you witnessed your first criminal trial in 1963.

- 45 Welcoming those new admittees your Honour reminded them of their duties. They were first and foremost to the Court and to the law; they owed a duty of candour and honesty in all their dealings; that they owed duties to their clients and that no part of those duties were optional. They are remarkable words which have echoed through your Honour's career and for those who you have mentored. You are aware that Newcastle is getting a new court; the gestation is perhaps the length of the birth of an elephant but it is soon coming.
- 46 Change is a constant but it is those values your Honour referred to, the traditions and principles that underpin the very *raison d'être* and is at the heart of our social cohesion.
- 47 Sydney University had a motto when it had a Latin motto, now removed, roughly translated was "Constant Under a Changing Sky". It is my submission to you, your Honour, that ethics are the constant of our profession, be it where I sit, where the Attorney sits and where the Court sits. It is the glue that binds all of the profession, from myself as a country lawyer to those in the large firm group from which you came.
- 48 The profession is grateful that your Honour did not succumb to the doubts you had about entering a legal career. You had a choice of moving to academia but your Honour has managed both, as the Attorney has pointed out, in your activities. Your Honour was also, many years ago, a member of the Law Society of New South Wales and prior to your appointment you served on the ethics committee; it was a very valuable contribution.
- 49 When you joined Mallesons in 1995 you certainly made an impact there but they were the days when you fitted like a glove but it was in an open plan of which you had some hesitancy about it and shortly you were moved to an office of your choice. It is said by some of your former partners there that should you wish to challenge them on an issue

someone would simply say, “a desk has become available in open plan Reg” and it was sufficient to bring you to heel.

50 We are particularly proud that your Honour has hailed from the solicitor ranks, the fourth of such solicitor to be directly appointed to the Supreme Court. And as the Chief Justice has said, Professor Austin, I know, is chasing you shortly because we are now organising the corporate seminar again.

51 At the time of your swearing in the Attorney has averted to that you questioned your experience as solicitor would adequately task you for the steps ahead. Several years later Justice Ward referred to your Honour’s remarks saying, “No-one would now doubt that you were well qualified for the position.”. I am sure you will continue to play an active role in promoting social justice and the administration of the community. The solicitors of New South Wales wish you a healthy, happy and fulfilling retirement. May it please the Court.

52 **BARRETT JA:** Chief Justice, Attorney and Mr Eades, my brother and sister judges, fellow lawyers, family and friends. I am very touched by what has just been said; and I am grateful to everyone for having taken the time and trouble to be here on this wet and wild morning; and, Attorney, I am honoured that my retirement should have been the occasion of the first address to the Court by the first woman to be the first law officer of the Crown in right of this State.

53 As a very young legal operative, I vowed to stay away from courts and litigation forever. I spent 1965, the second year of my articles, pursuing recalcitrant debtors for finance companies. Two particular experiences made me draw a line under my litigation practice there and then. On one occasion, a large, proud woman who had been evicted came to the office and paid the mortgage debt with a big bundle of cash after she and her children had spent three nights sleeping in the open. Sometime after that, the Sheriff’s officer at Parramatta phoned to say that he had

called off the execution of the writ when he arrived to find the judgment debtor engaged in a suicide attempt.

- 54 These were things that that particular 21 year old articulated clerk was keen to leave behind; and so it was that, when commercial practice beckoned, I spent the next 36 years doing my level best to keep both my clients and myself away from courtrooms. It therefore came as something of a surprise and a shock to find myself on 19 March 2001 sitting alone in that big chair at the front that I had long ago seen occupied by the genial Charles McLelland, Chief Judge in Equity, and the stern figure of Sir Thomas Clyne, Federal judge in bankruptcy.
- 55 When I arrived in the Equity Division, the judges were very welcoming and very kind. Kim Santow and Bob Austin took me under their wings. John Bryson and Peter Young willingly shared their experience; so did Bill Windeyer – in fact, at my request, he read my first judgment before it was released and assured me that it wouldn't cause the legal world to dissolve into laughter.
- 56 The profession too was accommodating and understanding. One of my colleagues sitting at the moment almost directly behind me was counsel in my first case. He told me years later that, after he took objection to some part of his opponent's evidence, my look of blank incomprehension made him feel that he had to explain why I should rule against him. I have never had the heart to tell him that my bewilderment was a product of the impenetrable South African accent.
- 57 Although a very small number of solicitors in this State had already made a successful transition direct to the Supreme and Federal courts, my origins made me work especially hard. Throughout my 14 years, I found that the work took all my energy and attention. There was precious little time for anything else. But right from the start, it was immensely stimulating and engrossing; and it remained so to the very last day.

- 58 So why retire a year early, people ask me; why not continue on to the end of the road in a year's time?
- 59 Well, I certainly don't have the problem that confronted Justice Callaway in Victoria who felt he had to retire early because he couldn't, in conscience, accept the High Court's decision in *Weiss v The Queen*. For me, the High Court is, by definition, always right – although I do sometimes wistfully revisit the excellent minority opinions of Justices McHugh and Kirby in the 3 to 2 decision in *Siemens v Schenker* in 216 CLR.
- 60 Nor do I have the difficulty that confronted another Victorian, Justice Ormiston. He said at his farewell two years before the deadline that the “constant interference by the bureaucracy” was “truly intolerable”. In this State during my time, the skill and diplomacy of two Chief Justices and the good sense of governments of both political persuasions have avoided any worry of that kind.
- 61 And fortunately I don't share the predicament of one of the current judges of this court who, if the Australian Financial Review magazine of 25 July last year is accurate, was “starting to enjoy the company of artistic and creative people more than business and legal people”. Now, I like artistic and creative people well enough but I can think of nothing more agreeable than the company of lawyers and my judicial colleagues. I will miss them; and I will miss the contacts I have had with judges from other places, particularly through the Supreme and Federal Court Conferences, the Judicial Seminars on Commercial Litigation and the INSOL International/World Bank Judicial Colloquia. At these meetings over the years, I have met truly delightful people, including four of the English judges who, in the Chancery Division, the House of Lords and the UK Supreme Court, dealt with cross-border cases that arose from letters of request that I had ordered sitting here in this building.



- 62 I will miss too the day to day contact with advocates who, with varying degrees of conviction and persuasiveness, tantalise the intellect and the imagination across the courtroom.
- 63 No, the simple fact of the matter is that “It’s time” – time for a change of pace after 51 years in the constant whirlpool of hard and demanding work – time to reclaim for my wife and myself hours that can be spent doing other things. Sue and I have made a long journey together. I could not have done it without her; and I would not have wanted to. I am looking forward to a new chapter in our shared the life; and I think she is too, but strictly on the basis of no Monday to Friday lunches.
- 64 Our two sons are here today as they were 14 years ago when I was sworn in. They were both students then and they are both students now; although I hasten to add “again” as distinct from “still”, with Tom studying for the ministry at Moore College and Hugh well advanced towards his PhD in philosophy at ANU. Not yet on the scene in March 2001 were our daughters-in-law, Vanessa and Suhasini, and our grandchildren Nathan and Talitha. I am very glad that all the members of my special support group are here with me today.
- 65 Many other people have supported me too – in particular, Chief Justices Bathurst and Spigelman, Chief Judges in Equity Bergin, Young and the late David Hodgson and Court of Appeal Presidents Beazley and Allsop. Each was a wise and generous leader. I am grateful to all of them and to the judges as a whole, past and present, for their collegiality and comradeship.
- 66 On occasions such as this, the retiring judge invariably speaks fondly of tipstaves too numerous to mention individually. Breaking with that tradition, I want to say how very much I have benefited from the fresh air that has been blown into my thinking at different times by Adrian Honnery, Nick Bender, Kavita Balendra, Paul Wilkes, Kelly Ngo, Shan Ree Tan, Josephine Hayllar, Jonathan Turner, Nicholas Mirzai,

Samantha Jian, Christine Iacono and Harrison Grace. They can all spot their handiwork in what I have written over the years.

- 67 Special thanks are due also to Jerry Riznyczok, the Court of Appeal Registrar, whose calm efficiency and dedication sustain us all.
- 68 And then there is the associate. What does one say about Miss Newby? She has served this court with grace and distinction for a continuous period of 41 years. She is a Phillip Street institution and, I think, the most conscientious and committed person I have ever met. She also has a quite wicked sense of humour and is very good company. I thank Margaret very sincerely for her professionalism and her friendship over the whole of my 14 years.
- 69 And so I take my leave. It has been an honour and a privilege to serve the people of New South Wales in judicial office and to play a tiny part in the government of this great and inclusive nation of ours. I dislike intensely the expression “un-Australian”. No origin, background, opinion, belief, lifestyle – and no combination of these – has a monopoly on what it is to be Australian. Our diversity is our strength; and the beauty of our law is that it looks beyond these things and sees us all as equal members of a just society.
- 70 In the overall context of the law and the way it is shaped, every judicial career is the merest blink of an eyelid. An article in the Australian Law Journal a year or so ago said that one of my judgments contained “the seeds of heterodoxy”. A piece in the Australian Yearbook of International Law a few years earlier said that another judgment was “excessively formalistic and lacking an understanding of basic principles of insolvency law”. So, the law is set to improve now that this particular blink of the judicial eyelid has passed.

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