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REVISED

IN THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

BATHURST CJ
AND THE JUDGES OF THE
SUPREME COURT

WEDNESDAY 31 OCTOBER 2018

**SWEARING IN CEREMONY OF LEA CAROLINE ARMSTRONG AS A
JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES AND
PRESIDENT OF THE NSW CIVIL AND ADMINISTRATIVE TRIBUNAL
(NCAT)**

(Commission read)

(Oaths of office taken)

BATHURST CJ: Justice Armstrong, on my behalf and on behalf of all members of the Court, could I warmly welcome you to the Court, I hope you have an enjoyable, productive, as well as obviously, a hardworking time here, thank you.

ATTORNEY GENERAL: Could I begin by acknowledging the traditional custodians of the land on which we have gathered today, the Gadigal people of the Eora Nation, and pay my respects to their Elders, past, past and emerging.

Justice Armstrong, on behalf of the State and the Bar, congratulations on your two well-deserved appointments as a Judge of the Supreme Court of New South Wales and as President of the New South Wales Civil and Administrative Tribunal.

Congratulations too, to your family, to your partner Barry, your sons Tal and Ronan, your mother Leonie, your sister Claire, and your father Peter, as well, though I know he is unable to join us today. Each of you shares this achievement in some order today.

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Many who shared their impressions of your Honour in preparation for today, spoke about your commitment to your family and the great support that Barry and the two boys, have given you over the years. It is an honour for me to share some of these impressions and some remarks about your Honour's life and times.

It is said that on occasion, some talented, respected, even revered people have come from Melbourne and gone on to live very fully lives and I am delighted to count Justice Armstrong among this group. Your Honour started your school days there, in Melbourne, and spent all your school days at Methodist Ladies' College, except for one year studying abroad as an exchange student. A year abroad that allowed your adventurous spirit to soar and soar you did, all the way to southern Californian and a year at Riverside Polytechnic High School.

This year was quite a portentous one and let us consider the following three pieces of evidence. One, from your journey across the Pacific, you inherited a lifelong love of travel. Two, from your, "host father", who was a professor at history, you inherited a lifelong love of history, and three, from your nights spent riding the rollercoasters at Disneyland with a select group of other, "straight-A", students from California, you inherited a lifelong love of theme parks. Your Honour has visited Disneyland at least ten times and your love of rollercoasters is becoming, from this moment at least, increasingly well-known.

Closer to home, when your Honour returned from Riverside Poly and completed Year 12 at MLC, your adventurous spirit, and perhaps your love of travel and history, took up the Princes Highway to Canberra, and the, "parkland setting", of Burgmann College at ANU.

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Your Honour had set your sights on becoming an historian but with some persuasion from your mother, Leonia, who thought it might be best not to rely on a history degree for a job, you enrolled in a Bachelor of Laws as well as a Bachelor of Arts. At, "O Week", at ANU, you first met your partner, Barry, with whom you share your love of travel and with whom, after completing your BA, you backpacked around Europe and visited your host family in California. Then it was back to Uni.

Your Honour took honours in law as well as arts, and upon graduating from law, spent a year as Associate to Justice McHugh of the High Court. In 1992, your Honour decamped north along the Princes Highway once more, this time beginning as a graduate solicitor with Blake Dawson Waldron. During three months undertaking, "discovery", with two other fledgling lawyers, it was then that you really, "discovered", public law. The firm had secondment arrangements with the public service and your Honour spent your first days at the Crown Solicitor's Office as part of that program.

At Blake's, your Honour gained a firm grounding in commercial law as part of the Trade Practices/Intellectual Property/Communications Practice Group. You undertook transactional work, advice work, and litigation, and helped prepared submissions to parliamentary committees.

After two years at Blake's, your Honour moved wholly to the Crown Solicitor's Office as a Legal Officer in Government Law. At that point, the dye was well and truly cast. Your Honour gained experience in a wide variety of matters of public law, including on secondment to the New South Wales Cabinet Office, and in 1996, you were appointed an Assistant Crown Solicitor, first as leader of the Administrative Law Practice Group, and then the Commercial Law Practice Group. At the same time, your Honour found the

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time to study for your Masters of Law, which you attained from the University of New South Wales in 1998. All the while, you developed your expertise in complex commercial matters - corporations law, corporate governance, contracts, tendering and procurement, public finance, statutory powers and compliance - to name but a few.

It is no surprise that 2005, while still with the Crown Solicitor's Office, your Honour the, "de facto", General Counsel for the New South Wales Treasury, and in July 2014, Treasury formalised that role and your Honour was appointed the first General Counsel in Treasury's long history.

Over a decade, you provided almost unparalleled advice on matters in which large commercial transactions intersected with government practice. Your expertise in transactions was invaluable, including the long-term lease of the Ports of Newcastle, Botany and Kembla, electricity general sales, the proposed long-term leasing of electricity networks, and planning for the implementation of the National Disability Insurance Scheme in New South Wales.

In June 2015, your Honour's career-long commitment to government and commercial law was recognised with your appointment as New South Wales Crown Solicitor. This appointment was a milestone, not only for your career but the State of New South Wales, as you were the first woman to hold this position and as such, your Honour has been an exceptional adviser to the New South Wales Government, on an extraordinary breadth of matters.

The Crown Solicitor's work extends beyond being the principal legal adviser to government. As Crown Solicitor, your Honour has served as head of the Crown Solicitor's Office, a New South Wales Government agency, with almost 400 staff. This role demands strategic leadership and management, as

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well as continuing provision of legal advice.

As Crown Solicitor, your Honour has continued to undertake significant legal work, including on reform of the State's financial management reporting laws, the operation of electoral law for State and Local Government elections, powers of parliament and parliamentary committees, and the legal entity that underpins the WestConnex infrastructure project.

Your Honour's leadership has been recognised academically and professionally. You recently completed the New South Wales Government Leadership Academy year-long, "Leading an Agency Program", as well as the, "Leadership in Law Firms" program at Harvard Law School.

Your colleagues say that you have promoted a culture of openness and collegiality. That you have promoted united visions and encouraged working together among the people practice groups in your charge.

Those who shared stories in preparation for today, describe you as warm, with a, "wicked sense of humour", "a mighty work ethic", and, "a champion of public sector lawyers". You are known to be, "a wonderful cat-herder" - a person who can bring parties together effortlessly even where there is disagreement.

Your Honour was the first woman to be the Crown Solicitor, and today, you are the first female President of NCAT. Other milestones in your career, testify to your strength as a role model for woman in the law.

Earlier this year, the New South Wales State Archives held an exhibition, fittingly titled, "Blaze: Working Women, Public Leaders", that paid tribute to the strength, courage and achievements of women who have worked in a range of policy fields in New South Wales, from the 1860's until today.

Your Honour was celebrated as one those women. You are quoted in

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the exhibition catalogue as saying:

“Leadership comes in all sizes and shapes and all different personality types. You don’t have to be like an ‘alpha male’. You don’t have to dominate the room. You don’t have to be overconfident. You can be yourself and still develop into a very fine leader.”

When you were appointed Crown Solicitor, you said it was important to have women in senior roles in the public service, and for younger women to aspire to those positions. You wanted to, “recognise that often women bring something different to the table”. Women who have worked with you, say that you have been a continuous role model for young female lawyers, actively mentoring and encouraging leadership among your female colleagues and peers.

Your Honour, you have shown your dedication to the law and honed your craft in commercial and government law, for more than a quarter of a century.

NCAT focuses on providing outcomes efficiently, fairly and cost-effectively, for all parties that come before it. Your personal character, your professional skill and your dedication to legal practice, will be invaluable as President of that Tribunal. Invaluable to Tribunal members, invaluable to Tribunal staff, and invaluable to the broader New South Wales community.

Justice Armstrong, I wish you every success in your career on the Bench. The law is now one of your lifelong loves - alongside travel, and history, and rollercoasters.

Though elevation to the Bench may not guarantee either travel or thrill rides, I offer my warmest congratulations to you, as you begin your judicial career and take your place in the living history of the this State.

Long may you reign.

PRESIDENT OF THE LAW SOCIETY: I also acknowledge the Gadigal people

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of the Eora nation, and pay my respects to their Elders, past, present and emerging.

As a mere suit on occasions like this, normally sitting in a sea of silks, it brings me enormous pride and pleasure to see a solicitor of your calibre appointed to such high office, as a Justice of this Honourable Court, and as a President of the New South Wales Civil and Administrative Appeals Tribunal.

For almost everything, there is a precedent and as far as solicitors are concerned, in being appointed to the Bench, my attention has been drawn to man called Frederick Garling.

Garling was a solicitor who came to Sydney in 1814 to practise as one of the first colonial solicitors after a successful career in London. There was a severe shortage of lawyers in the colony at that stage, at least amongst free settlers. Many emancipated convicts possessed legal qualifications - it is a strange thing but that is what it was - but the first Judge in New South Wales, one Judge Jeffrey Bent, forbade them from practice. When our promising solicitor, Garling, was appointed as a Deputy Judge-Advocate by Governor Macquarie in 1815, Judge Bent fulminated against this appointment of, "a mere solicitor", as a judge. He also opposed the practice of emancipated lawyers appearing in his court. C H Currey writes that:

"Several stormy sessions followed, in the course of which the Judge, furious that two laymen should set themselves against, 'a barrister of nearly ten years' standing'...refrained from taking his seat."

Despite all this fulmination, Governor Macquarie described our solicitor, turned judge, Garling, as having carried out his duties as Deputy Judge-Advocate, "with zeal, impartiality and integrity". I think they are qualities that your Honour will also show in your future career.

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Although Garling is a great predecessor to your Honour, many solicitors have followed in his footsteps, including some sitting in this Honourable Court, here today. However, your career has also been one of some precedent. As we have heard, you were the first woman to be appointed New South Wales Crown Solicitor and first government solicitor of whom I proudly count myself, to be appointed as a Justice of this Honourable Court. It is a true example for our profession and for women in our profession. You really are a trailblazer. I am quite happy to turn round and say, that this year, I have advocated quite strongly for the appointment of solicitors to the Bench. Whilst the Honourable Attorney General is there, sitting next to me, made the ultimate decision, I will take whatever claim I can to your appointment. Solicitors can and should, aspire to appointment to this Honourable Court and to every judicial office within this State.

As you have heard, your Honour showed promise from an early age. At school, I understand, you were involved in drama, behind the scenes as a stage manager. I understand that Cate Blanchett may have been a colleague of yours, somewhat later. She went on to a stellar acting career from her graduation at the same school. You won speech/drama scholarships and were a highly accomplished musician, playing piano, violin and viola.

At ANU, as referred, you lived at Burgmann College, where you had further brush with two other iconic Australian figures. In joining the College, you followed in the footsteps of rocker and turned politician, Peter Garrett, who I understand had the significant role of being the inaugural Burgmann College barman, and former Prime Minister, Kevin Rudd, who in contrast to Garrett, reportedly lamented at the intrusion of rock music and alcohol upon the college bar.

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Following graduation of course, you served as Associate to Justice Michael McHugh and then went on to Blake Dawson and Waldron. From 1994, of course, until 2014, you served in the Crown Solicitor's Office as a Legal Officer, Senior Legal Officer, Assistant Crown Solicitor in Administrative and Commercial Law, and then General Counsel. Of course, you went to Treasury as the Treasury's first General Counsel and then returned from there in July 2015, as the New South Wales Crown Solicitor.

You have operated at a dynamic intersection of commercial law and government. As Crown Solicitor, you have provided significant and complex advice to government on a wide range of matters, at the same time, managing a significant public sector agency of some 400 staff. Your colleague's testimony, of which I think the vast majority are sitting behind me, about your technical skills, are such that you will be an adornment to both this Court and to NCAT. You excel in statutory interpretation. You are a veritable powerhouse of knowledge when it comes to public law. You have been described as having a brilliant and enquiring mind, and a formidable intellect. However, at the same time, your colleagues emphasise your Honour's modesty and humility.

Whilst you have devoted all the time necessary to make sure that the job is being done and your duty to the public, has always been highest in your mind, one of the things that has cut through, has been some of your Honour's rules. I will highlight three of these. First, the ten-page rule. This stipulates that advices must run for no more than ten pages, preferably fewer. Some admit they thought a ten-page rule was quite impossible. However, the rule has produced clear and concise advices, and has encouraged solicitors within the Crown Solicitor's Office, to reflect on what the key aspects of the advice

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are, in an Armstrong inspired spirit of succinctness, and there are others who might benefit from the ten-page rule.

The second reform was to move to an open plan office. This was not without its issues. However, you brought attributes of resilience, tenacity and persuasiveness to bear on the transition. One described the successful transition, as an open plan, as a Herculean achievement. The collaborative vision that your Honour championed, encouraged people to get out their offices and actually mix with others and collaborate, and talk.

The third shift has been your Honour's emphasis on a client-centric advice. You fostered the dynamic approach to advice, whereby solicitors interacting with their clients, seek out the motivation and the reasons behind the request. You are looking at value-adding to the transaction. Across the board, your Honour has spearheaded a much more responsive culture in the provision of urgent advice. If urgent advice is generally urgently needed, it is given on an urgent basis.

The managerial skills you have exhibited in these reforms will no doubt be a profound benefit to NCAT, which is one of the largest and busiest Tribunals in Australia.

As a leader, your Honour has also been a great supporter of your staff and the legal profession generally, within the government space. The trust you place in others, helps them perform to their best. They felt that if your Honour saw something in them, then you were behind them, helping them, and trying to allow them to better themselves on every step of the way.

It is noted you have always been one to attend the baby shower, visit somebody during maternity leave, on the flipside, make time to speak to somebody who is having just a hard day. Solicitors at the Crown Solicitor's

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Office tell me they will miss your artwork in your office, its vivid and bright colours, a reflection of your presence in the office. They will also miss your resounding laughter and your great sense of sheer style.

Your Honour has taken the development of women lawyers seriously. Over the years, you have shown a commitment to the Women's Lawyers Association events and has shown generosity in speaking with solicitors, when they have had a rough day or needed guidance. Of course, your Honour, has been a great contributor to the Law Society of New South Wales, as an inaugural member of the Law Society's Specialist Accreditation Committee in Government and Administrative Law, as the Attorney General's representative, and you have also served on the Public Law Committee from its establishment in 2017.

Despite a hectic schedule, you have always made a point of ensuring quality time with your family who keep you grounded. As someone acquainted with the experience of being, "one woman a room of men", your Honour's status as one woman in a family of boys, has recently led to the acquisition, am told, of a new family member, Xena the Warrior Puppy.

I can assuredly say that your Honour is going to be missed enormously, from the Crown Solicitor's Office, and from the Law Society. However, we see it as being a wonderful appointment. We see it as being a great recognition, not only of your Honour's skills but those of public lawyers.

As you move from the world of, "adviser", to the world of, "judge", everyone believes that your, "next band of brothers and sisters", will very clearly be endeared with the attributes that your colleagues today just so much appreciated. They know that your Honour will be a shining inspiration to others, showing what dedication, commitment, responsiveness and

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consideration of public values, can result in.

We look forward to a productive term as President of NCAT and a very long tenure as a Judge of this Honourable Court. Again, on behalf of the 34,650 solicitors, I offer my sincere congratulations to your Honour.

ARMSTRONG J: Chief Justice, Judges of this and other Courts, Mr Attorney, Mr Humphreys, Tribunal Members, member of the legal profession, friends and family. Thank you for your presence here today. I would also like to acknowledge the Gadigal people of the Eora nation as the traditional owners of the land on which we are assembled.

Mr Attorney and Mr Humphreys, thank you for your very kind words.

It is indeed an honour to be appointed to this Court, and as President of this State's Civil and Administrative Tribunal. With these appointments come significant responsibilities. My immediate focus will be on my term as the second President of the Tribunal, and I acknowledge the tremendous work of his Honour, Justice Wright, as the first President. Currently receiving over 65,000 applications a year, the Tribunal facilitates access to justice, dispute resolution for ordinary citizens, and enables public decision-making to be challenged, and as the reach of legislative regulation expands, the Tribunal's role grows in social importance.

As is so often the case, looking at what lies ahead causes one to look back and in doing so, I was struck by how my career in, and love of law as a, "public service", has been so richly enhanced by the people who have guided, influenced and supported me. I did not come from a legal family and I knew no lawyers until I went to Law School. Neither of my parents had the opportunity to go on to university after school but they placed a high value on education for their two daughters and they instilled in us, the belief that we could achieve anything if

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we turned our minds to it.

Growing up in Melbourne, as you heard, I went to an all-girls' school, where a number of teachers had a marked influence on me. My favourite school activities were humanities subjects (or any subject really as long as it wasn't physics), speech and drama, and playing viola in the school orchestra. I also loved netball. Although from my experience, netball in a school girl competition, is an extremely hazardous activity which should be recognised for what it is, a blood sport.

After school, you have heard, I was determined to study history at the Australian National University. My mother worried about me moving interstate but mostly about my future job prospects in academia. She gently suggested I undertake a combined degree with Law so that I had a, "fall back" option, an important consideration for parent who hope to raise financially independent offspring.

I am grateful for the education I received at ANU Law School, from lecturers such as Professors Dennis Pearce, John McMillan and Nick Seddon. In particular, the last Professor Phillipa Weeks, was a mentor to me and many others, and in my view, one of this country's outstanding legal educators. Without her guidance and encouragement, I doubt I would be sitting here today.

While I remained a keen student of history, certainly by the end of my law degree, I had come to the view that law could be a fulfilling career path, and that deliberating over a finely nuanced legal point was no less fascinating than a thesis on the 13th Century persecution of the Cathar heretics in Southern France (and yes, that was an essay topic of mine).

After university, I was fortunate that Justice McHugh gave me the

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opportunity to work as his Associate for a year at the High Court. His encouragement to women in the law is well-known in the profession. I consider him to be one of Australia's finest judges and I can think of no better role model for a newly minted judge.

After my year as an Associate, I moved to Sydney and worked for three years at what was then Blake Dawson Waldron. After completing my, "rotations", as a graduate solicitor, my supervising partner was Dr John Griffiths, now his Honour, Justice Griffiths, of the Federal Court, who taught me the finer points of judicial review proceedings. As well as gaining some valuable experience in the law, I made some lifelong friends at the firm, with the help of Black Dawson Waldron's legendary Friday night parties.

I was thrilled to have the chance to pursue my interest in public law by moving to the Crown Solicitor's Office, which I can assure you, Attorney, was - and is not - a forum for legendary parties - at least not on Fridays.

In what was then called the Advisings Branch, I learnt how to interpret some of the many pieces of legislation on the New South Wales statute book. In the Special Litigation and Prosecutions Branch, the first litigation matter handed to me was, *Kable v Director of Public Prosecutions for New South Wales*, which of course, went all the High Court on a now famous constitutional law point. When the outcome of your first case is that your State's law is declared invalid and the High Court recognises a new limitation on State power, the only way is up.

Later, in the Government Law team at the CSO, I worked closely with the former Crown Solicitor, Ian Knight, who was generous in sharing his knowledge and expertise. While he enjoyed a rather liberal use of the red pen - that well-known legal training technique - I am grateful for the rigorous

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instruction I received in the writing of legal opinions.

Throughout my career at the Crown Solicitor's Office and at New South Wales Treasury, I have been fortunate to be involved in a number of matters at the forefront of legal developments - from complex commercial transactions, to competition in consumer law, to State and Commonwealth constitutional law, parliamentary law, electoral law, government enquiries, to name but a few areas.

I have also had the chance to work on some significant legislative reform projects, including a three-year fulltime stint on COAG energy reforms. More recently, as you have heard, I advised extensively on reform of the State's public finance and appropriation laws. Projects of this type are challenging, given the complexities of the issues, and the wide range of stakeholders but they are ultimately rewarding because of their potential to affect substantial change in the processes and structures of governance.

In 2015, it was a great honour for me to return to the CSO as the Crown Solicitor. In 2017, I was proud to lead the Office in its 200th Anniversary year, being 200 years since the appointment of the first solicitor to the Colony of New South Wales, in 1817. In addition to working on interesting and challenging legal matters, affecting the multitude of State Government agencies, I have had the opportunity to lead a Public Service agency of over 400 staff, during a period of significant transformation in the New South Wales public sector. I have benefitted enormously from the sharing of ideas and training, about leadership, management and innovation.

During my career, it has been a great privilege to work with superbly talented Government lawyers. The professionalism, skill, integrity and resilience of lawyers at the Crown Solicitor's Office, does not always receive

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due recognition and talented government lawyers are not limited to the CSO. They work at many levels of government in a large array of roles. They include lawyers employed in other Government agencies, Agency-General Counsel and their in-house legal teams, and of course, the gifted drafters at the Parliamentary Counsel's Office.

Most of these Government lawyers have no public profile. This is because the work of Government lawyers is often required to be carried out within the strict confines of confidentiality yet they do work that is vital to the rule of law. The rule of law requires that Governments work within the boundaries of the law and particularly, constitutional requirements. The work of Government lawyers is to provide frank, fearless and independent advice aimed at ensuring this is the case. I hope my appointment will encourage other Government lawyers to aspire to, and be appointed to, judicial office.

In my time as a Government lawyer, I have also come into contact with many other dedicated public servants in areas outside law. To those I have worked with, thank you for your confidence in me, and your willingness to share your knowledge with me throughout my career. Your commitment to your respective fields, is admirable.

I would also like to acknowledge the excellent working relationships I have had with barristers and with solicitors from the private sector. I will see you, my colleagues and friends, on such a regular basis but I can say sincerely, that working with you has provided me lifelong memories.

2018, marks the 100th anniversary of the *Women's Legal Status Act 1918*, which allowed women to practise as lawyers and stand for Parliament in this State. As we know, *that Act* did not immediately lead to women entering the legal profession, or Parliament, in equal numbers to men.

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While we are still grappling with how to best ensure that women are affording the same opportunities as their male counterparts, there have of course, been notable developments since the *1918 Act*. Occasions like the one today, are a chance to celebrate some of those developments and I acknowledge the debt of gratitude I owe to the women before me, who did not have the same opportunities I have had but whose efforts made my career progression possible.

Lastly, and certainly not least, thank you to friends and family, present and absent. My partner, Barry, since our first year together at ANU, you have always supported me in anything I have wanted to do. To my boys, now young men, Tal and Ronan, you have been significant, albeit unconscious, contributors to the New South Wales Public Service by allowing me the time to do the work I have so loved to do. While after a late night at the office or weekend of work, I may not have always used those exact words, or perhaps anything that resembles them, I simply could not live the fulfilled and rich life I have, without you all.

I approach my appointments with enthusiasm, and with a healthy degree of trepidation. I will do my utmost to honour the confidence that has been reposed in me.

ADJOURNED