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Swearing in Ceremony of The Honourable Reginald Ian Barrett

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

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

Monday 19 March 2001

SWEARING IN CEREMONY OF THE HONOURABLE REGINALD IAN BARRETT AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

1 BARRETT J: Chief Justice, I have the honour to announce I have been appointed a Judge of this Court. I present to you my Commission.

2 SPIGELMAN CJ: Thank you, Justice Barrett. Please be seated whilst the Commission is read. Principal Registrar, would you please read the Commission.

(Commission read).

3 Justice Barrett, I ask you to rise and take the oaths of office; first the oath of allegiance and then the judicial oath.

(Oaths of Office taken).

4 Principal Registrar, I hand to you the oaths to be placed amongst the Court's archives. Sheriff, I hand to you the Bible so you may have the customary inscription placed in it in order that it may then be presented to Justice Barrett as a memento of this occasion.

5 Justice Barrett, on behalf of the Judges of the Court and on my own behalf I wish you a very warm welcome to this Court. You bring to this Court an unsurpassed wealth of experience in your practice of commercial law, and I very much look forward to the contribution you will make to the Court in the years to come.

6 THE HONOURABLE R J DEBUS MP ATTORNEY GENERAL OF NEW SOUTH WALES: Your Honour, as Attorney General, and on behalf of the New South Wales bar and the legal profession, it is my pleasure to have the opportunity this morning to express sincere congratulations and to say something on the occasion of your elevation to the Supreme Court bench.

7 Your Honour brings to the bench a wealth of experience as one of Australia's most outstanding corporate and securities lawyers. You have an extensive practical working knowledge of the law through your participation as a solicitor in most of the important corporate acquisition cases that have emerged in this country during the last ten years. The contribution you have made to the law and society during your career provide a most appropriate background to equip you for the challenge of this appointment.

8 After completing your school education at Newcastle Boys' High School you undertook studies in arts and law at the University of Sydney, graduating with a Bachelor of Arts in 1964 and Bachelor of

Laws in 1967.

9 You were admitted as a solicitor in 1967, and have remained an active member of the Law Society since that time, demonstrating your trademark quality of continuous improvement in the acquisition of legal knowledge, particularly in the field of corporate law.

10 You embarked on further studies at Sydney University and completed your Master of laws with first class honours in 1971.

11 From 1964 until 1991 you worked at the firm of Allen Allen & Hemsley, becoming a partner in 1971 in the corporations and securities law practice area. During this time you spent two years with the firm's office in London as a resident partner.

12 Between 1991 and 1995 your Honour was employed by Westpac Banking Corporation as Group Secretary and General Counsel.

13 In May 1995 you commenced work at Mallesons Stephens Jaques as a partner, a position you occupied until your elevation to the bench of this Court.

14 You have worked on almost every complex and high profile corporate relationship case that has emerged in the last decade: The Westpac Challenge Bank merger, the NRMA insurance demutualization, and Comalco's takeover of Rio Tinto, to mention but a few. The ground breaking work that you successfully performed during the Australian Stock Exchange demutualization and self-listing was a world first that has since been repeated around the globe.

15 I note that during the period of your employment as a solicitor from 1973 until 1987, whenever you were based in Sydney you worked as a part-time lecturer in law at the University of Sydney. Your former students readily admit to being very grateful to have a lecturer with such enormous practical experience, able to regale them with legal tales from the real world of corporate dealings, and this certainly gave some spice and interest to what many would have otherwise thought would be a semester of dry and technical legal study.

16 Not content with providing enlightenment to budding young corporate lawyers, your Honour spent the period from 1983 until the present, immersed in the task of advising the Commonwealth and State governments and the general Australian legal community on the finer points of the relationship between corporations and their members. Your Honour is particularly remembered for his contribution to the development of the law as a part-time member of the Companies and Securities Law Review Committee between 1983 and 1987.

17 From 1991 you were appointed by the Commonwealth government to serve as a part-time member of the Companies and Securities Advisory Committee and Convenor of its legal committee.

18 In 1997 you were appointed Deputy Chairman of the Australian Stock Exchange Appeal Tribunal, and became the Chairman in January 1998.

19 The professional manner in which you have carried out the judicial functions associated with these positions demonstrates that you have all of the qualities needed to help you meet the challenges that lie ahead. Despite this enormous workload I note that you did not allow your preoccupation with the law to interfere with your real passions, scoring every Saturday for the Under 16 cricket team, and singing with the Sydney Philharmonic Choir.

20 Your mastery of the printed word and interest in improving legal professional education is clearly demonstrated in your prolific writing work. Your contributions to legal literature have included membership of the editorial board of the Company and Securities Law Journal since 1982, author of the substantial tome, The Principles of Income Taxation and numerous articles in a variety of respected legal journals. Your love of the written word is reflected in your large collection of what some might consider to be outdated and antiquated legal texts.

21 After a long career as a guru on the technical aspects of a complex area of law, I am reliably informed that your colleagues at Mallesons have launched you into your new career with several very

large dictionaries. It is hoped that this equipment will assist you to expand your use of plain English and - I should emphasise this point, your Honour - to diminish the size of your notoriously long emails.

22 The people of New South Wales are fortunate to have a person with your rare combination of academic, judicial and practical acumen joining the bench of this Superior Court.

23 In 1980, during a speech to the National Press Club, Justice Lionel Murphy QC had cause to comment on the nature of judicial appointments. He bemoaned the fact that there were then, in 1980, no women on the Supreme Court of New South Wales and that the selection process excluded many worthy lawyers. He said, and I quote:

"In the legal profession where you have academics, where you have government lawyers, where you have solicitors and junior barristers as well as senior barristers, the selection is restricted to almost 1 percent of lawyers."

24 And Justice Murphy commented further that if the United States had approached the matter in these ways, then some of the greatest judges of modern times would never have graced the bench; Earl Warren, Frankfurter and Douglas would have been excluded. The first, because he was a politician, and the other two because they had possibly the worst defect of being academics.

25 Your Honour's presence at this ceremony today is testimony to the fact that the legal profession, notorious for being often resistant to change, has come a long way since 1980. We have recognised and rewarded the contribution made to the law by women, by solicitors, by academics, and indeed by lawyers from diverse educational and cultural backgrounds.

26 The people of New South Wales and the members of the legal profession can be justifiably proud of the talented men and women who sit on the bench of the Supreme Court in this State now and, your Honour, I wish you my personal best wishes as you embark upon this new phase of your own legal career. I trust that you will find the position challenging and rewarding, and that you will continue to make valuable contributions to the development of the law.

27 MR N MEAGHER, PRESIDENT, LAW SOCIETY OF NEW SOUTH WALES: May it please the Court. On behalf of the solicitors of New South Wales it is my great pleasure to welcome your Honour as a judge of this Court.

28 Your Honour was born in Sydney but, as has been indicated, you were educated at Newcastle Boys' High where, as an exceptional student, you gained maximum marks in the then Leaving Certificate.

29 Your Honour entered the University of Sydney in 1961. Your studies in arts and law were complemented by your life at Wesley College where your popularity and talents in rowing and debating, together with your academic achievements, led to you being acknowledged in the final year by your election as senior student.

30 You maintained your commitment to the college serving as secretary on its council from 1970 to 1977. You also resumed your legal studies at the University of Sydney, graduating with first class honours in law in 1971; and subsequently there you returned as a part-time lecturer for a period of over fourteen years to exercise further your strong academic bent.

31 You commenced your legal career as an articled clerk in 1964 at Allen Allen & Hemsley, working for, amongst others, the late Sir Norman Cowper.

32 Your Honour was admitted as a solicitor on 17 March 1967 and you continued in employment with Allens where in 1971 you were made a partner specialising in corporations and securities law.

33 From 1983 to 1987 you were a part-time member of the Companies and Securities Law Review

Committee, during which time you made significant contributions to that body's publications and reports.

34 Between 1987 and 1989 your Honour took up the position as the resident partner of Allens in their then London office.

35 In 1991 Westpac Banking Corporation engaged you as Group Secretary and General Counsel. I am told that during this difficult period for Westpac, which included a major corporate restructure, you were able to steer the company successfully through the complex legal maze that it confronted. That had been, for you, a unique experience which highlighted to many your outstanding skills, not only as a commercial lawyer, but as an outstanding problem solver and analytical thinker.

36 Your expertise and high standing in the world of commercial law was further acknowledged when in 1991, whilst still at Westpac, and up until this year, you were appointed by the Commonwealth Attorney General as a part-time member of the Companies and Securities Advisory Committee and Convenor of its legal committee.

37 In late 1994 you were persuaded by Tony D'Aloisio to consider his offer of a partnership at Mallesons Stephen Jaques. Despite the great satisfaction you continued to derive from your work at Westpac, and your initial reluctance to contemplate a move, you eventually accepted, and in May 1995 you became a partner and continued there until your appointment to this bench.

38 In 1997 you were appointed to the Australian Stock Exchange Appeal Tribunal, initially as Deputy Chairperson, and from January 1998 as Chairperson.

39 From 1998 to the time of your judicial appointment the Law Society has also been privileged to benefit from your Honour's vast commercial experience through your contribution to the Society's Ethics Committee. Your advice, wisdom and guidance on the vexed issues surrounding confidentiality has been much valued by us.

40 Your Honour is the fourth to be appointed from the ranks of solicitors to the Commercial and Equity Division of the Supreme Court. You join their Honours, Justices Windeyer, Santow and Austin. As a solicitor you bring with you tremendous depth and breadth of commercial experience, experience which, I am informed by those who have worked closely with you, includes having 'done the deals' and knowing 'how commerce and major listed companies work'.

41 In your rare spare time your Honour is a keen Bridge player, and enjoys pursuits of the voice, performing in choral works and demonstrating a gift as a mimic. Your wife, Sue, is a member of the Philharmonic Choir, and your Honour I am told is one of the "groupies"; you regularly make up the numbers for the extended choir. You were in fact one of the twelve hundred voices we enjoyed at the opening of the Olympics.

42 Your wife and your sons, Tom and Hugh, I understand are here today, together with your mother and parents-in-law.

43 In the eyes of the solicitors of New South Wales your Honour is superbly qualified for the judicial role. Your appointment confirms the great confidence we share in your qualities, abilities and in your wisdom. When you left Mallesons you directed one of your emails at your colleagues where your message was:

"Part of the thrill of legal practice is the almost infinite opportunity for new intellectual discovery."

44 On behalf of the solicitors of New South Wales I take great pleasure in congratulating you on your appointment and wish you many satisfying years on the bench.

45 BARRETT J: Chief Justice, your Honours, ladies and gentlemen. Thank you all for being here this morning at what is, for me, my professional high water mark; and thank you, Mr Attorney and Mr Meagher, for your generous words. I have been having bridge lessons, Mr Meagher. I think that is as far as it goes, but I am willing to try.

46 Justice Michael Kirby apparently said in a recent address at the ANU that judges are experts in boring speeches because they receive daily instruction in the art from barristers. So you have Justice Kirby's guarantee that these, my very first words as a judge, will not be boring in any way.

47 This last Saturday, St Patrick's day, has a special significance for me as it was on 17 March, 34 years ago, that I was admitted to practice in the Old Banco Court.

48 My admission was the cause of some family consternation. It clashed with my younger sister's graduation ceremony at the Newcastle University and, as a result, my father was the only family member to attend. Today the imbalance is redressed. My father, alas, has not been spared to be present in the Banco Court again, although for me he is very much here in spirit. But I am happy to say that my mother and my sister, Kathryn, are both here this time and I am especially pleased that Kathryn and her husband, John McWilliam, have been able to come from Brisbane for the occasion.

49 The translation which has just been completed has caused me to reflect on the fortunate life I have led in the law, both before and after St Patrick's Day 1967. Much of my good fortune has flowed from my training and experience at Allen Allen & Hemsley where I started articles in January 1964 at the age of 19 and stayed until the eve of my 47th birthday.

50 My master solicitor was G S Reichenbach, "Reichy", as he was known, was stern and forbidding. He was admitted to practice in 1922 and was very particular about the pronunciation of his surname which came from Alsace-Lorraine. The apparently German spelling had to be spoken in a kind of Australianised French. He once mentioned to a gathering of the articled clerks that he had served as a corporal in the First World War. Indeed, he must have, because his name was on the Honour Roll in the vestibule of the old Supreme Court. Fortunately for all of us, he did not hear the murmur from the articled clerk at the back, "Yes, but on which side?".

51 The articled clerks' room at Allens in the mid sixties was a hive of brainpower which used to leave me struggling. Bill Gummow started articles in the year before me and John Lehane the year after. The mental agility was often directed into channels which meant that acceptance of anything at all at face value was entirely at your peril - particularly phone calls supposedly from senior partners. Seeing Justice Gummow and Justice Lehane here this morning, along with the likes of Ted McKeown, it all seems like yesterday or, at any rate, perhaps the day before yesterday or maybe it was last week.

52 The most significant influence upon me at Allens - or anywhere in the law for that matter - was Sir Norman Cowper, whose assistant I was for three years immediately after I became a solicitor. Cowper was simply magnificent. He was a master of company law, a brilliant draftsman, a leading company director and a prominent citizen of Australia. When you saw the stub of pencil fished out of the waistcoat pocket and the pipe stoked up, you knew that some gem of spidery prose was about to appear on the whatever scrap of paper came to hand.

53 I was knocked into shape for Cowper by the then junior partner, John Kerrigan, a more mature version of whom is in court this morning. He got me enmeshed in the Crown Lands Consolidation Act of 1913 and various property and estate matters and taught me a great deal.

54 In my second year at Allens I developed doubts about whether I wanted to be a practising lawyer at all. So much so that I applied for and was offered a senior lectureship at the law school of the University of Western Australia, which I eventually declined. Professor Ross Parsons had been one of my referees, and when I told Ross I wasn't going to Perth after all, he arranged for me to start part-time teaching at the Sydney Law School in 1973 and this was the beginning of the academic strand of my career, teaching and academic writing.

55 A turning point in my career came in 1976 when Gummow retired as a partner of Allens to go to the bar. Bob Stevenson and Adrian Henchman who, with junior partners Gummow and Lehane, looked after the Bank of New South Wales, decided that I should be introduced fully into the work of

that client. And it was that introduction which, 15 years later, led to my decision to become the first Group Secretary and General Counsel of what by then had become, with a lot of help from me, Westpac Banking Corporation. There I spent four most fascinating years. Under managing directors Frank Conroy and Bob Joss, I gained an appreciation of the role of law in commercial decision making which is simply not available to any external lawyer.

56 The first three years at Westpac, 1991 to 1993, were a period of great upheaval for the bank, virtually all of it with difficult legal dimensions. As that dust settled over the following 12 months, I was again faced with a decision: whether to move further into management at Westpac or to go back into practice by way of the partnership at Mallesons Stephen Jaques which by then had been offered to me and the rest, as they say, is history.

57 My six years at Mallesons were very happy, satisfying years. The experiences there are, of course, fresh and it would not be right to say too much. But I will say that my work over that period was made much easier by the great help and support of the younger solicitors with whom I have been associated and I single out, in that respect, David Friedlander and Jane Eccleston.

58 I have spent my working life in three institutions with links to this Court going back to its beginnings. George Allen, the founder of Allen Allen & Hemsley, made submissions along with all the other attorneys in the landmark case about the division of the profession heard by Chief Justice Forbes in September 1824. Montagu Consett Stephen who, in 1849, established the Sydney end of today's Mallesons Stephen Jaques, was of the family which provided the Court with three of its 19th century judges including, of course, Sir Alfred who served a record 29 years as Chief Justice. And Westpac, under its original name and its pre-incorporation form, was a litigant here from earliest times. The first case I have found, dating from September 1827, involved the all too familiar situation of the bank in the middle of a dispute about ownership of a deposit of \$1,600 which, in those days of course, were Spanish dollars.

59 The question I had to ask myself a short while ago is whether the career I have had has fitted me for the tasks on which I am embarking today. One aspect that has weighed upon my mind is the fact that I have not practised at the bar.

60 In an essay published in 1997, Sir Anthony Mason expressed the view that "the professionally skilled barrister is more likely to be a successful judge than lawyers from a different background of experience" but he went on to note (and this is more than three years ago now) that:

"We already had some examples of solicitors, academic lawyers and government lawyers who have proved to be successful judges."

61 Sir Anthony pinpointed as the ingredient of the success of these non-barristers what he described as

"an intellectual capacity to acquire in a relatively short time the requisite professional legal skills appropriate to judicial work".

62 It will be for others to say in due course whether I have shown myself to have the capacity to which Sir Anthony referred. I intend to make their judgment a positive one in all respects. As Mr Meagher noted, I said to the young lawyers at Mallesons Stephen Jaques as I left them a week ago, that, for me, the thrill of legal practice has been the almost infinite opportunity for new intellectual discovery; and that is a frame of mind I don't intend to change.

63 It is a great honour and pleasure to see here today many friends I have made during my 37 years in the law; people I have worked for, with and against.

64 As for my family, I have already mentioned that my mother is in court this morning, with my sister and her husband. Also here are my wife's father and mother, who have come specially from Inverell. My brother-in-law, Darrell, sister-in-law Maggie, niece Sarah and nephews James and Ben are here. And, of course, above all, my wife Sue and our two sons, who are my very special support team. Tom and Hugh, of whom I am very proud, have fortunately inherited their mother's special gift which is, every time my feet threaten to rise even a fraction of a millimetre off the ground, to plant them firmly

back down again.

65 Chief Justice, on the occasion of the Court's 175th anniversary two years ago, you said that experience indicates that contemporary custodians of institutions which, like this Court, have grown and developed over long periods of time, should approach their tasks with an element of humility.

66 I become such a custodian today, and I do so with a very deep sense of that humility.
