

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

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

Wednesday 30 January 2019

**SWEARING IN CEREMONY OF
THE HONOURABLE JUSTICE PATRICIA ANNE HENRY
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES**

- 1 **HENRY J:** Chief Justice I have the honour to announce that I have been appointed a judge of this Court. I present to you my commission.

(Commission read)

(Oaths of office taken)

- 2 **BATHURST CJ:** Justice Henry, on my behalf and on behalf of all the members of the Court, can I congratulate you and warmly welcome you to the Court. I hope you have a long, happy and productive career at the Court.

- 3 **THE HONOURABLE MARK SPEAKMAN SC MP, ATTORNEY GENERAL OF NEW SOUTH WALES:** May it please the Court. I acknowledge the traditional custodians of this land, the Gadigal people of the Eora Nation and pay my respects to their Elders past, present and emerging and acknowledge any Aboriginal people with us today. Chief Justice, your Honour Justice Henry, on behalf of our State and the Bar it is my great pleasure to congratulate you on your appointment as a Judge of the Supreme Court of New South Wales.

- 4 I also congratulate your Honour's family. To your husband Stephen, to your children Daniel and Hannah and to your mother Beverley, each of you shares this achievement in some measure with her Honour today. The love and support that you have shown her Honour throughout your lives are part of this special day.
- 5 Your Honour was an only child and grew up on the North Shore with your mother Beverley and your late stepfather Guy. Your schooling began at Middle Harbour Public School in Mosman, an experience you now share with both of your children. After primary school your Honour followed in your mother's footsteps and continued your education at Wenona. Your daughter Hannah has also followed suit to make it three generations of Wenona graduates in your family.
- 6 At high school your Honour knew that you wanted to pursue a career in the law. Like many others throughout history, you may have succumbed to the influence of Atticus Finch – and I am told you have confessed this was the case – that you were so moved by the story of *To Kill a Mockingbird* that you wanted to join the legal ranks to fight for social justice. You were the first in your family to undertake tertiary education and graduated with a Bachelor of Arts and a Bachelor of Laws from the University of New South Wales.
- 7 At university your Honour met Stephen Gorry, another law student whom you later married and with whom you went on to build a family. Your two children are high achievers just like their parents, with Daniel destined for a successful career in law after having graduated from ANU in economics and law and Hannah studying commerce and arts at the University of Sydney.
- 8 Your Honour has always had an independent and adventurous spirit and after graduation took a gap year to travel far and wide throughout Europe and went even further afield to Israel to pluck chickens in a kibbutz. This

was an experience which may or may not have influenced your liking for eating eggs when you returned to Australia.

- 9 Your Honour was admitted as a solicitor in July 1988. You had already cut your teeth in the legal world with a summer clerkship in Perth with Stephen Jaques Stone James which would become Mallesons Stephen Jaques and later King & Wood Mallesons. This was your Honour's introduction to the Mallesons family and you continued as a junior solicitor with Mallesons Stephen Jaques, signalling the beginning of a long and successful relationship.
- 10 The experience you gained there in your formative years was instrumental in shaping your career. You worked with a range of partners and were surrounded by strong women, many of whom were partners at the firm and with some of whom you now join the ranks of the Supreme Court bench. Whilst Stephen and you did venture to London to work for a couple of years in the early 90s – Stephen with Minter Ellison and you with Baker and McKenzie – you were ultimately drawn to return to Mallesons. There you continued to show your loyalty over a total of almost three decades.
- 11 From the very beginning it was more than just a place of work, it was a place where you loved to work.
- 12 Fewer than ten years after your admission and following your experience in London and the birth of your first child Daniel, your Honour became a partner in Mallesons in 1997.
- 13 Your Honour later became a member of the board and held several key leadership roles in the firm, including Practice Team Leader of the National Competition Law Team and a Senior Partner in Dispute Resolution, as well as within the 'people' arena, as Staff Partner, Recruitment Partner and a National and Equal Employment Opportunity Partner.

- 14 Your Honour is well known and highly respected among your peers and colleagues as an expert, a superb lawyer, an exceptional adviser and a tough adversary – in competition, consumer and telecommunications law and litigation.
- 15 Among the many high profile clients who have sought your Honour's expertise are Colgate-Palmolive, Westpac, Woolworths, Deutsche Bank, and of course Telstra. These clients wanted to work with your Honour for the quality of service they received, for your fairness, your common sense, your practical approach and your ability to tell things as they are but to do so with a human touch.
- 16 Your Honour represented Telstra on many occasions. Most recently, you represented Telstra in a challenge from the Australian Olympic Committee, to so-called "ambush marketing", around the time of the 2016 Olympic Games. As with many other cases in which your Honour has been involved, this matter has potential for major impacts on the commercial world – in this case, on corporate sponsorship.
- 17 And while your Honour has been a sought after and trusted legal adviser in high profile disputes, you have also been described as a humble superwoman with a normal family life, who does not seek the limelight.
- 18 As is usually the case with new judicial appointees, we overturned a number of stones to gain possibly unwelcome insights. All that our checks revealed, though, was that you may have had some involvement in a *Spice Girls* performance at a Mallesons partners conference some years ago. Since that Spice Girls episode was the extent of the result of those checks, when the Chief Justice asked me to tell him what I want, what I really, really want for the Supreme Court, I told him what I really, really want – and that was Trish Henry to spice up the court.

- 19 But I will move on from the Spice Girls jokes, or in other words, I will, stop right there, thank you very much – I just wanted to bring, “a bit of human touch”.
- 20 I’ll highlight just a few of your Honour’s many attributes of character that have been brought to my attention.
- 21 First, you are a games buff. You love a good card game. You are a genius at Scrabble, especially two-letter words only heard of in the Scrabble dictionary like, “Ug” and “Wo”. Your Honour takes trivia seriously and can often be found at particular venues, leading the Powerful Owls to trivia victory. Your Honour loves film and reading, theatre and travel, some loves I am sure you would like to indulge in a little more often than you have been able to do, as many of us would so love to do. While your Honour has a bit of a love affair with New York City and might dream of spending a week on Broadway, indulging in the theatre and the sights, it is your family to whom you have been devoted, in whom you have made the most valuable investments, and with whom you love to spend your time the most – perhaps in Hardys Bay or with your Labrador, Obi.
- 22 Second, your Honour has a passion for the law. Your Honour enjoys the challenge of testing new laws or complex legal problems, knowing that sometimes it is the matters that settle out of court that can be the most interesting.
- 23 Third, your Honour has displayed courage and leadership in your practice. Your former colleagues have identified your ability and willingness to deal with the tough stuff as one of the features they would miss the most about working with you – that along with your sense of humour.
- 24 There have been whispers through the corridors of Mallesons, as your former colleagues discuss how they might get through the Trish withdrawal symptoms they have developed since your Honour’s departure. That is because your Honour is not only passionate about the law but also

passionate about people. Your role as a Staff Partner, Recruitment Partner and National Equal Employment Opportunity Partner of Mallesons reflect your nature as a leader, determined and dedicated to protect colleagues' rights, to offer them opportunities for career progression and to encourage their personal growth. Your Honour took matters of equality, diversity, the engagement of women and compliance with the firm's policy seriously. You have left a broad, deep and lasting footprint over the firm. You have played integral roles in partnership admissions and the recruitment of summer clerks and graduates, and implemented a raft of mechanisms to remove bias from recruitment processes, a clear and lasting signal that demonstrates your passion for equality and equal opportunity.

25 For this your Honour has earned the utmost respect and admiration of your colleagues. I am told it is not uncommon to hear graduates or summer clerks, asking to be put on your team because all of the staff already on your team looked so happy. If there was ever a crisis, your Honour was known as the go-to for help. Your colleagues and friends have praised your good sense, clear thinking, rational opinion and empathy, and the ability to call a spade a spade, and to tell things as they are, to speak out where things need to change but to do so in a respectful and effective way. This gift will be one of your best friends on the bench.

26 While your tenure with King & Wood Mallesons came to a close at the end of 2018, 2019 marks a new chapter for you. This new chapter will have new challenges but I have no doubt, as your Honour's experience has shown, you will consistently rise to these challenges, with an approach that is innovative, courageous, respectful and just.

27 Congratulations on your appointment and I offer you the warmest of wishes for your career on the bench.

28 **MS ELIZABETH ESPINOSA PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** It is a great privilege to come before the Court in order

to congratulate Justice Henry on her appointment to this Honourable Bench. As President of the Law Society of New South Wales, I welcome the appointment of this highly qualified solicitor to the office of Justice of the Supreme Court New South Wales. In welcoming Justice Henry to this bench this morning, I also thank Justice Robert McDougall for his service to this State in this Court, as it is into his shoes that Justice Henry will now step.

- 29 Your Honour joins the bench on the back of an impressive career, as we have heard, at respected firm, King & Wood Mallesons, where you have served as senior partner within the dispute resolution team. For over 30 years, your Honour has been leader within Telecommunications Law, and Competition and Consumer law, in this country. Your contribution at Mallesons has included serving in many leadership roles, from leading the national competition law team to serving as national equal employment opportunity partner, and Sydney staff partner. Your time within the firm culminated in your appointment to its board, where your Honour's influence as longstanding partner of over 20 years was felt in your commitment to a strong, positive culture.
- 30 The first in your family to attend university, as we have heard, your Honour excelled academically and represented the University of New South Wales in interstate mooting competitions. Following your admission, you thrived in the environment of what was then known as Mallesons Stephen Jacques, which from early days, was committed to an equal gender balance and providing new solicitors with strong role models. This commitment would come full circle later in your Honour's career as you became a highly valued mentor for solicitors coming up to the ranks, including young female solicitors.
- 31 At Mallesons, your Honour has been valued by colleagues and clients for your integrity, common sense and fierce intellect. Known as an extremely hard worker, your Honour was always willing to put in the hard yards to accomplish the best outcomes. Your perspective, attentive and diligent

approach relating to all around you, reflected your aim in working life to serve your employer, colleagues and clients to the very best of your ability.

- 32 Your unique combination of intuition, listening and laser-like focus, combined in your legal practice to produce a formidable lawyer with excellent commercial sense. Colleagues have no doubt this potent mix will translate into great outcomes within your judicial role.
- 33 Another trait that will serve your Honour well on the bench is your knack for problem-solving. You have never shied away from decision-making, often approaching this task in a creative or lateral manner. Serving in a law firm at the highest levels for a significant period, you have had to make many time sensitive decisions for the good of a large volume of people. This ability, combined with your talent for providing timely and well-formed advice to clients, will manifest on the bench, as a gift for arriving at sound judgments, for the good of the people who come before you.
- 34 A recurring theme of testimony about your Honour has been your remarkable rapport with clients. Beyond valuing your advice, which was able to strip complications down to steadily understandable propositions, they also appreciated your Honour on an interpersonal level. Described as the consummate social being, your Honour can lead the conversation, fill in the gaps, or be the best listener, depending on what is needed by the person at the time. This adaptability is one of your Honour's best gifts: being able to assess the right thing for the particular set of facts or particular set of people confronting you at that particular time. When clients engage with your Honour, they feel that you genuinely are interested in them - their world, their thoughts and their perspective. You also bring to every meeting a sense of humour that puts people at ease. These qualities have engendered a strong sense of team spirit among those working with your Honour at Mallesons.
- 35 You have been sought after for wise advice and support and your company has been just as vigorously sought out if ever a work outing was

meant to be entertaining. Together with these social skills your Honour has brought strong values of integrity and loyalty to your work life. You have never been afraid to get involved if it ever seemed that a wrong needed righting or if someone needed a friend to stand by them in difficult times.

- 36 These values have created around your Honour a strong and beautiful circle of colleagues, friends and family. In your life outside the law one word that kept coming up about your Honour was “balanced”. A word that is often used but it is seldom truly meant.
- 37 To the external observer your Honour possesses seemingly unbounded stores of energy in your family life. You are a loving partner to Stephen and involved mother to Daniel and Hannah. Time spent together over the years has meant spending long, hot summers with the family at Hardys Bay, planning kids’ milestone birthday parties to their specifications when they were younger and proudly celebrating your children’s successes at every turn.
- 38 Finally you have always made time to get the family together for a Sydney Roosters’ match. Now in that regard your husband and family suspect that your enthusiasm for this Roosters team may have its true roots in the mid-1980s. It was then I am informed that your Honour spent six weeks working in the kibbutz, as we have heard, in south of Israel and your job within that community has been reported to become adept in the art of inoculating chickens or plucking chickens or doing many things with chickens. Your love of chickens has been instilled early. It is no surprise that your Honour is today a season ticket holder for the Roosters.
- 39 Your Honour is an inveterate trivia warrior playing regularly even if her teammates do rotate a little under the moniker, the Powerful Owls. In addition to chickens and owls you are also a keen dog walker clocking up kilometres alongside the family chocolate Labrador, Obi, yes after Obi-Wan Kenobi.

- 40 To your friends your Honour is full of life and terrific fun. You love dancing, spending time at the beach and sinking your teeth into a good book which could range from an example of the greatest literature followed by the latest hot boiler. Each year you swear off social media feeds and news headlines around the time of the Oscars so you can watch each and every red carpet arrival, category announcement and tearful acceptance speech later with a friend as though it were live.
- 41 The testimony of friends and family resounds on one point. No-one would ever hesitate to rely on your Honour. They believe that with the attributes of integrity, diligence and empathy you have brought to the practice of law you will be a tremendous addition to this bench. Indeed, the people of New South Wales will now look to and depend on you your Honour for the unique skills and experience you bring to the administration of justice to this State.
- 42 The body of some 34,000 solicitors in New South Wales whom I represent and from which you have been chosen for this honourable position holds the highest confidence in your Honour. We congratulate you on this significant day, the first in a long and successful tenure on the bench of the Supreme of New South Wales, and thank your Honour for being willing to serve the law and the State in this esteemed way. As the Court pleases.
- 43 **HENRY J:** I would also like to acknowledge and pay my respects to the traditional owners of the land on which we are gathered today, the Gadigal people of Eora Nation, and their Elders past and present.
- 44 Chief Justice, your Honours, Mr Attorney, Ms Espinosa, members of the legal profession, ladies and gentlemen, thank you for your attendance here today. I would like to acknowledge the presence of my family, friends and former work colleagues. I am very appreciative of the support you have shown to me by coming to this ceremony.

- 45 Thank you Mr Attorney and Ms Espinosa for your very kind and far too generous words. In accordance with my new role, I will not seek to invoke any right of reply to what you have both said. I will simply treat them as “submissions”. Today, for the last time, I will leave open the question of what weight those submissions should be given and let others decide.
- 46 It is an incredible honour to have been appointed a Judge of this Court. It is certainly not something I contemplated when I commenced studying law at the University of NSW. Nor was it on my mind when, just over 30 years ago, I started out as a first year solicitor at what was then known as Mallesons Stephen Jaques. As you have heard today, I have spent the best part of my career at one law firm. Other than being a research assistant at law school, being a solicitor has been the only paid legal job I have known until now.
- 47 What is less well known is that working as a solicitor was not my first legal experience. I did not come from a legal family. However, I did get to experience the inside of a courtroom while still at school.
- 48 My first appearance was in the Local Court at Quirindi as a 14 year old witness for the prosecution. By way of background, my wallet had been mislaid in Sydney and I, being the rule-bound person that I was, duly reported the loss to the local police station. Some months later it turned up, 350 kilometres away, in the possession of a person who was, as they say, known to and wanted by the police. I was called on to give evidence to identify the wallet and the value of the contents. It may not surprise those of you who depended on babysitting wages as a teenager as I did and it will not surprise my friends that, when cross-examined, I was able to answer that it contained precisely \$21.72 at the time it had been lost. I still recall the look of frustration on the cross-examiner’s face when I answered his questions, in what the police prosecutor later told my father was a surprisingly confident manner. That experience did not put me off the law. Indeed I expect it made me all the more interested.

- 49 I went to law school at the University of NSW having been attracted to its Socratic method of teaching. My time there impressed on me the importance of being prepared and across the facts, always listening to what was being said and knowing when to keep quiet. Those lessons stayed with me during my time as a solicitor, as did the friendships forged on the 9th floor common room.
- 50 It is however very evident to me that my appointment today reflects the training, mentoring and opportunities I was given while practising as a solicitor. I have been extremely fortunate to have worked for and with some outstanding lawyers at King & Wood Mallesons and its predecessor firm, Mallesons Stephen Jaques.
- 51 There are far too many to name today but there are a few that I would especially like to mention. Roger Featherston, who is now a Commissioner of the ACCC, was my supervising partner and fellow partner for many years. Roger has been a teacher and mentor over the years and I thank him for his wisdom and guidance. Gerald Raftesath, who headed the firm's litigation section when I started, was someone I did a range of cases with in my early years and he taught me much about the art of litigation. From both of these gentlemen I learned the importance of clarity and conciseness, and to always carefully consider what you write to another party as it may one day be read by a judge.
- 52 I have also been fortunate to have had the benefit of a number of female partner role models at Mallesons. When I started, there were already three female litigation partners in the Sydney office – Robyn Chalmers, Julie Ward (now the Chief Judge of the Equity Division of this Court) and Nancy Dolan. Today that may not sound unusual, but in the late 1980s it was extraordinary for nearly 30% of the litigation partners in a major commercial law firm to be women. I had the pleasure and benefit of working with and learning from each of them. Robyn in particular provided wise counsel to me on many legal and other issues over the years and I thank her for that.

- 53 Thanks must also be given to the very many partners, team members, colleagues and clients with whom I have worked closely and from whom I have received the utmost support, warmth and respect. In particular I would like to acknowledge and thank Peta Stevenson. For almost 20 years we worked together, first as supervisor and lawyer and then as fellow partners. Mention must also go to the current and past members of what was known as the “Henry-Stevenson” pod, my fellow dispute resolution and competition law team partners, and those who worked closely with me on client relationships and firm-related business. I could not have done what I have and would not have been given this opportunity without the hard work, friendship and advice they have given me over the years.
- 54 I will miss the camaraderie of law firm life and the opportunity to work with so many talented lawyers as part of a team. I do however look forward to the collegiality on this Court and from hearing from the very many talented lawyers who will be appearing before me in the future.
- 55 As a solicitor I have had plenty of opportunities to put forward my views on matters. However, when it came to Court, it was left to the very many skilful barristers that I worked with to make those oral arguments, with me quietly sitting behind (or across when in Melbourne) and passing them the occasional note with my views. I have learnt much from the barristers I worked with and want to thank them as well.
- 56 It has been said that to raise a family it takes a village. In my case to have the career that I have had so far it has taken many friends and family.
- 57 I was lucky to go to a very good high school and then enjoy free education at university. I formed long-lasting friendships at both. I am beyond happy to see here today many of those friends, and other friends I have made over the years. Many are not lawyers, their general knowledge is wide and

each has been of critical importance for various trivia events, movie awards nights and other occasions.

58 To my mother, Beverley, thank you for everything, particularly the sacrifices you made to ensure that I received an outstanding education and for always being there when needed. Thank you also for your wisdom and for teaching me that tolerance and respect are the cornerstones for whatever one does. It is with sadness that my stepfather, Guy, and my father, Barry, did not live to be here today. My stepfather, in particular, who valued common sense above all and taught me to be independent in my thinking. Also here today are my mother and father-in-law, Jo and Ron, and some of their family, who have also been an ongoing source of support and fun.

59 And above all others there is my partner in life and husband, Stephen, and our children, Daniel and Hannah. I am extremely lucky to have them in my life and I want to thank each of them. I am immensely proud of what Daniel and Hannah have achieved despite their occasionally absent and tired mother. Having it all often meant they didn't always get it all. Stephen has been with me every step of my career and has been my biggest booster. I cannot thank him enough for the laughs, the love, the encouragement and the patience over the years.

60 As a female solicitor, it was a particular honour to me that the announcement of my appointment as a Judge of this Court was made in the centenary year of the passing of the *Women's Legal Status Act* (NSW) in 1918. That Act allowed women to practise as solicitors and barristers and to be appointed a judge or magistrate in New South Wales. It took until 1924 for the first woman to be appointed a solicitor in New South Wales, 1980 for the first woman to be appointed a judge in New South Wales and 2008 for a female solicitor to be appointed directly to this Court.

61 It is wholly appropriate then that I use this opportunity to acknowledge those women who have gone before me and enabled my appointment.

- 62 I have been immensely humbled by the messages of congratulations I received when my appointment was announced, particularly from younger female lawyers, a number of whom I had worked with. I have been fortunate to have worked with many men (as well as women) who were blind to my gender and who provided me with opportunities based solely on how I did my job. I can only hope that other women enjoy the same, although I recognise this is not always the case. As women we can ask for no more, and we should expect no less.
- 63 Over the years much has been written and said in speeches about the qualities required of a Judge. This past year one of those qualities, judicial temperament, has been the subject of extensive media coverage and commentary. I will undertake this role with those qualities in mind, particularly of the temperament required of this public office. I will, therefore, do my utmost to be fair, measured, unbiased and treat all parties with courtesy and respect.
- 64 Finally, I am very conscious of and grateful for the confidence that others have placed in me in relation to my appointment. I look forward to working on this Court and will strive with all that I have to live up to those expectations and the very high standards set by my fellow judges.
