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## Swearing in Ceremony of the Honourable Jeffery William Shaw QC as a Judge of the Supreme Court of New South Wales

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
BANCO COURT

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

**Tuesday 4 February 2003**

SWEARING IN CEREMONY OF  
THE HONOURABLE JEFFREY WILLIAM SHAW QC  
AS A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES

### Judgment

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

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

(Commission read)

Justice Shaw, I ask you to rise and take the affirmations of office, first the affirmation of allegiance and then the judicial affirmation.

(Affirmations of office taken)

Principal Registrar, I hand to you the affirmations to be placed amongst the Court archives.

3 Justice Shaw, it is a common occurrence in this Court for the Court to welcome, as a colleague, a silk of such distinction as your Honour is. It is a much more rare occurrence for the Court to welcome a former Attorney who has served, it is universally acknowledged, a successful term of office.

4 A number of judges of this Court owe their appointment to your recommendation as, indeed, I do myself. So your Honour joins a bench in which a number of colleagues already have a high opinion of your judgement.

5 **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 legal profession, it is my great pleasure to congratulate you on your elevation to the Supreme Court bench.

6 Yours has been a distinguished career in the law and in public life and no-one can doubt that you will continue to serve this State with distinction in your new position as a Judge of this Court.

7 You have come a long way to be where you are today. As a child you lived with your family just off Thompson Street in Boronia Park, a small Sydney suburb between Gladesville and Hunters Hill. Your new colleague, Justice John Dowd, another former Attorney General, grew up in the next block. Perhaps there was something in the water.

8 The actress and writer, Pamela Stephenson, was also a neighbour of yours. In her biography of the comedian Billy Connolly, Ms Stephenson described her Boronia Park in the following terms: "a sparsely landscaped desert, dotted with mound-dwellings of indigenous giant, red, biting ants" and inhabited by "fierce magpies, striped goannas and funnel web spiders". Children walking to the nearest bus stop apparently, she says, "became accustomed to leaping over venomous black and brown snakes that lay sunning themselves on the path".

9 Clearly a landscape which ill prepared your Honour for your later career at the Bar and in the Legislative Council - both environments legendarily lacking in anything venomous.

10 Despite the perils of the locality, you survived to attend Boronia Park Public School, Chatswood Public School and then Hunters Hill High School. You went on to study at Sydney University, graduating in Arts and Law in 1973. You were admitted as a solicitor of the Supreme Court of New South Wales in 1975, and as a barrister the following year.

11 In your time at the bar you became renowned as a learned counsel, a persuasive advocate and a formidable opponent. After ten years of practice, you were appointed a Queen's Counsel on 12 November 1986.

12 At the bar you acquired extensive experience in all relevant courts and tribunals around the country. You had the rare distinction - at least the now rare distinction - of appearing in the Privy Council, as well of course in the High Court of Australia, the Federal Court and the Supreme Court, but your particular passion was Industrial law, although you have appeared in a wide variety of constitutional, administrative law, disciplinary, anti-discrimination and other matters.

13 At the bar you forged many firm friendships and won many admirers.

14 You had a longstanding involvement with politics since your time in Young Labor, and in May 1990 you were appointed to the New South Wales Legislative Council to fill a casual vacancy. You made your inaugural speech on 4 June that year. This was not a maiden speech cast in the typical mode. You used the opportunity to speak, not about yourself, but to engage in a scholarly and comprehensive analysis of proposed changes to industrial relations legislation that were before the House. And from that day forward during a decade in the Parliament, your contributions were invariably articulate, logical and thorough.

15 In opposition, you served from 1991 to 1995 as Shadow Minister for Industrial Relations and Local Government.

16 In Government, you served as Attorney General and Minister for Industrial Relations from 1995 to 2000, and also as Minister for Fair Trading from 1998 to 1999.

17 Your love of the law, your commitment to industrial equity and human rights and your great sense of justice made you an outstanding Attorney General and Minister for Industrial Relations. After more than five years, you left a great legacy as a legislator, including: the formulation and implementation of the current New South Wales Industrial Relations system, which has served as an international model; the first comprehensive State legislative regime for privacy protection; important amendments to the *Anti-Discrimination Act* providing protection for people with carers' responsibilities and transgender people, and Property Relationships legislation; the enactment of the *Young Offenders Act* 1997 which established a scheme of youth justice conferences as an alternative to Court proceedings; important changes to the State's sentencing laws; the establishment of the Administrative Decisions Tribunal; and the development and implementation of the Drug Court.

18 After more than five years as a senior Government Minister, you announced your intention to retire from politics and return to the bar. On your last sitting day in the Legislative Council on 29 June 2000, the accolades were strong and sincere from both sides of the Chamber. The leader of the Government in the Upper House, Michael Egan, described you as "an outstanding member of the cabinet" whose contributions were always measured and thoughtful. Members of the opposition paid tribute to your persuasive skills and renowned courtesy, including a longstanding National party member who described you as one of the three greatest debators seen in the Legislative Council.

19 I am not sure how far back into colonial times he had pursued his researches, but there was no doubt that the tribute was heartfelt.

20 Your Honour, you are widely loved and respected by your many friends and colleagues, who admire your sharp intellect, your wide range of interests and your keen sense of humour. Apart from being an accomplished Queen's Counsel and mediator, you are a prolific academic writer in the area of industrial law, having authored and edited many articles and texts on this subject. Last year you became a member of the Management Committee of the Industrial Relations Research Centre at the University of New South Wales.

21 Your Honour's output as a writer is not, however, confined to academic work. Being a regular contributor to a variety of publications on a wide variety of topics, you contributed pieces on legal affairs to the Australian Financial Review and book reviews to the Sydney Morning Herald. Over the years you have written on subjects as diverse as the enduring influence of Trotsky in the policies of Sri Lankan politics and the sartorial pitfalls of wearing sandals with or without socks.

22 Your academic interest is reflected in your appointment as a Member of the Council of the Sydney College of Advanced Education from 1986 to 1989. And since 2000, you have been a Visiting Professor of Law to the University of New South Wales, an Adjunct Professor at the Sydney University Faculty of Economics, and Adjunct Professor of Law at the University of Technology, Sydney.

23 You have maintained your passion for law reform; you have worked as the Deputy Chairman of the New South Wales Law Reform Commission since March 2001 where your experience and insight have proved invaluable.

24 Your Honour, the breadth and depth of your experience makes you a valuable addition to the Supreme Court bench of New South Wales, one of the most distinguished in the Common Law world, I need hardly say, and one which, if there is one more appointment, will not be able to fit on to the benches before us. May your career, your Honour, as a judge be as successful and fulfilling as your career at the bar and in government. I offer you my best wishes and the best wishes of the legal profession on this well-deserved appointment.

25 May it please the Court.

26 **MR R BENJAMIN PRESIDENT LAW SOCIETY OF NEW SOUTH WALES:** May it please the Court.

27 On behalf of the solicitors of New South Wales, I welcome your appointment to this honourable Court.

28 Whilst I will not repeat what has already been comprehensively covered this morning in relation to your Honour's professional history, experience and eminent reputation, I will make some brief remarks about your Honour's recent years.

29 It is desirable that judges are able to draw upon varied backgrounds and experiences when administering justice. Your presence will add to the breadth of the experience and knowledge on this particular bench. Although your expertise and reputation have been centred on the area of industrial and employment law, you have always had a broad practice encompassing constitutional and administrative law.

30 You have been a regular advocate in the Federal and High Courts and, as indicated by the Attorney General, you have even appeared before the Privy Council.

31 In 1996, the Secretary General of the United Nations invited you to address a conference on decolonisation of the Asia Pacific Region in Papua New Guinea. It is understood that you also experienced the famed Kokoda Trail during your stay in that country.

32 Your Honour also had the privilege of representing the State of New South Wales at the Constitutional Convention in February 1998 and you were also part of the Australian delegation to the

International Labor Organisation in July of 1999.

33 Your Honour's tenure as New South Wales first Crown Law Officer was marked by a period of sustained, competent and technical legal reform that affected a range of important issues. The subjects of the reform included: the abolition of the offence of being a common scold; the status of children legislation; the property relationships legislation that recognised modern society's diversity, ensuring that the law gave recognition and dignity to the variety of intimate personal relationships in which people live. This legislation has proved important not only to same sex couples, but also to personal carers. Your referral to the Legislative Council Standing Committee regarding the proposal to have a bill of rights for New South Wales, a move which did not enjoy unanimous house support within Government; a comprehensive overhaul of the State's occupational health and safety laws, which passed into law in 2000 and commenced operation in the following year; the provision of a modern, fair and efficient system of industrial relations, replacing the previous model. The care you took to consult all parties in the process was a hallmark of your even-handed approach to your political responsibilities.

34 Perhaps your most far-reaching reform was the dust diseases legislation that ensured all victims of asbestos related and dust diseases had their day in Court. No longer could the asbestos manufacturers enjoy a windfall gain when someone died before their matter could be finalised. The survival of general damages beyond the victim's death ensured economic security for their families.

35 The depth of support of this legislation was evidenced by the support of all Cross Bench Members of Parliament to this legislation.

36 Your other reforms included the establishment of the Administrative Decisions Tribunal, privacy legislation and the Court's supervision of video surveillance by employers in the workplace. While your reform initiatives are too numerous to mention here, those described above show both the breadth of your interests, and your commitment to technically sound legal change.

37 The unifying thread linking each reform is that it is not esoteric but affects directly the lives of ordinary people. It is not going too far to suggest that the themes of fairness and equality before the law have informed not only your working life, but also the practical output of your comparatively brief but important time in politics.

38 Perhaps the hallmark of your tenure as Attorney General was the great understanding and balance that you exhibited when dealing with competing pressures from different groups. Consultation was a key word for you.

39 Uniquely in recent New South Wales history, you also regularly appeared as Attorney before the various New South Wales courts in order to defend the integrity of the State's laws.

40 Other than your many achievements as an advocate and as Attorney General, it is not widely known that your Honour has a great appreciation of music, jazz in particular, and you can play the piano with some accomplishment.

41 This is not to be wondered at as you had studied music at the Conservatorium during your youth.

42 I am informed by those present at Parliament House in early December 1995, shortly before dawn, where they remember fondly your impromptu performance on a baby grand piano while on your way to a division, with the bells ringing loudly, as you insisted on completing your piece before casting your vote. Your Honour of course did not miss that, or any other division whilst in parliament.

43 This incident is perhaps indicative of your time in public life. You always carried out your duty with great capability and integrity, whilst ensuring that there was space for the human element.

44 Your Honour was served by a loyal staff, many of whom are present today. The respect and fond regard in which those who worked with you is evident not only from their presence.

45 You continue your period of public service to the people of New South Wales in this new role. May

you have many years of satisfying service.

46 May it please the Court.

47 **SHAW J:** Mr Attorney General, Mr Benjamin, ladies and gentlemen, I thank each and every one of you for taking the time to come to this ceremony and I entirely appreciate that in a busy life this is no easy task.

48 I had thought of mentioning, in particular, distinguished people here, but I think that is often an invidious thing to do and may I just, in a global way, thank all of you, from whatever relationship you have had with me in the past, for coming here today.

49 I am grateful for the generous words on behalf of the bar by the Attorney and from the Law Society by Mr Benjamin. I have appreciated my relationship with both professional associations over many years. The speeches, of course, contained some hyperbole and some flattery which is customary practice on occasions such as this, but nonetheless I am appreciative of what has been said.

50 Obviously, in terms of the members of those two professional organisations, I will, in my life in this Court, be very much in debt to the assistance of counsel and solicitors in the conduct of litigation.

51 To assume a position on the bench of this Court is a great responsibility, having regard to the traditions of the Court, its status as a pre-eminent Court in the country, and I do not assume those duties lightly. On the contrary, I feel a substantial obligation to apply myself assiduously to the adjudication of claims between citizens and between citizens and the State in a manner which is impartial and in accordance with the judicial oath or affirmation. I will say something later about that primary obligation as a judge.

52 It is appropriate on occasions such as this to thank and acknowledge those who have supported the new appointee throughout his or her career. My primary obligation is to my family, my wife and my two children, who have suffered many absences and distractions whilst I worked in the legal and political area.

53 I also need to acknowledge the support of my late father and my mother in working assiduously through sending me through school and university not without considerable difficulty and even with the support of Commonwealth scholarships. My father was a letterpress printer, my mother was a secretary, but both thought I ought to become a barrister. They, in fact, did not know any barristers and yet they were right; it was the correct path for me.

54 I also have a great sense of gratitude to those who have been colleagues in the legal profession, solicitors, regular and loyal clients - or any clients frankly - senior barristers with whom I have appeared as a junior, a number of whom are members of this Court. I have learnt much through that experience at the bar since 1976.

55 As you know, I have experience in the Executive Government of this State as well as at the bar. I never regretted entering public life and I value being given the opportunity to take up the office of the Attorney General of New South Wales. Those five years were gratifying, in terms of both the administration of the Criminal and the Civil Justice System, and the opportunity for legislative reform, some of which have been mentioned by the speakers: the establishment of an Administrative Decisions Tribunal, privacy laws, non-discriminatory property laws, even perhaps controversially the statutory basis for the evidence laws in this State and the widening of anti-discrimination laws.

56 That background has given me a sense of the difficulties and the pressures that the Executive Government and the Legislature experience from time to time. I understand the vicissitudes of politics. However, nothing has diminished my profound belief that the independence of the Courts and of the judicial officers is utterly central to a free society.

57 The judicial oath or affirmation which I have taken today requires the appointee to permit to do right, an admirably plain expression, a promise which can be traced back to the statute of Edward the third and which Chief Justice Gleeson has said "involves the acceptance of a public trust invested in the office of Judge" and which Sir Gerard Brennan has said "forbids partiality and, most importantly, it

commands independence from any influence that might improperly tilt the scales of justice.”

58 This is a commitment which I take seriously. It involves the disinterested - a word that is often misused - dispensation of justice to litigants appearing before the Court.

59 Although the doctrine of the separation of powers might not apply strict censure to a sovereign State Parliament, nonetheless a central doctrine of our liberal democracy is the independence of the Courts. This requires the fearless adjudication of matters, whatever might be the criticisms that come from individuals, the media, or even the Executive Government in relation to such decisions.

60 It is important, I think, that there should be an understanding, knowledge and respect in the relationship between the Executive Government, the Legislature and the Courts. A culture of civility is important. Judges give appropriate respect to legislative intention when applying statutory provisions to particular cases before them. Likewise, it is vital that legislators understand and respect the decisions of the Courts and individual cases where the legislation is valid. These are the checks and balances which are the hallmark of liberal democracy.

61 Courts acknowledge the need to give effect to legislative intention. Wise legislators would acknowledge the need for caution and proper consideration before circumscribing the powers of the Courts to do justice in individual cases in either the civil or the criminal jurisdiction.

62 Although some of my former colleagues in the legislature might disagree, I accept the view of the American writer, Alexander Hamilton, whose 1787 commentary on "The Constitution of the States", referred to the judicial sphere of government as the least dangerous branch. It is a check against possible excesses of the executive and the legislature.

63 Justice Heydon recently quoted George Orwell in his Honour's well-publicised Quadrant speech on "Defence of traditional legal institutions". I would only enter those controversies with great trepidation, but I do venture to refer to the English historian, E P Thompson, who, when referring to some of our old legal terms, said that the rule of law is an unqualified human good, and supported institutions which have proved to be flexible, capable of modification through centuries of conflict and after protracted studies of reform.

64 Ladies and gentlemen, I thank each and every one of you for coming here today on an occasion which is obviously of importance to me, but as each occasion welcomes the new judges is of importance to this Court.

65 I assume the position not with any hubris, but rather with a profound sense of the historical intellectual and legal traditions of the Court and I am very conscious of a substantial obligation to live up to its rigorous standards in the adjudication of matters which come before the Court. Thank you.

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