

**SPEECH AT THE SWEARING-IN OF THE HON. JAYNE JAGOT AS A  
JUSTICE OF THE HIGH COURT OF AUSTRALIA, 17 OCTOBER 2022**

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PRESIDENT, AUSTRALIAN BAR ASSOCIATION**

May it please the court.

I appear on behalf of the Australian Bar Association and its constituent bodies to congratulate your Honour Justice Jagot on your appointment to this Court.

I acknowledge the traditional owners of the lands on which we meet, the Ngunnawal and Ngambri peoples. I acknowledge their continuing culture, and pay respects to their elders, past and present.

It is a privilege to have been invited to speak today on the occasion of your Honour's swearing in as the 56<sup>th</sup> person to be appointed a Justice of this Court.

Because the High Court of Australia sits at the apex of our justice system, its members have unique and onerous responsibilities.

This Court is an ultimate safeguard of the Australian experiment:

- a nation on a remote and unforgiving, yet fragile and beautiful, continent nurtured for millennia by the peoples of the oldest continuing civilisation on earth;
- a western democracy whose foundations rest on the displacement of that civilisation;
- a federation both blessed and cursed with the sharing of powers and responsibilities between its constituent parts;
- in its modern incarnation, perhaps the most successful multicultural country on earth; and
- despite the relative youth of our foundational document and the institutions it established, a country whose commitment to the rule of law is basal.

One of the many reasons why the Australian community can have confidence that your Honour will discharge your duties as a Justice of this Court with distinction, and provide a bulwark for the Australian experiment, is that your Honour has, throughout your career, reflected deeply upon the intersection of the law and humanity. That deep reflection has found form in the manner in which your Honour has managed and adjudicated the cases you have heard and determined.

Your Honour has observed that fundamental touchstones for the rule of law in a civilised society include the separation of powers; the judiciary alone having authority to declare what the law is; and having laws that apply equally to all people, and equally to individuals

and the State. But your Honour has also observed that adherence to the rule of law does not protect us from bad laws; laws that are inconsistent with our shared values.

The law is our social compact; the rules by which we all, governors and the governed, agree to be and are bound. The strength of that compact depends upon the law comporting, so far as possible, with the human values that we agree, at least as an aspiration, ought to define our society. This requires a constant process of re-examination and recalibration by all three arms of government.

But, as your Honour has articulated, the judicial function, even on a court free from the yoke of binding precedent, is not to substitute the judge's view of what the law should be for the judgment of parliament, or what the outcome should be for the exercise of discretion by the executive or the principled development of the common law. As Justice Brennan put it in *Mabo (No 2)*, not even this Court is free to adopt rules that would fracture the skeleton of principle which gives the body of our law its shape and internal consistency.<sup>1</sup>

These are principles your Honour profoundly believes in. You will bring to the awesome responsibility of sitting on our ultimate court not only a remarkably broad mastery of the law and a renowned work ethic and efficiency, but also a nuanced view of the machinery of the compass which points the law towards justice, or our shared values, chief among which is compassion, described by your Honour as “the great moral engine of human action”. Your Honour is in good company: Arthur Schopenhauer described compassion in 1840 as “the basis of morality”; the XIV<sup>th</sup> Dalai Lama more recently as “the wish to see others free from suffering”.

Your Honour also comes to this Court with a clear and compelling vision of the judicial function. You are no cog in a system; you understand the role that the law plays in the functioning of society; that it is the optimal means by which we resolve real world problems; and that it cannot achieve that objective unless every litigant, whether a claimant in a native title claim or a multi-national pharmaceutical company in a patent dispute, has equality of access and is accorded respect and a fair hearing.

In speaking to many people for the purpose of preparing these remarks, from judges, to counsel who have appeared before your Honour, to associates and former associates, there was a striking consistency in what I was told.

Your Honour has a calm patience, unfailing respect for others, empathy and modesty. You are a natural leader, and a person of rare well-roundedness, combining intellect, wisdom, judgment, equanimity and good humour. Your judgments are characterised by an elegant simplicity which belies the intellectual effort they incarnate.

People asked about your Honour invariably mention your humility. When you tell a funny story, and you are known to do so, it is more likely than not to be at your own expense.

They also mention your authenticity: your Honour is the same person on the bench as off it; the same person sworn in today as a Justice of the High Court as the law student who

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<sup>1</sup> *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175, CLR 1, [29].

was interviewed for a summer clerkship by Julie Ward, now President of the NSW Court of Appeal (good call by the way, Justice Ward).

You are the sort of judge beloved by counsel, because you credit them with winning submissions, even where in truth you were the author of them or had improved them when recording them in your reasons for decision.

I have been told that counsel who appear before your Honour often can assess how they are going from your no-nonsense responses to submissions. ‘Yep’ means ‘I get it and that’s right’; ‘uh-huh’ means ‘I get it but I don’t buy it’; and ‘Nup’ means ‘nup’.

I spoke earlier of the Australian experiment, because your Honour considers yourself to be a lucky beneficiary of it. In truth, your Honour’s appointment says something both meaningful and reassuring about the strengths of our nation. Your Honour has risen to the apex of the Australian judicial system in exactly the way we would hope for it to be possible, through talent and hard work, quietly earning and building respect, without talking yourself up or others down.

The Attorney-General consulted, and is to be thanked for consulting, widely in the period leading up to your Honour’s appointment. Your Honour emerged as the outstanding candidate from that process, and your appointment has been universally welcomed by the profession.

Australia is fortunate that there are people of your Honour’s calibre who are prepared to serve the community by accepting appointment to high judicial office. I have not the slightest doubt that your Honour will discharge your new duties with intelligence, integrity, diligence and compassion.

On behalf of the Australian Bar Association, I wish you a long and satisfying career as a Justice of this Court.

May it please the Court.