

Chief Justice Michael Grant, Justices of the Supreme Court of the Northern Territory, all the Elders present, my Aboriginal and Torres Strait Islander Brothers and Sisters, ladies and gentlemen;

It is my absolute honour to be here today on Larrakia Country to speak about such an important program. I pay my deepest respects to the Larrakia Nation and the Larrakia People. I acknowledge their spirits and ancestors.

I must also make special mention of my colleague, David Woodroffe, or Woody as he is known. It was a fitting acknowledgement that last week he was awarded the Australian Human Rights Commission Legal Award. To me, it signalled both a recognition of his extraordinary commitment and contribution, but also a recognition of ongoing and dire human rights abuses suffered by Aboriginal and Torres Strait Islander people in the Northern Territory.

Before continuing, I should also add that I do not propose to make comment tonight on the Royal Commission into the Protection and Detention of Children in the Northern Territory. Except for this ...

Amongst all the gut-wrenching sadness there some moments when I permitted myself a little levity.

Gordon Syron was an Aboriginal artist from Sydney. He painted a series called "Judgement by his Peers" from gaol. The scene depicted in the works is one in which the judge, the lawyers, the jury, and gallery are all Aboriginal people and the accused is a

white man. The wide-eyed look on the face of the accused always cracks me up. There were a few times during the Royal Commission when Woody or Lincoln Crowley or both were next to me at the bar table representing their clients and Tim Goodwin on my other side as my junior counsel ... and Commissioner Gooda sat on the bench ... I swear I saw a look on the face of the witness that reminded me of this painting.

I am honoured to have been asked to speak at tonight's launch. The support that the Bilata program has already commenced providing to the Territory's law students is critical to establishing the study and practice of law as an embedded pathway that young people take for granted as a potential option.

We know that support programs for young people work. In the area of university education we know that the student retention rate overall is increasing year on year and that is being done by providing culturally safe spaces, academic pathways, relevant curricula and higher education role models. This has not happened overnight.

It was 20 years ago, in the December 1996/January 1997 edition of the Northern Territory Law Society magazine 'Balance' a piece was published on the very low retention rate of Aboriginal and Torres Strait Islander law students and the newly upgraded support program. Ms Fiona Hussin, the Aboriginal Pre-Law Program Co-ordinator at the Northern Territory University told Balance that even if Aboriginal students did have access to law

studies, the social factors, cultural factors and inappropriate curricula conspired to make completion very difficult.

In 2011 Phillip Rodgers-Falk published a paper on the attrition of Aboriginal and Torres Strait Islander law students in Australian law schools. The figures he presented disclosed a tertiary education system in which efforts were made to increase enrolments in Bachelor of Laws courses but the systems had not or could not convert those enrolments into completed study. He reported that although there were no first year enrolments in law by Aboriginal or Torres Strait Islander laws students in any law schools in Australia in 1970, the number had risen to 92 by 2009 of which number there was only a 45% completion rate. Mr Rodgers- Falk examined some of the reasons for the low retention rates and looked at the initiatives designed to remedy those failings. He identified many of the things that Fiona Hussin had discussed in 1996. However, one of the developments that had started to emerge by 2011 was a level of support from the legal profession.

In each of the east coast states there now exists trust funds and associated programs for the development and support of Aboriginal and Torres Strait Islander law students and barristers. These funds are created and maintained almost entirely from barrister's donations. Obviously, that is a much easier ask in New South Wales and Victoria where the number of barristers is relatively large. It is less successful in Queensland which has a smaller bar. In this regard, it is significant that the Northern Territory, through this program, is first outside of the east coast to take this step.

You may ask what can be expected from a commitment to such a program. Well, in NSW we presently have 5 Aboriginal barristers. The most we have ever had. When I came to the Sydney bar in 2000, Lloyd McDermott and I were the only two. I have been a member of the NSW Bar Association Indigenous Barristers Strategy Working Group since 2001. It has been a learning process for our committee and the NSW Indigenous Barristers Trust of which I have recently been made a trustee. At first there was an eagerness on my part and the other members of the committee to identify appropriate candidates for the bar and encourage to come to take the exam and commence practice. Over time, we realised that there were simply not enough Aboriginal people or Torres Strait Islanders finishing their law degree and not enough choosing to practice law. Further, we only really came to appreciate the extent of the attrition because of a mentoring scheme which we established. We already knew that a large number of graduates were being sucked in government positions with a smaller number remaining in the academia and very few choosing to practice.

Through the mentoring schemes we have been able to give students access to someone within the profession they can talk to who is also able to direct them back to us if they need help. While the numbers are still low, I estimate the number of students that would have potentially dropped out of their law studies but gone on to complete their degree because of our program to be in the dozens. Of the many who have completed their degrees with or without our assistance we have seen the practice of law come

back into favour as a viable and valid career choice. Right now, there are many fantastic young legal practitioners who have undeniable talent and potential. That did not happen by accident. I should add, noting the focus on school children in the Bilata program, I am convinced that in NSW we must extend our support into the high schools.

It would be convenient at this point for me to be able to tell you about the additional support I needed at high school to get into the law course at the Queensland Institute of Technology, but I didn't need too much. The one piece of support that I suppose made the difference between staying at school and leaving before graduating school was the \$12 per fortnight Aboriginal Secondary Education Grant cheque. It wasn't much, but it was just enough to give me a little bit of independence.

Unlike a lot of Aboriginal people I enjoyed high school. I found the study relatively easy, and did very well at a variety of sports. I also got caned by every school principal I ever had at least once each year.

From high school I went to work in the Aboriginal Legal Service in Brisbane. It was an accident really. I had been offered entry into an arts degree, and imagined myself being a full time student lazing around on Abstudy racking up degrees. This was pre-HECS. However, to get from my home to the University was a very long trip by public transport but a very short trip if you had a motorbike. I asked the Aboriginal Student Welfare Officer if she knew where I could get a job for the holidays and she told me to ring the ALS so

I did. I went to the interview with my report cards and the principal legal officer interviewed me and said “I have represented lots of your family, they would be very proud of you if you studied law and became a lawyer.” He said he would employ me if I would have to sign up to a term of 5 years as an articled law clerk and study law at night. I said I would think about it.

It was the exact opposite of what I had planned out for myself. I talked to my family who were supportive and went to the mainstream guidance officer at my high school. I told him about the offer and I will never forget his response. He said “law is a really hard degree and takes lots of discipline, perhaps you should just stick with the arts degree”. I reckon he meant well.

Nobody from my family had finished high school let alone gone to university, none of my mates went to university, I had no idea what to expect or how to be a university student. There was only one other Aboriginal student in the whole institution and we didn't know each other then. I hated it and only had limited success in my first and second years. But all the while I was working at the Aboriginal Legal Service gaining valuable experience. I remember my first suit was from St Vincent de Paul. At the end of my second year I was ‘gross failed’ and placed on probation. If I didn't pass half of my subjects the following year I would be kicked out. It was then I stopped playing rugby league and starting taking my studies more seriously. I graduated in 1988 and was admitted as a solicitor the same year.

The admission ceremony was unusual, my uncle who was serving 9 years for a bank robbery with a sawn off shotgun was given day release to come to the Queensland Supreme Court. He was escorted into the court by corrections officers and who at least had the decency to take his hand cuffs off when he came into court. The Chief Justice had been informed and every sheriff and bailiff from the Supreme and District Court seemed to be on hand.

I can now confess that in Queensland in those days all of the applicants for admission as a lawyer had stand up and together read out an oath of allegiance to the Queen as part of the admission application. I can say, quite by accident, I lost my place midway through the oath and pretended to read out the balance.

I can also reveal that even though I had literally hundreds, perhaps thousands of court appearances prior to my admission, in 1988 I was still buying baggy trousers in an attempt to hide my shaking legs.

There were two things that got me through those years at law school. The first was the forbearance and understanding of the principal legal officer to whom I was indentured. I disappeared from time to time during those years, usually on a binge of some sort, and when I returned I would tell him what I had been up to. He allowed me the latitude that I needed to cope with my life in the only way I knew how. What I mean by that is that because I was the first from the Brisbane community to go through, I was involved in a lot of cases with people I knew well or was related to. I think the burden of that was sometimes too much.

The other aspect that helped me through those years was that in about my third year other clerks were employed. There were Aboriginal people, Torres Strait Islanders, an African/Indian and a Vietnamese clerk over the years. We had our own safe space. It was an incubator from which fully fledged Aboriginal and Torres Strait Islander lawyers hatched. It would hardly be considered good practice these days but we spent years going to the local pubs near our office every Friday testing our wits against each other. Out of that little firm there has been produced two senior counsel, one of whom has gone on to become a Justice of the Federal Court, the first Torres Strait Islander Magistrate in Australia, the first Aboriginal Magistrate in Queensland, a senior junior Aboriginal Barrister who will take silk in the coming years, another is a boss of a major land council, and one who ran away to set up a legal practice in Dublin, Ireland. If there is another firm that has contributed more to the development of Aboriginal and Torres Strait Islander lawyers, I am not aware of it.

It seems to me that for Aboriginal and Torres Strait Islander law students, articles of clerkship were a very useful means of getting a law degree, learning on the job how to be a lawyer, and having an income.

It is my appreciation of the value of those years in the safety of people who were like me, and the reverse impact of a law school where there was no one like me that has driven my commitment to the annual National Indigenous Legal Conference. The need for

safe spaces for Aboriginal and Torres Strait Islander law students is greater now than it has ever been.

The question that I often ask myself is what is the justification for extra effort being put into the development of Aboriginal and Torres Strait Islander lawyers. Clearly, there is a need for more Aboriginal people in all the professions until we reach a point where the service providers largely match the clients in gender and culture.

It seems to me that only when we have sufficient numbers of law graduates and practitioners, will we start to see the bench reflect the community. In that regard, the searing question in this jurisdiction is how can it be that, in a territory where 30% of the population are Aboriginal people, there are no Aboriginal Magistrates and no Aboriginal Judges. Of course, the question is worthy of contemplation in isolation, but it should also be noted that there are no Aboriginal superior court judges in any jurisdiction, only Judge Myers of the Federal Circuit Court at the intermediate level, and very few magistrates.

My reality growing up was that I hated the police. I had no respect for the legal system and didn't regard it as anything but a means of trying to keep control of me, and my people. I saw the police bash and arrest people for no reason, I saw them steal people's drugs, I saw them pull their gun and threaten to shoot unarmed kids. I went straight from high school into the Aboriginal Legal Service and heard clients giving statements and evidence about the same types of behaviour I had witnessed with my own eyes, and I saw

Magistrates and Judges almost invariably prefer the evidence of the police to the evidence of the accused. I also saw my clients refuse to make complaints or give evidence against police because they knew what the result would be.

At the time, I understood why my clients had no regard for bail or parole conditions, and no respect for the Court.

Having said that, I do not say that it is impossible for non-Aboriginal or Torres Strait Islanders to understand our lives and why we do the things we do. But I do say that it is very, very difficult for anybody else to feel our anger and our bitterness and our oppression.

The Bilata Program, this program which helps the spear fly fast and true, is an acknowledgement that the present state of affairs is unacceptable, and that the legal profession must transform itself. It will happen, of that I am confident. We only have to look across the Tasman and see the position with respect to Maori practitioners and judges. Maori Judges now make up 10% of the District Court bench and are or have been represented through all levels. It should also be said that they are rightfully complaining because with 15% of the population they are under-represented. However, the Maori only really got access to full mainstream education two decades before us, and it my observations that in many respect we are maintaining the two decade disparity.

The Bilata program also importantly focuses on the need for Aboriginal and Torres Strait Islanders law students to have two

way education. By this it is meant that the students are encouraged to continue their education in their own law as well learning the imported British legal system. I cannot stress how important this aspect of the program is.

I say this because I have an unerring belief that our future self-determination will be experienced through the negotiation and performance of treaties. As lawyers, if we are to be of real value to our communities, to our first nations we must be proficient in both legal systems. I am not alone in this belief. In 2011, the Rev Dr Djinninni Gondarra was a keynote speaker at the National Indigenous Legal Conference being held in Sydney. I got to spend a bit of time talking with him about a range of matters. He confided in me his sadness at seeing all these young Aboriginal and Torres Strait Islander law students and lawyers at the conference who were learning the Australian legal system, but did not know their own law or totems let alone their language.

A year later I was talking with former High Court Chief Justice Sir Gerard Brennan, who I have had the benefit of getting to know through his role as the patron of the NSW Indigenous Barristers Trust. He told me that he thought that Aboriginal lawyers really must know their own law and something must be done to help that occur. Not having fulfilled the requests of those two men is something that plays on my mind.

I should also add that more than simply being an aspect central to the work we will need to do now or in the future, it is fundamental

to our resilience that we are strong and confident in our identity, culture and law.

Before I close there are two more sets of observations I wish to make. First, to the practitioners, and I accept that I am largely preaching to the converted, the system of justice in which we operate is prescribed by parliament and the common law. It is riddled with injustice which acts against Aboriginal and Torres Strait Islander people. As we know there are inbuilt measures to ameliorate some of the harsher effects of those laws. But those checks and balances only perform their function when we as lawyers call them out. In this regard we must be ever vigilant. We must continue call out the injustice when we see it and seek to apply the checks and balances, no matter how tired we get of hearing our own voices or how many times we are rebuffed.

To the students – the Bilata program is there to support you to become the best lawyers you can be. I wish such a program existed when I was at law school. If I can impart just three lessons. The first I learned early on when I was nearly kicked out of law school and it has been a guide to life as well as the study and practice of law. It is this, concentrate on the task at hand. Do not worry too much about promotion or recognition, if you concentrate on the doing the best you can at each step those things will follow.

Over the years I have found without consciously pursuing it, I have been engaged in more and more challenging and rewarding work where I have now reached a point in which I am briefed in matters

I did not even dream it would be possible for me to work on, let alone be the senior lawyer.

The second lesson is to work in the area of law you are passionate about. Being of service to your people and to the whole community does not require you to be a treaty advocate or a children's court lawyer. There are Aboriginal and Torres Strait Islander lawyers who are passionate about international law, intellectual property, family law and many other areas and have contributed enormously to our advancement.

The third lesson is do not be ashamed to ask for help, and make the most of your mentors. I have had and continue to have many mentors. One such informal mentor has been Justice Graham Hiley QC of the Northern Territory Supreme Court. After having been his junior in two important native title matters, and his opponent in another, his encouragement was one of the main reasons I applied for appointment as senior counsel.

I hope I have given you all some food for thought, some insight into how I got here, and some inspiration for the support of our future leaders through the Bilata Program. It is my expectation that through the Bilata program we will be able to recreate the Gordon Syron painting in the not too distant future.

It is with great pleasure and pride that I congratulate the Bilata Reference Group Members on their much needed work and officially launch the **Bilata Legal Pathways Program**.

