THE HAL WOOTTEN MEMORIAL LECTURE

Advocacy: From Bourke to Bugmy and Beyond

Justice Dina Yehia

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Acknowledgements

1 Thank you for that kind introduction.

2 I also thank Andrew Lynch and the UNSW Faculty of Law and Justice for the invitation to give the 2025 Hal Wootten Lecture. It is an incredible honour.

3 My staff, Elizabeth Parsons and Christina Nguyen have been of considerable assistance in the preparation of the PowerPoint. Thank you.

4 There are many people to acknowledge tonight but I want to start by welcoming members of Hal Wootten's family, Professor Gillian Cowlishaw, Richard Wootten and special shout out to Caitlin Wootten, who, I am told completed her final HSC exam today and is planning to study law here at UNSW.

5 Chief Justice Bell. Justice Beech-Jones. Chief Judge Huggett. Judges, practitioners, academics, students, friends.

6 Thank you all for attending. On Thursday, October 2nd, a notice went out from the NSW Bar Association mistakenly announcing that I was giving this lecture the next day, Friday 3rd. I was a little stressed because I had two immediate thoughts. Either those interested would turn up to the University on the Friday in my absence, or I would turn up tonight without an audience.

7 I am happy that in the end we are all here on the same night.

8 I commence by acknowledging the traditional owners of the land upon which we gather and pay my respects to their Elders past and present. I acknowledge First Nations peoples' continuing and deep connection to lands, waters and culture.

9 I extend my respect to all First Nations people present. I pause to note that I will be referring to the names and images of deceased First Nations people. I do so with the utmost respect.

10 On a personal note, this acknowledgement must be accompanied by an acknowledgement of Aboriginal and Torres Strait Islander people I met in Western New South Wales and the relationships and friendships that were forged there. I was a relatively young solicitor when I journeyed over the mountains past Lithgow to Dubbo, and later Bourke, Brewarrina, Wilcannia and Broken Hill. I was embraced with warmth, kindness and generosity.

11 I was taken in by one particular family, sometimes referred to as their fifth daughter, and shown a great deal of support and affection. These relationships taught me many things including resilience, loyalty and humour. I am happy to say that our friendships continue 35 years later.

Introduction

12 You may, or may not, be relieved to hear that this lecture will not involve a dissertation on property law, the application of the correctness standard, the ever-increasing complexity of sentencing law (will the High Court endorse aggregate sentencing in Commonwealth cases?) or the application of the "high degree of probability" test in applications under the *Crimes (High Risk Offenders) Act 2006* (NSW).

13 When Andrew Lynch kindly invited me to give the lecture this year, he suggested I might want to speak about my journey in the law which commenced at the Western Aboriginal Legal Service in January 1990.

14 I decided on the title "*Advocacy: From Bourke to Bugmy and Beyond*", because it seemed to be a fitting way to focus on the role of lawyers and the importance of advocacy, while at the same time weaving in my own story.

15 Tonight's lecture is dedicated to lawyers, those practitioners who are engaged in the noble work of representing the interests of others and in the course of their work calling out injustices and seeking to redress those injustices through their advocacy. It is dedicated to those who live their lives in the law, motivated by the desire to achieve better results for those whose contact with the legal

system can be disempowering and alienating. To those lawyers who, through their advocacy, safeguard and promote the rule of law.

16 After settling on the topic, I came across a book edited by David Dixon and Andrew Lynch, which contains Hal's selected writings and speeches. The title of the book is: "*Living greatly in the Law*". The book explains that the purpose of the Hal Wootten Lecture is to celebrate Hal's founding vision for the Law School by inviting a speaker:

> "…to discover in their lives in the law personal and social meanings and connections with the history of the times. In that way, the lectures might accumulate, not a pattern for a life in the law, but examples of the varied opportunities that a life in the law can provide, and the varied ways in which people respond to its challenges".[1]

17 That purpose resonated with me, and I hope I do it justice tonight.

18 Before we get to Bourke, circa 1990, I want to say something more generally about advocacy and lawyers.

19 I must admit that I have always been baffled by the bad press that lawyers and judges get.

[PowerPoint 2]

20 Defence lawyers get a particularly bad rap.

[PowerPoint 3]

21 Sometimes they are treated as though they have committed the offence themselves. Often, they are portrayed as sneaky and underhanded.

22 Judges are not immune. After all, I suppose we are a species of lawyer.

[PowerPoint 4]

[1] David Dixon and Andrew Lynch (eds), *Living Greatly in the Law: Hal Wootten's Selected Writing and Speeches* (UNSW Press, 2025) 20.

23 Often, we are accused of being out of touch, an accusation to which I will return.

24 I am not completely naïve about the flaws of some lawyers, nor do I advance a position that every lawyer I have encountered has been motivated by noble principles. But I can say, hand on heart, that the overwhelming number of lawyers whom I have had the privilege of knowing, are hard-working, committed, passionate, and principled individuals – many of them now judges.

25 The role of a lawyer, engaging in advocacy, often representing the interests of the most marginalised in our community, the voiceless, the disempowered, is more important than ever. So too is fighting to safeguard the rule of law. Fearless advocacy is essential to that fight and essential to the legitimacy of our legal processes.

26 We have witnessed over the last nine months or so events taking place in the United States which are of considerable concern. Attacks on lawyers, judges and the rule of law are troubling.

27 In the case of *Perkins Coie LLP v US Department of Justice*, which came before the United States District Court for the District of Columbia, Judge Beryl Howell commenced her memorandum opinion with a reference to William Shakespeare, who penned the phrase, in Henry VI, Part 2, Act 4, "The first thing we do, let's kill all the lawyers".[2]

[PowerPoint 5]

28 When Shakespeare's character, a rebel leader intent on becoming king, hears this suggestion, he promptly incorporates this tactic as part of his plan to assume power.

29 The case involved a challenge to an Executive Order which sought to stigmatise and penalise a particular law firm and its employees, due to the firm's representation of certain clients and pursuing plans and taking positions with

[2] *Perkins Coie LLP v U.S. Department of Justice et al* (United States District Court for the District of Columbia, 25-716 (BAH), 2 May 2025) 1.

which the US President disagreed. Judge Howell noted that in a cringe-worthy twist on the theatrical phrase, “Let’s kill *all* the lawyers”, the approach taken in the Executive Order is, “Let’s kill the lawyers *I don’t like*”.[3]

30 The opinion goes on to emphasise the importance of lawyers, their independence and courage, particularly in the face of such attacks. It demonstrates the importance of advocacy and the dangers of complacency and complicity.

31 “Living greatly in the law”, is a theme that Hal referred to when he gave this lecture in 2008. Notwithstanding all the bad jokes and the bad publicity, it is possible to live greatly in the law. In fact, I would argue that it is the only way for lawyers to live in the law.

32 And so, I return to my initial contention that the role of a lawyer, of an advocate, is a noble one. Lawyers not only have the power and capacity to make a real difference in the lives of their individual clients but are also able to advocate for systemic change by challenging systems and processes that lead to unjust results, including but not limited to, calling out institutionalised racism.

33 In one of his speeches, Hal complained about his university education that, “Law was taught to me as essentially a closed static system” and that “lawyers thought too much in terms of cases and too little in terms of clients, too much in terms of the law as a closed system and too little of its role in shaping a more just or even a more functional society”.[4]

34 I think that lawyers, in greater numbers nowadays, are interested in and committed to solution focused practices, recognising that the law does have a role *in shaping a more just or even a more functional society*.

35 So, as we embark on the journey to Bourke, I pose these questions for your consideration - what does access to justice really mean? How do lawyers

[3] Ibid 3.
[4] Dixon and Lynch (eds) (n 1) 51.

represent the interests of their clients effectively? How does our justice system foster dignity, engagement, strength? How do we deal with deeply entrenched trauma? How do we achieve community safety in a meaningful way?

36 These questions are posed not only to practitioners but to judges and other decision-makers. As I said earlier, judges are sometimes criticised for being out of touch. That accusation is often made in the context of criticisms about bail decisions and perceived lenient sentences.

37 But let us just reflect on the life of a judge for a moment, particularly a judge of the District Court or a Local Court Magistrate. Think about what judges do day in and day out. Judges spend hundreds of hours each year dealing with trauma, disadvantage, poverty, mental illness, drug addiction, trauma experienced by victims - searching for ways to facilitate meaningful rehabilitation and foster the protection of the community.

38 If that does not make us experts, I don't know what will. Far from being out of touch or removed, we are in the thick of it. We have a role to play in solution focused and problem-solving objectives because we are in the thick of it. We know what works. We know what doesn't.

39 Of course, we are no longer advocates and there are constraints on what we can say and do. But, as Hal said, every now and then there is an opportunity for a judge to give a little nudge that sends the law along the direction it ought to go.

Bourke

40 We start our journey in Bourke, New South Wales.

[PowerPoint 6]

41 For those of you who have never been there, it is a small town, 760 km from Sydney, with a population of about 2500 people. Roughly 30% of the population are Aboriginal and Torres Strait Islander.

42 Interestingly, I could not find a specific number for the population of Bourke in 1990. It is thought to have been much higher than the present because the population has been declining.

43 Bourke is on the traditional land of the Ngemba people, who, along with other groups like the Barkandji, Murrawarri and Wangkumara, have a rich history spanning over thousands of years.

44 As with events elsewhere, the traditional owners were displaced, and the Aboriginal reserve was established in 1946 by the Aboriginal Protection Board.

45 I arrived in Bourke in early 1990, having left Sydney, bypassing my new home in Dubbo, picked up at the train station by the Principal Solicitor, to be driven directly to Bourke, so that we could appear in court the following day. My appearance in court was not a mention or a short plea. I was allocated a defended hearing for an Aboriginal man who was charged with stealing a motor vehicle. The issue was identification.

46 I had never stepped in a courtroom before, let alone stood at the bar table. Although I had studied criminal law with a great deal of enthusiasm and commitment, I had no idea what I was doing that day.

47 During the hearing, I took an objection to a piece of evidence. When asked by the Magistrate the basis of the objection, I felt like a rabbit in the headlights. It went something like this:

[PowerPoint 7]

48 I share this story particularly with the students and entry-level solicitors in the audience. My message to you is that everyone in this room, no matter what we have achieved or the position we now hold, has made mistakes, felt inadequate, and performed poorly at some point in their professional lives. That is not a failure. The failure is in not picking yourself up off the floor, developing your skills, listening and learning and continuing your mission.

49 The anxiety, distress and humiliation experienced in court in the early days (mine, not my clients') was fortunately contrasted with the security of being accepted into a small community, by both First Nations and non-First Nations people.

50 Take for example, Esther Alvares, the WALS solicitor who was living and based in Bourke, and her partner Ian Cameron, who was the local doctor. Hundreds of nights were spent sitting around their dinner table discussing the problems facing the world and workshopping our cases.

51 But, notwithstanding this camaraderie, arriving in western New South Wales in 1990 was a particularly confronting experience. The relationship between First Nations people and the police was very poor. Much of our work at the Western Aboriginal Legal Service involved representing clients charged with offensive language, offensive behaviour, resisting police, assaulting police and violent disorder.

52 Those were the days in which your clients, even when only charged with swearing, were routinely sentenced to terms of imprisonment. This tension, always bubbling near the surface, was complex, multidimensional and deeply entrenched.

53 In the late 80s and early 90s, one of the causes of considerable anger and distress was the ever-increasing number of Aboriginal deaths in police and prison custody.

54 One of those deaths was that of Lloyd Boney, who died on 6 August 1987 in the Brewarrina police cells, found suspended at the neck by a football sock. Lloyd Boney was 28 years old. He was arrested in a highly intoxicated state for breaching a number of bail conditions.

55 He grew up in a household with 15 other children. He and his family lived in Brewarrina. Brewarrina is a small township, about 100 km from Bourke, with a

population of approximately 1300 people, roughly 50% of which are First Nations.

56 Many of the Aboriginal people who were living on the mission were moved from the mission to a new area situated on a treeless hill near town, which the residents called “Dodge City”, as a way of highlighting the racial segregation, inequality and harshness they experienced.

[PowerPoint 8]

57 The Royal Commission into Aboriginal Deaths in Custody was established in 1987 with a mandate to investigate the deaths of 99 Aboriginal people in State and Territory custody. I believe that it was Lloyd Boney’s death that precipitated the establishment of the Royal Commission.

58 Many of the families of those who had died in custody believed that these deaths were homicides, committed by police. That was certainly the belief held by Lloyd Boney’s family.

59 In 1990, I had the incredible privilege of representing the interests of the Boney Family at the Royal Commission hearing.

60 Hal was the Commissioner. The hearing was held in Brewarrina. Counsel assisting was Steve Norrish. We engaged David Buchanan to represent the family. The hearing was conducted over several days. I have a very fond memory of those three legal giants, and myself, a starry-eyed young solicitor, walking from the motel to the bowling club for dinner.

[PowerPoint 9]

61 Our motel was across the road from the Brewarrina fish traps, which are located in the Barwon river. They are a complex network of river stones arranged to form ponds and channels that catch fish as they travel downstream. They are known as one of the oldest human made structures in the world. The creation of the fish traps and the Aboriginal lore governing their use, helped shape the

spiritual, political, social, ceremonial and trade relationships between Aboriginal groups from across the greater landscape, in addition to being an important site of food production.

62 And here we were, staying in a motel virtually across the road. Conscious of the rich and proud First Nations history, our purpose to participate in an inquiry that was going to hear about the grief, anger, and suspicions of the family and the palpable tensions that existed in the community.

63 Those tensions were in part exacerbated by the fact that following Lloyd Boney's death and at his wake at Memorial Park in Brewarrina, the police sought to disperse the mourners, notwithstanding the fact that the family had gained the proper permission from the Brewarrina Council. Things escalated and several Aboriginal people were charged with various offences and were later tried in what became known as the Brewarrina Riot Trial.

[PowerPoint 10]

64 This history is important in understanding the context in which the Royal Commission hearing took place. Lloyd Boney's family, even three years later, was gripped by grief. Their son was found dead in a police cell. Members of the family were charged with criminal offences arising from the confrontation with police. Some of those accused were on bail not to enter the township of Brewarrina for years, which meant separation from their family and the community. There was a collective outcry for change which led to a national reckoning.

65 As their solicitor, it was essential that I spent time with the family in their community to build trust, obtain instructions and generally represent their interests. All this was going on in the context of a firmly held belief by the family and wider community that there had been foul play.

66 Although the investigations did not lead to any evidence of foul play, the significant work of the Royal Commission was to interrogate why so many First Nations people were falling foul of the justice system. This was not the purpose

for which the Royal Commission had been established but eventually it was accepted that an amendment to the National Commissioner's terms of reference was necessary.

67 Hal investigated 18 deaths in New South Wales, Victoria and Tasmania and provided the Regional Report for these States and contributed to the final report published in 1991. What began as an investigation into the immediate causes of these deaths became an inquiry into systemic issues concerning First Nations people in Australia, which included the dysfunction and disadvantage brought about by colonisation and the role racism plays.

68 Hal Wootten pointed out the debilitating impact of racism when he said:

> "Few white Australians understand how racism continues to affect Aboriginals and what an all-pervasive part of their experience it is. If there is to be a real change in the position of Aboriginals in Australian society, the non-Aboriginal community has to develop an understanding of the widespread, insidious, dehumanising and debilitating effects of racism and work to reduce its influence."[5]

69 There is an argument to be made that there have been improvements, although the debate around the Voice referendum demonstrated that perhaps overt racism bubbles just beneath the surface, every now and then exploding into the atmosphere and polluting everything in its way.

70 But even accepting a decline in overt racism, we need to grapple with the existence of implicit or unconscious prejudices. The assumptions that we make about people who are different to us because we have no or little knowledge about them, no understanding of their history, culture or traditions. We do not value their importance and the lessons they can teach us, believing that the dominant culture is superior.

71 We cannot be proud or complacent just because we no longer make racially pointed jokes. Instead, we have to acknowledge and address the deeper

[5] Dixon and Lynch (eds) (n 1) 157.

systemic factors that result in structural inequalities, often adversely impacting the lives of First Nations people.

72 If we do not confront and address these issues as a community, the work done by lawyers, judges and decision-makers in their individual spaces will fail to bring about systemic change.

73 By the time of the Royal Commission, there had been a long and rich history of First Nations peoples' political, social and cultural activism, which sought in part to educate the rest of us about our own history and about what was needed to effect real change.

74 But I don't think we have been listening. The disproportionate representation of First Nations people in custody continues to be a national crisis and is the lived experience of too many First Nations peoples. This overrepresentation profoundly impacts on families and communities as well as on the individual who is incarcerated.

[PowerPoint 11]

75 On 15 October this year, the New South Wales Coroner was reported as describing the spate of Indigenous deaths in custody as "profoundly distressing" as NSW recorded the most ever deaths in custody in a single year. 12 Aboriginal and Torres Strait Islander people have died in custody in New South Wales this year so far.

76 The State Coroner raised what she called the "entrenched overrepresentation of Indigenous prisoners". Quoting New South Wales Bureau of Crime Statistics and Research, the number of First Nations people in custody had risen by 18.9% in the past five years. The non-Aboriginal prison population decreased by 12.15% according to the agency's statistics from the same period.

77 The State Coroner pointed out that the disproportionate rates compound the risks and vulnerabilities contributing to the rising number of deaths in custody.

78 Taking this issue seriously means more than simply improving design and safety across correctional centres, although of course that is an important aspect. Taking it seriously requires us to acknowledge the systemic issues that give rise to the overrepresentation of First Nations people in the criminal justice system and in our gaols.

79 It means listening to First Nations people about these underlying issues and the ways to address them, accepting that any programs, initiatives, or reforms should be a product of genuine consultation and collaboration - a co-design model.

80 The failures over the last 35 years or so since the Royal Commission's final report, are not the fault of the Royal Commission's Inquiry or final recommendations. Hal wrote –

> "I get somewhat impatient with those who sanctimoniously point out that Indigenous incarceration rates have risen not fallen since the Royal Commission, as though it is the Commission's fault, and they are absolved of responsibility… Our commissions expired, we went home and left it to you, those who hold power in Australian society".[6]

81 And, of course, he was right. The responsibility lies with all of us.

82 The important work of the Royal Commission is not limited to the 339 recommendations which address underlying social, cultural and legal issues that contribute to the disproportionate representation of First Nations people in the criminal justice system and in custody.

83 The profound impact of the Royal Commission, work done by lawyers including First Nations lawyers, is, in part, the narrative that the work of the Commission encouraged.

[6] Dixon and Lynch (eds) (n 1) 169.

84 Narratives are extremely important in shaping the way we conceptualise and think about the world. Real change can only come about when we alter the way we think about the world.

85 The Royal Commission narrative focused on issues like the systemic disadvantage brought about by colonisation and institutionalised racism. We slowly started to appreciate the central role of First Nations Organisations and the voices of First Nations people.

86 The recommendations of the Royal Commission were just the beginning, but they need supplementation, refining and widening in particular respects. They need to be supported by meaningful discussion and consultation with First Nations communities and investment in co-design models for diversion and solution focused approaches, recognising that there has to be systemic and structural change.

87 This history, both personal and professional, informed the arguments in the High Court in the case of Mr William Bugmy.

Bugmy

88 23 years later I appeared for Mr Bugmy in the High Court.

[PowerPoint 12]

89 Mr Bugmy was born and raised in Wilcannia.

[PowerPoint 13]

90 Wilcannia is 945 km from Sydney with a population of about 540 people, 62% being First Nations. In 2011, the population of Wilcannia was approximately 600, with 77.2% of the population First Nations.

91 Some of you may be familiar with the facts, the issues and the grounds of appeal in the case. It is not necessary to go into the details except insofar as they are relevant to the topic. In 2011, Mr Bugmy committed a serious offence

for which he was sentenced to full-time imprisonment. The sentence was increased after a successful Crown appeal. Mr Bugmy appealed to the High Court where he was successful.

92 William Bugmy had a profoundly disadvantaged background. He had experienced a background of socio-economic deprivation. Since the age of 12 he had been placed in foster care and spent time in juvenile justice facilities. He was illiterate. He was exposed to very serious domestic violence and family violence during his childhood. He commenced using alcohol and drugs at the age of 13 and suffered from a range of mental health issues including depression and schizophrenia.

93 Perhaps the most confronting fact was that at the relevant time, the life expectancy for a First Nations man living in Wilcannia was approximately 37. Mr Bugmy was 31 years old when he was sentenced to a term of 6 years' imprisonment.

94 One of the arguments that we put to the High Court is that equality before the law for a member of the First Nations community in twenty first century Australia is informed by the historical context recognised in the decision of *Mabo v Queensland (No 2)* (1992) 175 CLR 1, the reports of the Royal Commission into Aboriginal Deaths In Custody (RCIADIC) (1991), Bringing Them Home (1997) and Little Children are Sacred (2007), and BOCSAR and Productivity Commission statistics.

95 We argued that sentencing First Nations people should take into account *the unique systemic factors brought about by a history of dispossession and colonisation*, with far worse whole life indicators than the non-Indigenous population with respect to health, life expectancy, educational attainment, homeownership and employment opportunities.

96 It also involved recognition and consideration of the fact that Indigenous Australians are overrepresented in the gaol population.

97 The argument was neither unique or radical. The Supreme Court of Canada in *R v Ipeelee* [2012] 1 SCR 433 affirmed and explained its earlier decision in *R v Gladue* [1999] SCR 688, requiring Canadian courts to take into account the unique circumstances of Aboriginal offenders, brought about by the impact of colonisation, that bear on the sentencing process, as relevant to the moral blameworthiness of the individual. One of those factors is the disproportionate rate of First Nations people in our prisons.

[PowerPoint 14]

98 I just pause there to tell you an amusing story about an interaction that Gabrielle Bashir (my junior in the appeal) and I had with a Canadian lawyer Jonathan Rudin, who was involved in the *Gladue* case (he is the Program Director at the Aboriginal Legal Service in Toronto). We found out that he was in Sydney at the time we were preparing the written submissions for the High Court and asked to meet with him.

99 He came to my chambers, and we had a very lovely time. At one point he asked whether we were going to use the “c” word in the submissions. I was a little concerned at that point about his credibility.

100 I realised, however, that the “c” word he was referring to was “colonisation”. As I said, we did use the “c” word. However, the argument did not find favour with the High Court as it was then constituted. The Canadian cases were distinguished for reasons that I will not go into.

101 The appeal, I am happy to say, was successful on other grounds and the case took on some importance in sentencing proceedings.

102 Once again, what is important about the case, leaving aside the legal principle and its application in sentencing proceedings, is the narrative that it continued to encourage. It promoted the discussion about the continuing impact of colonisation and the importance of finding a way to meaningfully address the disproportionate rate of incarceration of First Nations people.

103 What does individualised justice mean in sentencing a First Nations offender? Can a judge really apply that principle without considering the history of dispossession and its continuing impact? Does such a background reduce moral blameworthiness of an offender? How do we deal with the underlying issues that give rise to the offending without acknowledging intergenerational trauma? How do we structure an appropriate sentence that fulfils the purposes of sentencing and reduces the risk of recidivism, without appreciating the history?

104 These questions and the issues underlying them, continue to be highlighted in the work of First Nations and non-First Nations lawyers, whether that be in Bourke Local Court or in the High Court. It is the focus, the commitment, the striving to use the law in shaping a more just or even a more functional society, that matters.

105 Advocacy, in the pursuit of such goals, is not limited to in-court advocacy. I admit that I am a very solution focused judge. Consistent with that disposition I want to talk about three practical initiatives that have developed since the decision in *Bugmy*.

106 There are, of course, many more solution focused and problem-solving approaches that judges and practitioners have developed both in Australia and internationally. There are many lawyers and judges both in Australia and overseas who are doing incredible work in this space.

107 We have some of those judges in the room today - Judge Hunt, Judge Hopkins and Judge Beckett.

108 I will speak about only three initiatives. These are examples of the positive changes that can be made when lawyers and judges, in collaboration with stakeholders and community groups, devise ways to make change, on their own patch, within the confines of existing laws and precedent, using the tools available to them, often in very difficult circumstances and always with inadequate resources.

Bugmy Bar Book

109 The first is the Bugmy Bar Book. For those of you who are not familiar with it, it is a free, evidence-based resource for lawyers and legal decision-makers, as well as policymakers and other professionals. It was launched in November 2019.

[PowerPoint 15]

110 The Bugmy Bar Book is comprised of chapters of research relating to experiences of disadvantage and deprivation. Its purpose includes, although is not limited to, assisting practitioners in the preparation and presentation of evidence to establish the application of the Bugmy principles.

111 I am happy to say that the Bugmy Bar Book has benefited from the support of the Centre for Criminology, Law and Justice and from this Faculty through the work done by its Indigenous students.

112 The content of the chapters is drawn from major reports and leading research. The chapters include:

- Aboriginal and Torres Strait Islander Stolen Generations and Descendants.
- Childhood Sexual Abuse.
- Childhood, Infant and Perinatal Exposure to, and Experience of, Domestic & Family Violence.
- Incarceration of a Parent or Caregiver.
- Homelessness.
- Social Exclusion.
- Significance of Funeral Attendance and Sorry Business.

113 These are only some examples of the chapters. The resource is being used nationally, and its use is not limited to criminal proceedings.

114 It is important to say something about the origins of the Bugmy Bar Book because its history demonstrates the way in which lawyers can and do make a real difference through their advocacy.

115 Rebecca McMahon, then a sole practitioner in Port Macquarie, understood the importance of an evidence-based resource, not only to the preparation of cases, but more generally, in educating practitioners about how to interact with and take instructions from their client, in better engaging experts to provide reports, and in educating decision-makers.

116 She started by relying upon research into the impact of childhood exposure to domestic and family violence in a sentencing case that she appeared in at the District Court sitting in Port Macquarie.

117 Following that, she engaged in discussions with other interested parties and brought a number of us together in what became the Bugmy Bar Book Committee. That Committee is now comprised of representatives from the NSW, ACT and NT Supreme Courts, the NSW District Court, Magistrates Courts, Legal Aid, the Aboriginal Legal Service, the DPP, and academics. Several of the Committee members are First Nations judges, lawyers and experts.

118 In the six years since its launch, the Bugmy Bar Book has gone well beyond its original purpose of assisting practitioners and decision-makers in individual cases. It is a resource that informs the narrative around disadvantage and deprivation in education and policy work.

119 Importantly, it also encourages a focus on strength-based evidence and cultural safety, cautioning against being limited to a deficit narrative and centres the voices of First Nations practitioners and experts in the preparation of chapters and in education.

120 I commend to you the Report on The Significance of Culture to Wellbeing, Healing and Rehabilitation.

[PowerPoint 16]

121 This report contains the Social and Emotional Wellbeing Framework.

[PowerPoint 17]

Walama List

122 The second initiative that in large part flowed from *Bugmy*, was the establishment of the Walama List as an Indigenous Sentencing List in the NSW District Court. Walama was launched in January 2022. There had to be a better way of achieving justice for First Nations offenders, their families, the community and victims. A process which acknowledged the importance of cultural safety and trauma informed practices.

[PowerPoint 18]

123 The Walama Judge applies the same laws and precedent that apply more generally in sentencing proceedings, but the approach and the practices are very different. The sentencing conversations are led by Elders. The rehabilitative case-plans are, in large part, overseen by First Nations caseworkers, some from grassroots organisations, with judicial monitoring.

[PowerPoint 19]

124 The objectives of Walama include the importance of centring First Nations voices, encouraging strength-based narratives, and bringing together the service providers around the Walama table. It prioritises culturally safe practices and approaches.

125 Walama recognises that working in silos is ineffective in bringing about meaningful and positive change to an individual's life and by extension to the life of the community. It is extremely heartening to see Corrective Services, Community Corrections and Justice Health working together, with other

stakeholders and, in some cases, community-run organisations, to achieve a better result.

126 Walama is not a unique or radical initiative. Specialist sentencing courts exist in other jurisdictions both in Australia and overseas. Walama came to life because of the hard work and commitment of judges, lawyers, community organisations and stakeholders who collaborated with each other, to ensure its commencement. All done without additional resources. An example of what Hal referred to as thinking "outside the box", to strive for solution focused approaches.

127 Anyone who has participated in or observed Walama proceedings acknowledges the profound way in which the solution focused approach, led by First Nations Elders, caseworkers and support staff, instils dignity and respect which encourages honest and deep engagement with the process. That engagement increases the prospects of healing and rehabilitation, which in turn increases the prospect of compliance with court orders and better outcomes for the community at large.

128 Importantly, the process centres the narrative of First Nations people in an environment that provides respect and dignity to all involved, recognising the importance of cultural safety.

129 One hears stories of Walama participants, reaching the end of a 12-month program, wanting to delay their sentence so that they can continue in Walama. That is an extraordinary change from the usual response by clients to court proceedings; "get me out of here as quickly as possible".

130 One of the early Walama participants wrote a poem after his experience, eloquently expressing the importance of cultural safety in the criminal justice process.

131 [Keith Quayle's poem read].

Solution Focused Courts

132 That leads me to the third area that has developed over more recent years, and that is the emphasis on solution focused courts. Solution focused courts are not limited to Indigenous sentencing courts. They include Drug Courts, Domestic Violence Courts and the Indigenous List in the Federal Circuit and Family Court. In Australia alone there are about 28 different types of solution focused courts or lists.

133 There is also lot to learn from our colleagues in New Zealand and Canada, as well as the community courts in Papua New Guinea.

134 But again, we have been pretty much working in silos, each court focusing on its own work or its own jurisdiction. That is not a criticism but an inevitable consequence of high-volume work, under difficult circumstances with little resources.

[PowerPoint 20]

135 To this end, the BBB Committee, together with the NSW Bar Association, UTS and the New Zealand Institute of Judicial Studies, are organising a cross-jurisdictional symposium on solution focused justice, to be held in February 2026 and launched by the Chief Justice in the Banco Court.

136 We have support from the New South Wales Judicial Commission, the Australasian Institute of Judicial Administration and the Centre for Criminology, Law and Justice.

137 We will have presenters from across Australian jurisdictions, New Zealand, Canada and Papua New Guinea. In addition to providing education and showcasing the courts, I must admit that the symposium will be very therapeutic for those who work in solution focused courts because they will have an opportunity to hear from their colleagues, to collaborate and share ideas and be supported and inspired by that collaboration.

Conclusion

138 I said earlier that I am a solution focused judge which means that I must conclude by formulating a case plan or at least some take-home points. These are the take-home points:

(1) Lawyers are not catfish. They undertake noble work and are at the forefront of safeguarding the rule of law.

(2) Access to justice is not simply about legal representation but extends to a system of laws and procedures that are respectful and instil dignity.

(3) The improvements made by solution focused courts are a product of the initiative, hard work and commitment of judges and lawyers in consultation with community organisations and stakeholders, under challenging circumstances with little additional resources.

(4) The voices of First Nations people are central to achieving systemic change and structural reform including in developments intended to provide solution focused approaches and diversionary programs.

(5) We must acknowledge our history and listen to and collaborate with First Nations people if there is any chance that such developments will truly benefit individuals and communities.

139 It is fitting to end this lecture with the words of a First Nations woman, June Oscar AO, the former Aboriginal and Torres Strait Islander Social Justice Commissioner:

> [PowerPoint 21]
>
> "Structural reform is essential to making sure our voices are always present. I also firmly believe that our voices, from the ground-up, are necessary in decision-making spaces to inform working practices, institutions, and policy that are more innovative, caring, compassionate and enabling for our peoples. To do this we need to listen deeply with purposeful intent to our Aboriginal and Torres Strait Islander voices. Change happens, we introduce and implement

reforms, when what we hear alters the ways in which we think about the world around us and necessitates that we act and do our work differently".[7]

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[7] June Oscar AO, 'Voices' (Speech, Garma, 3 August 2019) <https://humanrights.gov.au/about/news/speeches/garma-voices-speech>.