

SUPREME COURT OF THE NORTHERN TERRITORY
STATE SQUARE, DARWIN

CEREMONIAL SITTING FOR
THE HONOURABLE JUSTICE GRAHAM HILEY RFD

TRANSCRIPT OF PROCEEDINGS

COURTROOM 1, FRIDAY 1 MARCH 2013 AT 2:00 PM

PRESIDING JUDGES:

THE HON. THE CHIEF JUSTICE, JUSTICE T.RILEY
THE HON. JUSTICE S.SOUTHWOOD
THE HON. JUSTICE J.KELLY
THE HON. JUSTICE J.BLOKLAND
THE HON. JUSTICE P.BARR
THE HON. JUSTICE G.HILEY RFD
THE HON. JUSTICE J.REEVES
THE HON. JUSTICE J.MANSFIELD AM
THE HON. JUSTICE D.MILDREN RFD

IN ATTENDANCE:

THE HON. AUSTIN ASCHE AC QC
THE HON. DAVID ANGEL QC

Transcribed by:
Merrill Corporation

THE SHERIFF'S OFFICER: Silence, all stand and please remain standing.

All persons having any business before this Supreme Court of the Northern Territory now draw nigh and give your attendance and you shall be heard.

God save the Queen. Please be seated.

THE ASSOCIATE: The Court welcomes his Honour, Justice Graham Hiley.

RILEY CJ: Your Honour, the Administrator, the Honourable Sally Thomas and Mr Duncan McNeill, who is not here; Attorney-General John Elferink, the Lord Mayor of Darwin Ms Katrina Fong Lim; the Mayor of Palmerston Mr Ian Abbott; former Administrator Mr Tom Pauling and Mrs Tessa Pauling; Mr John McRoberts, Commissioner of Police, Fire and Emergency Services; distinguished guests, members of the legal profession from both the Northern Territory and Queensland, and family and friends of Graham Hiley, welcome.

We gather for the presentation of the commission by his Honour Justice Hiley and welcome his Honour to the court. I am joined on the Bench by Judges of the Court, Justices Southwood, Kelly, Blokland, Barr, Reeves, Mansfield and Mildren.

I wish to extend a special and warm welcome to those who have joined us on the Bench, being the distinguished former Judges of this Court, the Honourable Austin Asche and the Honourable David Angel.

HILEY J: Chief Justice, I have the honour of advising this Court that I have been appointed a Judge of this Court by the Honourable Administrator and I present my commission.

RILEY CJ: Thank you, I invite you to take your Oath of Office, before her Honour, the Administrator.

OATH OF OFFICE TAKEN

HILEY J: Thank you, your Honour.

RILEY CJ: Yes, please take your seat, Justice Hiley.

HILEY J: May it please the Court.

RILEY CJ: Master, would you please read the commission of his Honour.

MR LUPPINO: To the Honourable Graham Eric Hiley, know ye that reposing full trust and confidence in your loyalty, learning, integrity and ability, I, Sally Gordon Thomas, Member of the Order of Australia, Administrator of the Northern Territory of Australia, acting on the advice of the Executive Council of the Northern Territory of Australia, pursuant to s 32(1) of the Supreme Court Act 1979, do, by this commission, appoint you, Graham Eric Hiley, one of her Majesty's counsel, learned

in the law of the Northern Territory and the States of Queensland and Victoria, to be a Judge of the Supreme Court of the Northern Territory of Australia, from and including the first day of March, in the year of our Lord 2013; to have, hold, exercise, and enjoy the said office of Judge of the Supreme Court of the Northern Territory of Australia, under and subject to the provisions of the Supreme Court Act 1979, as amended from time to time, during good behaviour with all rights, powers, privileges advantages and jurisdiction, thereto belonging or appertaining.

RILEY CJ: Master, please place the Commission and the Oath of Office with the records of the Court.

MR LUPPINO: Certainly, your Honour.

RILEY CJ: Mr Attorney, do you move?

MR ELFERINK: I do, Chief Justice. May it please the court.

I rise today to heartily welcome the appointment of Justice Hiley to this most Honourable Court. It is tradition, on these occasions, to provide some account of your Honour's early life and career, as an introduction for those who are less familiar with your antecedents.

In accordance with that tradition, I note that your Honour was born in Sydney, and completed your leaving certificate at Epping Boys High School. Your contemporaries at the school included golfer Jack Newton and that other famous Australian barrister, Geoffrey Robertson.

Your Honour completed degrees in Arts and Law at Sydney University and then worked as a solicitor with the firm, which subsequently became Mallesons. During that time, your Honour also completed your National Service as a legal officer with the Australian Army. Your Honour then came to Darwin in 1976 to work with local firm, McCormacks. Following a stint with Cridland & Bauer, your Honour was called to the Bar in 1978.

Your Honour quickly established yourself as one of the Territory's leading barristers and you were appointed Queen's Counsel in 1987. I think I can recall reading somewhere on your Honour's website that this occurred a full 12 months before Geoffrey Robertson took silk. Although your Honour may have won that particular race, I am reliably informed that Jack Newton, even with his significant disadvantage, has always been a far better golfer than yourself.

Your Honour has a long standing relationship with the Territory and your appointment as one of its Judges is a fitting culmination of that relationship. Your Honour had a wide-ranging practice at the Bar, which included commercial causes, administrative law, personal injuries, criminal law and Aboriginal land rights work. The list of reported cases in which your Honour appeared during your time in Darwin, reads like a catalogue of Northern Territory precedents. Many of those

cases remain the seminal authority in the relevant area inside Territory Law. I will mention only a few which had particular significance in Territory legal history.

Papantonakis v Telecom was a case that started with a linesman falling off a ladder in Darwin, and it was a case which ended up revolutionising the law of occupier's liability in Australia and, ultimately, in the Common Law world. *Skuse v The Commonwealth* was a case which involved the notorious shooting of a lawyer in the Alice Springs Court House, in what turned out to be a case of tragic mistaken identity. From those tragic circumstances came one of the more enduring assessments of the Commonwealth's 'duty of care' in public buildings.

The Northern Territory of Australia v Mengel was a case involving the conduct of the brucellosis and tuberculosis eradication campaign in the Northern Territory. It remains Australia's leading authority in relation to misfeasance in public office and overturned previous High Court authority in that respect. However, I am reminded by the Crown that your Honour was ultimately and properly on the wrong end of the result in that matter.

As well as your Honour's substantial case load, you held office as President of the Northern Territory Law Society, and subsequently as President of the Northern Territory Bar Association, and you remained active in the Army Reserve for more than 20 years; ultimately achieving the rank of Lieutenant Colonel. You also served as Deputy Chairman of the Lands Acquisition Tribunal for 12 years, Chairman of the Planning Appeals Committee for 10 years, Chairman of the Community Living Areas Tribunal for eight years, and lectured part-time at the Northern Territory University for almost 10 years.

From the mid 1990's, your Honour enjoyed something of a reincarnation, as a Native Title specialist, which coincided with a move to Brisbane for family reasons. In that capacity, your Honour has been involved in most of the landmark cases in the field, and those cases have included *Wik*, concerning the interaction between Native Title and Pastoral Leases; the various *Yorta Yorta* decisions, concerning the continuance of Traditional Laws and Customs; *Yarmirr*, dealing with sea rights; the *Blue Mud Bay* case, concerning fishing rights in the Inter-tidal zones; and *Risk v The Northern Territory*, concerning the Native Title claim over the town of Darwin. Your Honour has also published widely in the field of Native Title, including editing the leading text on the *Issues and Implications Arising from the Wik Case*.

For all your Honour's achievements, you have always been and remain a modest and humble man. For many years, you drove a rusty, bilious, green Celica, which established beyond any doubt that you were entirely unconcerned with appearances. Your former juniors tell stories of you appearing before this Court, dressed variously; in tracksuit pants, Daniel Boon-style jackets and other clothing of that nature. In fact, the common perception is that your Honour is practically Amish in your attitudes to dress. Of course, less charitable colleagues have attributed your Honour's plain taste in motor vehicles and clothing to a grim and Scottish determination, not to part with money except in the case of most dire and desperate emergency. Naturally, I rebut them for their lack of charity.

Your Honour also has a reputation as a prankster. One of those pranks involved, rather unwisely as it turned out, concreting a garden gnome into the front yard of a colleague. As is the case with many pranksters, Fortuna made certain that your colleague was later to be appointed Chief Justice, with control over this Court's court list.

All this experience and these attributes equip your Honour well for your new role, and the people of the Northern Territory rightly and properly have certain expectations of their Judicial Officers. So consequently, your Honour, and with all levity aside, I come before you to enter a plea on behalf of the Queen and her people who reside here in the Northern Territory. As part of the contract that you enter into by accepting your position, you are unencumbered by the unlawful influence that both the executive and the parliament or, for that matter, any other agency can bring to bear upon you. This is a fundamental precept of our system.

It now becomes essentially impossible for any to touch you, other than in the most extreme circumstances, and there are only two restraints which may be imposed. The first restraint is that of your equally independent peers and seniors, in this court and the superior court, and I will not expand on that. But the second, however, is the restraint of your own integrity. It is your reputation, your skills, your experience and your integrity that have seen this trust bestowed upon you. There should be no better guide for you than your own conscience, no better compass than your own sense of justice and your knowledge of the law.

I plead before you to fulfil the terms of your contract with the people of the Northern Territory with all the integrity, justice, and wisdom that lies within the realm of your power and your understanding. For all of the concrete and steel that makes this splendid building, it is but gossamer and flotsam next to the true fibre of this place; your integrity and the integrity of your peers on the bench. It is that fibre that prevents the roof from calamitously falling upon all of our heads.

In truth your Honour, I believe this pleading is not at all necessary, as I am certain you would not have it otherwise. But this is a sacred trust, and consequently I cannot forbear but to mention it. It is a deep duty that we, the people, demand of you; a demand that I am utterly confident that you will embrace with all solemnity, dignity and reverence.

Judge wisely, Judge. May it please the court?

RILEY, CJ: Thank you, Mr Attorney.

Mr President of the Northern Territory Bar Association, do you move?

MR LAWRENCE: Yes, may it please the court?

Firstly, on behalf of the Northern Territory Bar Association, I offer to your Honour Justice Hiley our congratulations and best wishes on your richly deserved appointment.

Further, we, the Bar association, welcome you back to this jurisdiction of the Northern Territory; a jurisdiction, the likes of which there is no other in the common law world. Our jurisdiction boasts a singular jurisprudence, rich in creativity and inclusiveness, being important hallmarks and attributes of any Common Law system. It was, of course, a jurisdiction in which your Honour revelled as a Barrister here in Darwin from the years 78 through to 93.

The learned Attorney-General has taken us to your significant works and contributions to the Territory Legal System then and, in particular, he mentioned your representative capacity, as both President of the Northern Territory Law Society, which was from 87 to 88, and indeed as President of this auspicious body, the Northern Territory Bar Association, which lasted from 1990 to your departure from the Territory in 93.

Briefly, and I am indebted to the learned Attorney-General for touching on some cases, and forgive me for mentioning them again, because the occasion merits it. You were a solicitor from 76 to 78 here in Darwin, and then you joined the newly-formed independent Bar. In fact, you were one of the founding fathers in 1980/81 of this and again I stress, most auspicious body, the Northern Territory Bar Association, of which I now have the privilege and great honour of being its President.

Having being appointed silk in 1987, you operated at the apex of your profession. You deservedly enjoyed respect and regard from the profession itself, not only from your instructing solicitors and your fellow Barristers but also the bench, who held you in high regard for your learning, your integrity and your even-handed, yet determined advocacy.

Further, and personally it should be said on this occasion, that you were universally liked by the profession and the court staff. This fondness came by virtue of your decency, courtesy, your sense of humour and your self-effacing manner. Significantly, you are still fondly remembered by many in the profession for the fact that you were approachable and extremely helpful to the junior ranks of the profession, and I count myself as a member of that club.

You enjoyed, of course, a very broad and busy practice as a silk in the mercantile killing fields of both commercial and civil litigation. Cases have been mentioned, the Northern Territory of Australia against Mengel, which is to be found at [1994] 185 CLR at page 307, known more popularly as the Banka Banka case, which was in relation to the BTEC program, and you represented the Mengel family throughout that extensive litigation, ending in the High Court of Australia. Further, and it has been mentioned, Papantonakis against Australian Telecommunication Commission, reported in the [1995] 156 CLR at page 7.

You and the present Chief Justice were at the fulcrum, in many respects, of those civil litigations going on in that period. A 'Hiley/Riley ding dong', was a feature in those mercantile and litigation killing fields. Some of us will remember, and he's passed away now, the Court Orderly Steve Durant, God rest his soul, who was often heard muttering in the corridors of the Supreme Court, when trying to find counsel, 'Hiley/Riley/Smiley, don't ask me.'

You've recently appeared and it's been mentioned again in the famous Native Title Cases, Yorta Yorta and Wik. And so, in 1993, it was the Territory's loss and Queensland's gain, just as now it's their loss and our gain, that you left our jurisdiction and to quote the quote, "went to Queensland droving", but of course we did know where you were. We of course know that you spent the majority of the last 20 years practising successfully as a barrister in many important and leading Native Title claims.

Indeed, much of your work in Queensland has been involved in this dynamic area of Native Title claims, made by indigenous peoples flowing from the historic High Court decision of Mabo, and the resulting Federal and State Legislation. This work, in close involvement with indigenous peoples, their language, customs and laws will serve your Honour well in dispensing justice in this Honourable Court.

The Territory legal system has prided itself on its abilities over decades to address, consider, and not only acknowledge Aboriginal customary law, but when appropriate, accommodate the same into our mainstream common law, that which originated from the English legal system and the English common law. And it is by this process of development as only the common law does and can develop, that the Territory is able to boast such a rich, varied and impressive jurisprudence.

However, we live in present times, when both Federal and Territory executive governments have legislated to now severely restrict and in some areas exclude such an accommodation. This is seen in the Court's sentencing exercise in criminal law, when a law clearly relevant to a sentencing judge, evidence of Aboriginal customary law is prescribed to have no effect in the sentencing exercise.

Having a jurist learned in the intricacies and nuances of such customary law, will be a great addition to this honourable court. And so, my task here on behalf of the Bar Association and of the legal profession, is to welcome you back to this court. Nevertheless, in welcoming your Honour, I have to point out that things have changed since you were last here, seriously changed.

Some might say you were here in the halcyon days in '93, and I think we should go back there, albeit briefly, just to remind ourselves of how things have changed, for your Honour's benefit if nothing else. Marshall Perron was the Chief Minister; the right Honourable Austin Asche finished his term of Chief Justice to be replaced by the Honourable Brian Frank Martin as Chief Justice. Tom Pauling QC was the Solicitor General; Sir William Kearney was still a judge of this honourable Court.

Nationally, Paul Keating won the unwinnable election in March 1993. As it happened it was the International year of Indigenous Peoples. Mandawuy Yunupingu, a Territorian, was the Australian of the Year and that year flowered (?) probably at the MCG in September when Essendon belated Carlton in the Grand Final. And not only did our Michael Long take out the Norm Smith Medal, but Gavin Wangeneen won the Brownlow. Mr Tippet's looking a bit ill there.

Indeed, halcyon days. Mandatory sentencing was three years' away and beyond most people's wildest imaginations. Again, I stress things were different. Now, in my extensive research in relation to this presentation, conscious of your Honour's pivotal role as a founding father of the Northern Territory Bar Association, I've researched as deep as I could with the able assistance of my learned Vice President, Mr Wyvill. I've obtained through those researches relevant minutes of the Northern Territory Bar Association meetings, and those minutes share a very telling light on the way things have changed and, arguably, for the worse, your Honour.

First of all, if I can take you to - as I've mentioned earlier, you were indeed a founding father of our auspicious organisation - the minutes of the inaugural meeting 27 June 1980. Mr Pauling took the minutes. Those minutes record that Mr Maurice QC was elected unanimously, without opposition, as President and your good self, your Honour, was voted as the Treasurer. We pursued these minutes as best we could, and I must say they were rather scant and difficult to come by. However, I was able to find some from the mid- 80s which shed a light on the way. Sadly, I have to advise your Honour that things have changed.

Minutes of the Northern Territory Bar Association meeting held on the 6 August, those present: T Riley, J Reeves, G Hiley, P Bracher, P Tiffen. Now, the minutes are relatively short; but, the thing I want to stress about these minutes is that they reflect the priority given back then, how the Bar worked and the Bar Association worked and I'm afraid to say, things have changed in that regard.

There are three items on the minutes for that important meeting. First was the Council for Law Reporting, which tells us that Mr Tiffen was to be the Bar's rep and he was to notify the Department of Law. The second is the Bar rules which were incorporated and accepted and voted in. Then we have the all important minute, which takes up the vast majority of the recording of that important meeting. It's entitled 'Social'; JA, JR, GH and PB to draw up a social calendar to include the following, and I stress to include, so don't think that was the end of it.

Here we go:

- a) Bar luncheons, to be held on the last Friday of every second month, commencing 30 August;
- b) Bar and Bench dinners, wait for it, four per annum, two to include spouses. Attorney-General to be invited to these dinners. It goes on.

- c) Drinks, believe it or not. Drinks at Chambers, from 4:30 to 6:30 pm, on the first and third Fridays of the month, to include invited solicitors, judges and magistrates. Oh, we've got d).
- d) Alice Springs. When three or more are gathered there together, you can just imagine it, they probably sort of fell off the Darwin circuit and landed in Alice Springs, looking for some respite, that if you bump into another two colleagues, guess what? Put on drinks for the Alice Springs' solicitors.

And we've got an e) and an f) and it probably should be mentioned, but it was a farewell then to acting Chief Justice Muirhead. So, what did the diary read? You bet, dinner. And also a last mention of Federal Court Judges, and guess what that involved? Drinks at Chambers, 20 August at 5 pm. Now, that impressed me more than anything, big time. I don't know how you guys did it quite frankly, but you did. But there's a telling feature here because as I continued my in-depth research of these minutes and the first – the next record I find, again, the minute recorder is Mr Pauling, then QC.

The first recording is – the next recording is: 'Then there are two years of minutes missing.' Is there any wonder; what happened to the Bar, via Alice Springs, Federal Judge here, and former Justice Muirhead? So, I think that's an accurate reflection and perhaps a good way of showing to your Honour, albeit sadly, that things have changed somewhat compared with back then. However, today is a genuine celebration and we celebrate today, and again I repeat on behalf of the Association heartfelt congratulations and a genuine welcome back to this jurisdiction.

May it please the court.

RILEY CJ: Thank you Mr President.

Madam President of the Northern Territory Law Society, do you move?

MS CHEONG: Thank you, your Honours. As I have said before, Mr Lawrence is a very hard act to follow, your Honours. It is with great pleasure that I get this opportunity to stand before you today, on behalf of the Law Society and the legal profession of the Northern Territory, to welcome your Honour, Justice Graham Hiley with an 'H', to the Supreme Court Bench of the Northern Territory.

I have to gazump the Chief Justice here, because he's told this story before, following on from Mr Lawrence's 'Hiley/Riley/Smiley, who cares?' anecdote. Although our Chief Justice has the 'Chief' in front of his Justice, your Honour, Hiley J was made silk before Riley J and, in fact, was the one to advise him before the Attorney got to ring him, because it was the Attorney at that time who had rang you by mistake to advise you that you'd been given silk. I thank his Honour, the Chief Justice for that bit of information.

As the third speaker, your Honour, I am trying to avoid the repetitions. It is clear your Honour has had an illustrious career as a barrister, both here in the Northern

Territory and in Queensland; but, in terms of the Law Society, we've been able to do a little bit of research, though not as extensive as Mr Lawrence.

Your Honour arrived in 1976. You commenced working as a solicitor at McCormack and Co, and then moved to Cridland Bauer, Solicitors in the Northern Territory. You were admitted as a Barrister and a Solicitor of the Supreme Court in 1976, and you, as we've heard, were called to the independent Bar in 1978. Despite leaving the Territory in 1994, your Honour, you were kind enough to maintain membership of the Society from 1976 through to 2000. You then clearly faded away a little bit, but we are very grateful that you've rejoined us in 2012.

Your Honour was a founding member of the NT Bar Association in 1981, and your Honour, it hasn't changed that much, the Bar still have drinks on Friday afternoon. I'm not sure which 'bar' Mr Lawrence was referring to. From 1979 to 1984, your Honour was the Chairman of the Society's Professional Indemnity Insurance Committee. You were vice-President in 1986 to 1987 and became President from 1987 to 1988. As the President of the Law Society during that time, your Honour was also the delegate – the Society's delegate, to the Law Council of Australia.

During the time of your Presidency, your Honour, the Public Purposes Trust of the Northern Territory was launched; the purpose of that trust was to advance legal education and to improve access to legal services. Also, during your year as President, there were a number of reforms of the Society and one of those included keeping the post of immediate past presidents. Unfortunately, that's changed now, that's gone now again. There were monthly meetings between the Chief Justice, the Society and the Bar Association, and there was also a standard form Law Society contract which your Honour, as the President, encouraged its use during those times.

Your Honour, also during your year as President, saw submissions on proposed amendments to the NT Planning Act, the Liquor Act, the Evidence Act and the Police Administration Act. During 1988, the Supreme Court Rules came into force. We also note that the Law Society and your Honour, by virtue of your membership of the Ethics Committee, were named as defendants in the Supreme Court matter of *Shane Stone v Graham Hiley, John Stewart and Kim Graves*, in their capacity as members of the Ethics Committee. Unfortunately, on appeal, the findings of the Committee on that matter were quashed.

Your Honour's experience with Aboriginal Land Claims commenced in 1978, when you were counsel assisting the first Aboriginal Land Commissioner, Toohey J. Your Honour has since appeared in numerous land claims in various capacities. I've just scrubbed out half my page because Mr Lawrence and Mr Attorney have kindly listed your Honour's attributes and successes in that area. Your Honour has also published widely in the Native Title matters and in 2006, your Honour became an editorial board member of the NT Law Journal.

Lastly, but certainly not the least, your Honour, I do note, not in terms of golf, but your Honour's significant contribution to the Annual Cricket Match, between the Chief Justice's 11 and the President's 11 in 2012, your Honour. And your Honour was kind enough to agree to play on my team on that occasion and, of course, the people thought we had acquired a great cricketer in your Honour's agreement to play for my team, and indeed it was a privilege to witness your Honour's great cricket playing during the game. Your Honour will be a great loss to Law Society's team and a great gain to his Honour, Chief Justice's team no doubt, given that you will no doubt be seconded to his Honour's team for the annual match on 19 May this year, your Honour. I will just have to contend with the loss of your Honour's contribution to my team, especially in light of the fact that your Honour suffered an unfortunate injury during the practice leading up to the match, and didn't in fact get to bowl or bat on that occasion and that's probably why my team lost by a mere nine runs, as the Chief Justice keeps reminding me.

Your Honour, you have excelled in your legal career to date. We are sure you will bring to your role in the Court your excellence that you have demonstrated so far and we wish your Honour the very best on the Bench.

May it please the court?

RILEY CJ: Thank you madam President.

Mr Douglas, representing the Queensland Bar Association, do you move?

MR DOUGLAS: May it please the court?

Suffice to say, occasions like this are important, and that's not just so for your Honour, but also for your family and for the court. They are also important to the members of the public who have resort to the court as litigants and who are affected by the decisions of this court under the rule of law. The public are entitled to attend occasions like this or read a record of what is said in the media, so they can judge for themselves whether a new judge, by character traits and learning, temperament and personality, is suited to judicial appointment. And that is so, by hearing today from those who know the appointee and who, I might add, are required by ethical obligation and candour to speak the truth, the truth I speak.

Any member of the public, Justice Hiley, can leave this place today, confident that your Honour harbours, and in good measure, all the necessary traits for judicial appointment. My specific task here today though, with the leave of the Chief Justice, is to speak on behalf of your Queensland colleagues. I have been asked by Roger Traves, Senior Counsel, President of the Bar Association of Queensland, and the members of the Council of the Association, to offer their congratulations to your Honour, and I do so, and I'm happy to do so.

You are held in the highest regard by your fellow Queensland barristers. And there is no better evidence of that regard than the presence here today of most of your Chamber colleagues from Jeddart Chambers in Brisbane, together with a

goodly number of your former briefing solicitors. They have travelled here today to honour you. They expect, and I think thus far they've met their expectation; they expect entertainment here today and also this evening.

Many from Queensland have asked me to pass on to you their regards. You and your wife Sue made many friends in Queensland, both in legal and non-legal circles since you moved there in 1994. A number of judges and tribunal members, State and Federal, have asked me to pass on their regards to you on this occasion. They pass on their appreciation for your determined, yet even-handed, style of advocacy. There were no doubting submissions from your Honour; they always knew where you were coming from.

Mr Graham Neate, the President of the National Native Title Tribunal, has asked me to pass on his congratulations. He can't be here today as you know, although he would have liked to have to been. Mr Neate, whose admission you moved in this court in 1981, waxed lyrical of your influence in the development in Native Title Law and practice and the many Native Title cases you argued. He referred also to claims of which you were instrumental in the settlement of, including the Western Yalunji Claim in North Queensland, and the Quandamooka Claim in North Stradbroke Island, which was finalised by consent determination in July 2011.

Finally, Mr Neate spoke of the work you did with Dr Ken Levy on the Native Title Claims Resolution Review of 2006. That has been relied upon by successive Australian governments in preparing amendments to the Commonwealth Native Title Act in 2007, and again in 2009, and it underpins a number of the Constitutional reforms made in 2012, coupled with amendments presently before the parliament.

Your Honour, many of your non-legal friends in Brisbane pass on their regards. In particular your poker group say they'll miss fleecing you with the fortnightly card nights. But, to allay the fears of the public in that regard, those gentlemen were at pains to point out that the only true lack of liquidity in the group lay in the empty bottles at the end of the evening, at each poker night. Your Honour, we congratulate you, we commend your appointment and we hope to maintain our friendship with you despite your move, from what used to be called the 'Sunshine State.'

May it please the court?

RILEY CJ: Thank you Mr Douglas. Justice Hiley, do you wish to respond?

HILEY J: Your Honour, the Administrator, Chief Justice, Attorney-General, Judges and former Judges of this Honourable Court, distinguished guests, fellow members of the legal profession, family and friends, ladies and gentlemen.

I was going to offer drinks to everybody after we finished, but in light of the submissions of Mr Lawrence, I'm sorry, I can't do it.

Thank you all for honouring me and this court for attending this afternoon. Thank you especially to those 30 or so friends and family who have travelled here

from Brisbane, Sydney, Melbourne, Adelaide, Newcastle and Singapore. Thank you to the many members of the profession and other personal friends who have taken the time to come along to witness my swearing in. And thank you to all of those here who I do not know so well. They include members of Government, the Military forces and the Police. Your presence here reflects the respect which the parliamentary and executive arms of government have for this judicial arm of government, and recognises the important function of the rule of law in this lucky country.

Thank you too Mr Attorney, Mr Lawrence, Ms Cheong and Mr Douglas, for your kind and thoughtful words. I know how long it takes to research and prepare a speech for occasions such as this, and I appreciate you having done so on this occasion. I also appreciate and thank the many people who have sent me letters, cards, emails and who have telephoned me with generous messages of congratulations, support and encouragement.

I have many people to thank for their contributions towards this very important stage of my life. Of course, the foundations of my happy and fortunate life are my parents. Together, they struggled to support my brother and me through school and university. By their example, Mum and Dad showed us the need to set goals and to work hard to achieve them, and they instilled in us many fine and Christian values which I know will be of much assistance to me in my new role as a Judge.

Unfortunately, my father is not here as he passed away some 18 months ago. He was always supportive of me, particularly during my years at university and during my time in the Army doing national service. However, I am honoured by the fact that my 91 year old mother has been able to make another trip to Darwin, especially at this time of year, for this occasion.

I thank for their contributions to my fortunate life - my brother Peter, my dear wife Susan, and my four wonderful children, Nicole, George, Catherine and Michael, all born in Darwin and each setting and achieving their own special goals and livelihoods, in various places of Australia.

Shortly after we were married, Susan and I set off for a six-month drive around Australia in a Land Rover. Little did we expect that we would find ourselves marooned in Darwin in March 1976 and end up staying here for the next 18 years or so, during which time, we would have four fine children and would establish a happy home life and a successful work life. Nor did either of us have an inkling of the fact that we would back here now. Thank you, Susan, for your continuing love, support and encouragement, during our 38 or so years that we have been together. Thank you too Nicole, George, Catherine and Michael for your loyalty, support, love and understanding, especially during those times during a trial where Susan would warn you: 'Watch out for Dad, he's in Court-mode this week.'

During our early days in Darwin, we were fortunate to meet and participate in activities with lots of other friends, many of whom are here. We got to know well the

likes of the Bradleys, the Rileys, the Winters, the Mansfields, the Whartons, the Coulehans, all of whom have been kind enough to come along today.

Living and practicing law in the Northern Territory provided me, and I know provides others, with wonderful opportunities, opportunities that we may or probably would not have had elsewhere. As a young solicitor at Cridland & Bauer, I found myself frequently going to court, appearing in not only the Magistrates Court but also the Supreme Court. That was an opportunity probably unique to the Northern Territory, that as a very young solicitor you'd find yourself appearing in the Supreme Court.

I joined the fledgling Independent Bar in February 1978. As has been noted, there were three of us there then, Michael Maurice, John Harrison and myself. The Bar had previously been set up, and Ian Barker QC had left the Bar to become Solicitor-General, and Tom Pauling had gone to become an acting Magistrate. From the outset, I received strong support from the Northern Territory legal profession. Indeed, my very first brief at the Bar was from one Trevor Riley, who was then a partner at Ward Keller. I don't think my paltry fee on brief of \$75 has yet been paid.

The growing local Bar has always received support and encouragement from the Judiciary, particularly Sir William Forster and James Muirhead. They were great days, and the range of work was, and I'm sure remains, varied and challenging. Since I began practising here in 1976, there have been many substantial changes to the law, resulting in fascinating and challenging work for the Northern Territory legal profession. These included the statutory conferral of Aboriginal Land Rights in 1976 under the Aboriginal Land Rights Act; self-government in 1978, which gave us young lawyers wonderful experience and exposure to constitutional law; the removal of common law remedies in relation to motor vehicle accidents in 1979, the removal of common law remedies in relation to industrial accidents in 1986, and of course, the codification of the Criminal Law in 1984.

Needless to say, those of us practising law during those times were able to participate in numerous novel cases that arose, and that had to be considered and determined by the Northern Territory courts and other tribunals. In those days, and no doubt still, virtually every case presented a new challenge and thus made life at the Bar exciting and satisfying. The most significant opportunity that I had was to serve as counsel assisting the Aboriginal Land Commissioner Justice Toohey. As we know, he was then a Supreme Court Judge of this court and went on to be a High Court Justice and participate in the Mabo case, amongst many others. I was privileged to be his counsel assisting in a number of the early land claims under the Land Rights Act.

The first land claim in 1978 was the Warlpiri Land Claim. This required us to travel and stay at Lajamanu and Yuendumu and to sit in various locations, including under gumtrees and in dry creek beds. Then followed many other land claims often in the Central Australia region, also involving staying and sitting in remote communities in many parts of the Northern Territory. In fact, I still recall us sitting at a place called Utopia, which was certainly nothing like Utopia, and the lack of beds

was such that I had to sleep in the medical unit there on the one and only bed. I was rudely awoken at 2 o'clock in the morning, when an Aboriginal woman was about to give birth, so I had to relinquish the bed in the medical unit to enable that to happen. Such is life in the Territory, and the exciting times that it produced.

My wife, Susan, often speaks of the day when we bought our first born, Nicole, home from the old Darwin Hospital, only to have me set off two hours later for Ayers Rock with Justice Toohey for the Ayers Rock Land Claim.

I stopped doing land claim work in about 1982. I decided that I should be spending more time in Darwin with my young and growing family, and I should dedicate more of my early days at the Bar to more mainstream areas, which I did until the mid '90s.

But my early land claim experience inspired and equipped me to participate some 15 years later in the developing jurisprudence of Native Title in the Federal Court. My Native Title practice began in the '90s, in the mid '90s, and remained a substantial part of my professional focus of my life for the following years. Indeed, one disappointment about taking up my new position, at this time, is that I've had to relinquish a very interesting case in South Australia, part-heard before Justice Mansfield, who has honoured me and this court by attending today.

I have been following with great interest and concern the ongoing endeavours to improve the lives of indigenous people, many of whom live in the Northern Territory.

I'm particularly saddened by the fact that the plight of many indigenous people appears worse today than what it was one or more generations ago; certainly worse today than it was when I was practising in the Northern Territory previously. This is the case, notwithstanding the grant of land titles under the Land Rights Act since 1976, the recognition of Native Title under the Native Title Act in 1994, inquiries such as the Aboriginal Deaths in Custody Royal Commission, and the Northern Territory Intervention by the Commonwealth Government.

I've also been reading some of the discussion in the media about sentencing of indigenous juveniles, not only here but also elsewhere in this country and I note the frustration expressed by judicial officers, particularly magistrates, about their sentencing options and limitations. Whilst I recognise that the resolution of many of these issues is beyond the power and jurisdiction of the courts, I am conscious of the fact that the courts do have a major role to play when dealing with offences, particularly where aspects of traditional Aboriginal Law or custom are present.

In this regard, I note that as long ago as the early 1950s the Northern Territory Supreme Court was confronted with the intersection between traditional Aboriginal Law and Custom and the Criminal Law. For example, whether a certain accused could be convicted of murder for the killing of another Aboriginal man, having been ordered to do so by his Aboriginal Elders. The man that he had killed had committed a very, very serious crime, according to Aboriginal Law, and so the question was

whether or not that would provide some sort of defence for murder and, as we know, it didn't and doesn't.

Secondly, another decision in the early '50s, whether and how the court should take into account during the sentencing process the fact that an accused would also be punished under Aboriginal Law for the same offence.

I'm also very much aware of the current debates about mandatory sentencing, the adequacy of facilities for rehabilitation, and for the mentally ill in the Northern Territory, and the sufficiency of funding for Legal Aid. Sadly, I suspect that much of my work will be involved in the Criminal Jurisdiction and will continue to involve crimes inflicted upon vulnerable people, such as innocent women and children in circumstances involving drugs and alcohol.

I recently re-visited some of the old judgements of this court, and reminded myself of some of its history from parts of Justice Mildren's excellent book *Big Boss Fella, all same judge*, published in 2011, 100 years after this court began. In the early days, the remoteness of the Territory from the rest of Australia was largely responsible for many unusual things happening, and that hopefully will never happen again within the Northern Territory legal system. These included the need for the Judge to travel by boat all the way around from Adelaide in order to hear and determine cases. Secondly, the holding of a public meeting near the Administrator's Office in Darwin, that led to the Judge and the Administrator being run out of town, followed by the Judge's dismissal from office. Thirdly, the need for a judge's decisions to be retrospectively validated, because of the invalidity of that judge's appointment. Fourthly, the appointment of a judge whose practicing certificate had previously been suspended. Fifthly, a judge refusing to allow an Aboriginal accused an interpreter during a trial. And finally, the abolition of trial by jury - a situation that pertained for many decades.

They were many years ago. And, of course, the profession and the Court has moved on from those early days. In later years, the Territory was blessed with a number of excellent judges, such as Justices Kriewaldt and Blackburn, who considerably enhanced the skills and reputation of the court. Following them, the likes of Justices Forster, Ward, Muirhead, Toohey, Gallop, Kearney, Asche, Thomas, Angel, Martin, two Martins, Mildren and those who I'm now joining, have ensured that this Court is one that fairly and competently performs the functions expected of all superior courts in this day and age.

I am proud and privileged to be given this opportunity of joining the Court, and meeting the ongoing challenges involved in the provision of justice to the Northern Territory community. I will do my best to fulfil my promise to serve the community, to exercise the important powers inferred upon me as a member of the court.

I am pleased to be joining your Honours on this Bench. I've known each of you for many years, both socially and professionally, and I have the utmost respect for your respective abilities and enthusiasm. I am also aware of the hard work done by others involved in the Territory and the justice system, including the magistrates, the

Crown, the DPP, Legal Aid, the Police and, of course, the legal profession. I look forward to joining such a fine group of people and playing my part in maintaining the integrity and high standards set by them.

Thank you to all of those who I've met and worked with here in the Territory. Special thanks to the many solicitors who have briefed me over the years, the many barristers, with and against whom I worked, and a particular thank you to the members of my old Chambers, William Forster Chambers, for your company and support over the years. I'm proud to see that the fledgling Northern Territory Bar of three that existed when I started in '78, has grown to over 30 members spread over five sets of Chambers. Thanks too, to those with whom I have been working in more recent years in Brisbane and elsewhere in Australia. These include my fellow barristers at Jeddart Chambers, and other Brisbane lawyers and friends, some 12 of whom having honoured me and this office by travelling here to attend this occasion.

Thank you also to my family and other friends, many of whom are not lawyers, for your friendship and company. I will continue to look to you all for your support in my new position, as I endeavour to serve the community in accordance with the oath that I have taken. In particular, I aim to remain conscious of the need for the legal system to recognise and protect the rights and responsibilities of all Territorians, many of whom are nowhere near as fortunate as I have been.

RILEY CJ: Thank you, Justice Hiley.

Mr Solicitor, do you move?

MR SOLICITOR: May it please the Court.

RILEY CJ: Mr Karczewski. Do you move?

KARCZEWSKI QC: May it please the Court.

RILEY CJ: Mr Tippett. Do you move?

TIPPETT QC: May it please the Court.

RILEY CJ: Ms Cox, do you move?

COX QC: May it please the Court.

RILEY CJ: Mr Wyvill do you move?

WYVILL QC: May it please the Court.

RILEY CJ: Mr Diehm, do you move?

MR DIEHM: May it please the Court.

RILEY CJ: Are there other motions from the Bar?

Thank you.

Well, ladies and gentlemen, that concludes this special sitting. I think it is appropriate that we have a photographic record of this occasion, and I invite those who are robed and those who are advocates before this court to now join Justice Hiley on the steps of the Court for a photograph. The judges will be pleased, and this is not Justice Hiley's shout - if it was it would be the first - the judges would be pleased if you would all join us in the foyer of the Supreme Court for refreshments following the adjournment.

Would you please now adjourn the Court.

ADJOURNED 3:04 PM INDEFINITELY