

Milton Griffin QC –

Keynote Address on 17 November 2017, at the Banco Court (Queen Elizabeth II Courts of Law Complex)

“I was there, and I survived, and I’m here”

Firstly, I thank the organising committee for according me the honour and privilege of addressing you this evening. I warmly acknowledge the presence of the Attorney General, the Chief Justice, Justices of the Supreme Court and Judges of the District Court, and members of the Magistracy. I am equally delighted to see so many friends, who by their presence, are supportive of this cause.

Before I commence my address, I must make reference to the circumstances of this occasion. This magnificent ceremonial Banco Court, in which I have been present both as a participant and a spectator, alone lends gravitas to the proceedings. Moreover, the presence of the Attorney, and various judicial officers, is recognition of the acceptance and support that is given, their regard for this Pride in Law Association, and the issues concerning the LGBTQI community. I also note the support of the Queensland Law Society and legal firms as sponsors.

I am, and have been, through no matter of choice, a member of that community. I was such a member at the time of my admission to the Bar in 1975, although it was generally known merely as gay and lesbian. Since then, greater sensitivity, understanding, both socially and in medical terms, have led to the inclusion of other diverse groups under that umbrella LGBTQI, which for convenience, I will later refer to as, The Community.

Having accepted the invitation to speak, I ascertained the topic about which the organisers wanted me to speak, was my career and experiences as a gay man in the law. It seemed to me that that was a recipe for an entirely dull and uninteresting reflection. I have, therefore, decided that this occasion demands a rather less subjective consideration of the period during which I worked as a barrister and presided as a Judge.

I propose, therefore, to recall for some of you, and to inform others, what the social, political and legal climate was like when I commenced practice as a barrister in 1975. I will then outline some of the changes, both socially and legally, which affected The Community over the next 40 years, the period when I was both a barrister and a member of the judiciary. Finally, I will make some observations as to the state of affairs that presently exist which affect The Community, and make some modest and personal predictions for the future.

Stephen Sondheim, the American composer, had one of his characters sing, in the musical *Follies*:

*“Good times and bad times, I’ve seen them all
I’m still here.
I got through all of last year, and I’m here.
Lord knows at least I was there and I’m here.
I’m still here.”*

This paean to survival sums up neatly what it felt like for many, both gay and straight, to endure the worst excesses of abuse of power, authoritarian government and to live in a Police State during the Bjelke-Petersen National Party government. I was there, and I am here, and this is consistent with the theme I have chosen – ‘survival’.

Let me then take you back to what really was the beginning of a nascent quest for rights for gay and lesbian people. It was a night in Sydney in 1978:

“On 24 June at 10 pm as a night-time celebration following a morning protest march organised by the Gay Solidarity Group, more than 500 people gathered on Oxford Street, in a planned street "festival" calling for an end to discrimination against homosexuals in employment and housing, an end to police harassment and the repeal of all anti-homosexual laws. The figure rose to around 2,000 as revellers out for the Saturday night at Oxford Street bars and clubs responded to the call "Out of the bars and into the streets!". Although the organisers had obtained permission, this was revoked, and the police broke up the parade. 53 of the participants were arrested. Although most charges were eventually dropped, *The Sydney Morning Herald* published the names of those arrested in full, leading to many people being ‘outed’ to their friends and places of employment, and many of those arrested lost their jobs as homosexuality was a crime in New South Wales until 1984.

Only two people who were arrested were fined. The rest were released and the charges dismissed. The police response to a legal, local minority protest transformed it into a nationally significant event which stimulated gay rights and law reform campaigns.”

Much the same flavour of police behaviour obtained in Queensland. Gay people were often harassed, had identities demanded, photographs taken, and were, on occasions, subjected to bullying and violence by police.

The Police Force came to be under the control of a modestly talented, deeply ambitious and equally corrupt, Commissioner of Police, Terrence Murray Lewis, who was complicit in having his police officers, for his own corrupt purposes, do the bidding of the conservative government. Lewis was knighted for his services to policing and the government. The government actively used homophobia for electoral advantage, equating it to paedophilia and presenting it as morally deviant. Government was uniformly hostile; the Education Department refused to offer teaching work to *openly* gay men, and an amendment to the liquor in 1985 made it an offence for publicans to serve alcohol to “perverts, deviants, child molester and drug users.” I point out that sexual acts between consenting females have never been the subject of criminal legislation in Queensland, however women, too, were equally, often subjected to abuse and discrimination.

As a result of activism, Australian states gradually, during the 1970s and 1980s, began to liberalise their anti-homosexual laws. This was not the case in socially conservative, National Party controlled, Queensland. Numerous sections of society which were to become more vocal, railed against this extraordinary state of political affairs until, in the late 1980s, a commission of inquiry was instigated, led by the Honourable G. E. Fitzgerald QC, as he then was. The Fitzgerald Inquiry, as it came to be known, shone an unrelenting spotlight on the criminal excesses over the entire political structure. The findings of that inquiry led to the National Party government being comprehensively swept from power with the Labor Party winning government in 1989. This marked the beginning of significant legislative changes amongst other things, to the standing, recognition, acceptance and equality of people from The Community, not least of which was, in January of 1991, the decriminalisation of homosexual acts between consenting adult males.

I was there, and I survived, and I’m here.

Specifically in relation to the legal world and culture, it is sufficient to say that from the 1970s and into the 1980s, a flavour of the legal world and culture can be gained by reference to its lack of recognition, even blindness, to women in the profession. It is correct to say that although there were some female practitioners, they were small in number. They were, in fact, largely invisible when questions of promotion and judicial office were discussed. The legal profession, including judicial officers, was composed almost entirely of white males. Their attitudes, understandably, were a product of having lived through the Second World War. Many were veterans of that war.

An occasion, in the mid-1970s, springs to mind that nowadays seems impossible to imagine. It exemplifies such rigid and entrenched attitudes: A female journalist, whose husband was a prominent young barrister, was engaged by a newly-formed national newspaper, to report on proceedings in court. She was the first female journalist to be engaged to do so. On one particular occasion, she went to court wearing a pants suit; that is, a tailored jacket and slacks. When the judge came into the courtroom and observed her, without any preliminaries whatsoever, he ordered her from the courtroom for being, in his opinion, inappropriately dressed. This is a true and honest account of the incident, for I was there. One can only imagine his horror and consternation at the ceremony here this evening.

As for me, I practised as a prosecutor in the Government until 1987 when I took chambers at the private Bar. I have little to report, I must say, about my time at the Bar apart from memories of working hard, and occasionally being asked for advice by gay men who complained about unsolicited police brutality and violence. I took Silk in 1999.

I cannot claim at any time during my career, direct knowledge of or experience with discrimination or homophobic conduct, although as no doubt will forever be the case, cowardly statements are made and slights perpetrated behind one's back.

There is one curious incident that I recall, however, on an occasion when I was sent to prosecute a prisoner within the prison walls of Boggo Road prison, now happily, decommissioned.

The prosecution concerned an offence committed by a prisoner. He worked in the kitchen of the prison and was alleged to have added, by

way of a special ingredient to the visiting Magistrate's food, a powdered cleaning product, called bon ami. The hearing lasted all day and at the luncheon break I was offered a meal from the prison kitchen. I chose to have a meagre glass of water, go hungry, and keep myself safe. That is the background. The incident really concerns my arrival at the prison, which was a foreboding 19th century, red brick edifice, with enormous doors at the entrance point, through which one had to pass to another set of metal gates that led into the prisoners' yard through which I was led amongst the prisoners, to the hearing room. It is not irrelevant to record that I was wearing a particularly colourful suit, as was the fashion in those days, teemed with an equally bright tie. As I walked through that prison yard, a chorus of whistles commenced, directed at me. I was, at first, dismayed, even perhaps shocked. That, however, did not last long, and I converted my surprise into a state of comfortable satisfaction that the prisoners had displayed particularly good taste. I was certain that this was an isolated incident that could only have occurred to me. Some few years later, I was deflated to learn that a male colleague, and friend of longstanding, had had the same experience as he walked through the prison yard. He informed me, that he was wearing a pale blue suit with red stitching. So much then, for the so-called good taste I imputed to the prisoners. I am sure you would all like to know the identity of the blue-suited barrister. He remains a friend to this day. But I have given my word to Judge Terry Martin that I would not reveal his identity.

It is beyond coincidence, in my opinion, that the quest for equal recognition, fairness and tolerance, in relation to the way LGBTQI people hoped to be treated in Queensland had parallels in the Women's Movement. That Movement so arduously pursued and which fought hard for women's rights, created both an atmosphere and laid the foundation for a growing acceptance of the LGBTQI community: first to be seen, then heard, then listened to. The Community was carried along in its slipstream.

From 1989, women in the law had begun to find a voice or voices, and this later came to be reflected in the appointment of women to the bench. In Queensland, the first female appointment was the Hon. Margaret McMurdo AC, to the District Court in 1991, later to be appointed the President of the Court of Appeal in 1998. The winds of change set in motion by the Fitzgerald Inquiry and put into practice by the Labor Government under the Premier, Wayne Goss, saw a greater

recognition of women in the law and the commencement of women appointed to the bench. Appointments began to be made in this State, and federally. Justice Susan Kiefel, as she then was, was appointed to the Supreme Court of Queensland and then to the Federal Court of Australia. The Hon Michelle May AM, was appointed to the Family Court of Australia, and has recently retired from that court as a Justice of Appeal.

In that context and atmosphere, in 1992, I was appointed an Acting Judge of the District Courts. I undertook a further acting appointment in 1999, replacing Judge Richards who was on maternity leave, and was appointed permanently in 2004 by the then Attorney General, the Hon. Ron Welford.

Any discussion of my career would be incomplete and distorted without reference to my partner of 35 years, Michael Barra. He has been my constant companion, closest friend and ally, counsellor, advisor, and sometime member of the Fun Police. Our mutually supportive relationship, based amongst other things, but fundamentally on mutual respect, has provided me with the love, support and courage that has given me, without doubt, the career that I have had.

During the course of my legal career, I did not hide or dissemble about my sexual orientation. I believe I acted with dignity, honesty, authenticity and truthfulness.

In fact, in 2004, on the occasion of my elevation to the bench, it was a significant moment for me personally and for those who supported equality of opportunity when Attorney General Welford said in his speech about me, that: “my appointment would bring fresh insights, and a new diversity to the Court, in a way that will broaden its perspective...” and that, as Attorney, he would continue to bring to the membership of the Courts: “new capacities and diversities ...”. This was a bold statement of intent, which, in my view, has not always been practised.

I should make it perfectly clear that although I was the first openly gay person to be appointed a judge of this State, that is no more than a factual assertion. It neither affected me personally or professionally nor was it, of course, of relevance in the way in which I discharged my judicial duties.

I was welcomed to the District Court by the then Chief Judge, Patsy Wolfe AO, with warmth and generosity. Likewise, I felt nothing but inclusion, respect and friendship from the Justices and Judges of the Supreme and District Courts in both work and social circumstances when almost without fail my partner, Michael, was by my side, and who was equally warmly accepted. This speaks eloquently and strongly of the attitude of the highest levels of the legal profession and is entirely consistent with the presence of those distinguished members of the judiciary who are present here this evening. I could not pass by this topic without referring to two occasions on which members of the judiciary have supported both Michael and myself with good counsel and advice. The two occasions to which I am about to refer reflect the inclusive and accepting attitudes that then, as now, prevail amongst members of the judiciary for the benefit of LGBTQI people.

After I had taken Silk, my dear friend of long-standing, the Hon. Michelle May AM, who is present here this evening, convinced me, in only the way which she can, to have Michael accompany me to Canberra to attend the presentation of Silks before the High Court and the dinner which followed in the presence of the High Court Justices. I am ever grateful to her for encouraging me to have my partner by my side on that special occasion. I am equally grateful to the present Chief Justice, and Justice Atkinson, who in a similar vein in 2004, took me to lunch before my swearing-in ceremony and strongly counselled me, as only they can, to make mention of Michael in my speech on that occasion. It is obvious from these personal experiences some 14 or more years ago, that there was, and continues to be, an appetite for tolerance, inclusion and equality which has been demonstrated amongst the members of the judiciary and the profession, not only in this State but in my certain experience, throughout Australia.

In Queensland, legislative advances in treating the gay community with tolerance, inclusion and respect have continued to be made over the past 3 decades with some loss of momentum during the years of the LNP Newman Government. In recent times, all issues of consent in sexual matters have been standardised and reflect equality. Legislation was introduced recognising same sex partnerships, which faulted but was recently reinstated by the present Government, as well as equality for same sex couples wishing to adopt.

As for the Police Force, there has been a dramatic about-turn in their attitude to The Community. This followed, and is in conformity with, Police practices in other Australian States and Territories. Dedicated teams throughout the State operate to protect and assist LGBTQI people.

And what of the future?

Two days ago, three out of five Australians agreed that the Marriage Act should be amended to include the right for same sex couples to marry. It is a happy and significant coincidence that the inauguration of this Association occurs two days after that result was announced. That vote is portentous of further satisfactory and appropriate changes to the law in Australia and hopefully consequential changes in attitudes. For those who are of a conservative turn of mind, the argument will always be used that such a change opens the floodgates to all sorts of diabolical behaviour and consequences. In fact, in 1989, the then Premier of this State, Russell Cooper, in the dying days of the National Party government, said of Opposition policy to decriminalise homosexual acts that it: “would send a flood of gays crossing the border from the southern States”. This type of ‘floodgates’ argument was also utilised in the recent same sex marriage debate, happily with little effect.

The prospect of change to the Marriage Act will offer the opportunity to same sex couples in Australia to legally formalise their relationships. After 35 years, Michael and I look forward to that prospect.

Despite advances with attempts to change the rights of people to achieve equality, there will always be those who resist such change with discrimination, intolerance and bigotry. Many of those who made statements on behalf of the recent No Campaign, including politicians, indulged in such conduct, resulting in hurtful and harmful effects on members of the LGBTQI community. For example, a survey during the time of the lengthy Same Sex Marriage Poll, disclosed from a reputable source, that there had been a 40% increase in young people seeking help for emotional and mental health issues as a result of negative attitudes expressed and statements made on behalf of the No Campaigners.

And what may we look forward to in the future?

A social commentator has recently said that humankind is going through a transformation to a new age of enlightenment. I am more realistic. In my view, humankind will continue to exhibit the historically documented behaviours of both tolerance and compassion on the one hand, and intolerance, bigotry and ignorance on the other, against those who do not conform to their particular ideal stereotype. Therefore, all fair minded, compassionate and tolerant people must be ever vigilant against those negative attitudes. For example, in Australia, and elsewhere, there is evident the rise of white supremacists and the growing incidence of hate speech, particularly online. With all that has been achieved so far, make no mistake; fear, intolerance and bigotry are still abroad.

One can also be optimistic, for it is true that what has occurred this week demonstrates that a majority of the Australian people have turned their backs on discrimination, exclusion and division and opted for inclusion and equality.

As to the future for LGBTQI lawyers, the support given by all branches of the legal profession to this Association suggests, strongly, a world in which practitioners can pursue their careers in an atmosphere of tolerance, equality and acceptance.

There will, however, always be challenges; that is the nature of the world. Not everyone will adopt and exhibit appropriate values.

With that in mind, may I proffer some advice for those of you in the LGBTQI community and supporters:

Take the fight to those who would oppress you.

Clothe yourselves in dignity.

Arm yourselves with truth, honesty, authenticity and courage.

In that way, you will be supremely prepared and fortified for battle to withstand any challenges which the future may present.

Milton Griffin QC