

THE NEED FOR COOPERATION ON CONSTITUTIONAL REFORM

Media Summary, Launceston College Speech

MEDIA SUMMARY

EMBARGO: 8:30 P.M. THURSDAY 26 MAY 1988

KIRBY CALLS FOR COOPERATION ON CONSTITUTIONAL REFORM

LAUNCESTON, THURSDAY

A leading judge has called for greater cooperation between political parties to secure necessary constitutional reform in Australia. Justice Michael Kirby was speaking at a public function of the Launceston College in Launceston. Justice Kirby is President of the New South Wales Court of Appeal. Until 1984 he was, for nine years, Chairman of the Australian Law Reform Commission.

Need for cooperation

Justice Kirby said that he was not commenting on the particular referendum proposals for amendment of the Constitution presently before Federal Parliament. But he said that better arrangements were necessary in Australia to achieve constitutional reform with the participation of the people. He said that, in default of such arrangements, it was necessary to rely upon the more unpredictable and less democratic procedure of court decisions to effect constitutional change:-

"Australia has been called, constitutionally speaking, a 'frozen continent'. This is because, time after time, governments have

declined to refer important questions to the people by referendum. When matters have been referred, the record of constitutional change approved at referendum has been discouraging. We seem to have a serious institutional problem here. Royal Commission reports suggesting constitutional change are not implemented. Constitutional conventions descend into petty squabbling and political divisiveness. And now, proposals substantially derived from the Constitutional Commission, appear to have foundered on the rock of party political divisions.

Division and difference of opinion is the essence of a free society. But that we need to update our Constitution could scarcely be doubted. It is one of the oldest and least altered constitutional arrangements in the world. Despite nuclear fission, interplanetary travel, test-tube babies and computers, the Australian Constitution sails on, perpetuating arrangements first conceived in the 1870's."

Justice Kirby said.

#### Democratic legitimacy

Justice Kirby said that no one should believe for a moment that the Constitution was completely "frozen".

"It is expressed in words. Words are ambiguous. They are construed by judges. The last word is said by the Justices of the High Court in Canberra. The power of the High Court - and the room for difference of opinion - was seen most clearly in the Tasmanian Dams case. Yet it is only by adaptation of the words of the Constitution that we have been able to get by with our unaltered Constitution. Only in this way have we been able to:-

- \* provide national regulation of broadcasting and television;
- \* provide economic regulation of national industries;
- \* allow essential protection of the environment in places of national and international interest;
- \* permitted a national system of industrial relations.

But it would be much better if major changes were achieved with the approval and involvement of the people. This can only happen if we

improve our processes for achieving change by referendum. To the extent that the politicians fail to agree on necessary changes which should be put forward, our country's social and economic institutions are hostages to the fortune of litigation and to the opinion of unelected judges. It is a sign of immaturity of the country that we prefer the verdict of judges to the verdict of the people. It is a sign of our political inactivity or basic conservatism that we leave the big constitutional changes to judges in Canberra rather than regularly and frequently involving the people in every part of our Commonwealth. This is not as it was expected to be when the Commonwealth was established. But we have only managed so far, because the judges have filled many of the gaps where democracy has neglected to give attention or has failed to achieve reform. This is a sober judgment on Australia, 200 years on. But I am sure that it is correct."

Justice Kirby concluded.

Justice Kirby praised Launceston College. He said that it was making a notable contribution to "under-educated Australia". Justice Kirby is Chancellor of Macquarie University in Sydney. He said that it was essential to increase the educational retention rates in Australia and that this was recognised by all political parties.

For details of Justice Kirby's visit contact Mr Peter Henning (Senior Master of History) or Mr A L Crawford (Principal) at Launceston College (tel) 003 32-2558.