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INTERVIEW WITH THE CHAIRMAN

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Controversial, eloquent, open-minded, brilliant — his life sentence is work

The legal profession is overcrowded with bright young lawyers dying to become OCs and to find a comfortable seat on the bench. But brilliant judges are much rarer. GARY MARTIN interviews one of the youngest and sharpest — a man who

has already made his mark as a law reformer as well as a jurist. Apart from his background, he doesn't fit the legal stereotype. This judge speaks his mind — and he has plenty to say.



AUSTRALIA's best-qualified judge is no busy man. He hasn't been to court for five years. He has a reputation no one can dispute. Mr Justice Michael Kirby, deputy president of the Australian Commission on Law Reform, is an outstanding jurist and a judge without a peer.

Mr Kirby was born in 1917. He was educated at the University of Sydney and also at the Australian National University. He was called to the bar in 1941 and has since held a number of important legal posts. He was appointed to the bench in 1977 and has since been one of the most vocal and eloquent of judges.



TITLE REFORMER



'People have a feeling of fear about the law'

reading beyond their own little discipline." Independent-minded though he is, the judge always knows when to back off. In 1974 he gave an interview to Australian Penthouse which was not published.

"Some of my colleagues here took the view that it was not appropriate for the interview to be reported," he said. "I had no objection to publication because I believe every Australian has a right to know the work of the commission."

"But this isn't a news show," Mr Justice Kirby returned to the bench and he seems to have a censor to the content of the commission, Sir John Kerr.

"So far as I can see I've seen cut out any reference to an atmosphere of fear that he says. But you can let people peruse that," he said. Donald P. ... zual will be affecting the ... in this country ... hangs up his blue ...

"I always wanted to be a lawyer and for the life of me I can't think why," he said.

"Now I have one of the most interesting and extremely challenging jobs in the country."

Relaxation for the judge is the theatre, classical music, opera and reading non-legal books, though he says he's losing the battle against legal texts.

"It's often said that the law sharpens the mind while narrowing its focus. I think there's a great peril with people in jobs such as mine not

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comments are almost strictly confined to the bench.

He's always available for interviews and spends many hours addressing various groups, seminars and the like.

He's often controversial, ever eloquent, open-minded and definitely well off, earning \$52,975 a year in salary and expenses as commission chairman.

He's diplomatic - "I think it's very important that judges don't get caught up in partisan political issues" - and upper class. But he's a dedicated public servant with a passion for involving ordinary people in law reform.

"People have a feeling of fear and mystique about the law, a feeling that it's too big and expensive," he said.

"These are impediments that exist between the community and the law and its officers."

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"Part of our function is to reduce those barriers and make people understand that the law is there for them."

Mr Justice Kirby has taken his commission to the streets to review, simplify and modernise laws.

"We've gone out of our way to get community submis-

sions and opinions," he said.

The commission reports to the Commonwealth Government, which decides whether to put its suggestions for changes to federal law into practice.

He doesn't want the glare of his publicity to outshine the commission.

"I don't believe in a personality cult," he said.

He fears if the commission is "personalised around me" it will deflect the important issues of reform.

But in interview he opens up to reveal much more than his 18-line entry into Who's Who, where work is listed as his sole recreation. From Summer Hill oppor-

IN TELEGRAPH WHAT'S WRONG WITH OUR LEGAL SYSTEM TODAY

Second in a series by GARY MARTIN

THE REFORMER

A judge
who
fights
for
justice



JUDGES don't go around

Mr Justice Kirby makes a habit of saying things almost as controversial.

The chairman of the Australian Law Reform Commission is the most vocal spokesman for the judiciary in Australia. He stirs pots other jurists would be scared of falling into.

Here is a sample of newspaper headings about Mr Justice Kirby's comments on issues that concern the commission:

Cruel Jails Slammed, Little People Denied Justice Says Judge, Planning Maze Criticised, Australians Vulnerable To Terrorism, Shake Up Soon In Legal System, Computers Threat To Privacy Warns Judge, Lawyer Glut To Cut Legal Costs, Kirby Tells Police To End Their Rivalry, Teach Children Law Says Kirby, Public Need Role In Law Reform, Poor Training For Policemen, Judge Wants Plain English, The Law Is Too Obscure, Courts Distort Truth Says Judge... and so on.

Why does this judge jump into public debate so eagerly?

"Well, if you look at what I say in public it always has relevance to the tasks of the commission," he says.

Attacked

"Every one of those tasks has been (on) a highly controversial question.

"By consulting the community and enlivening discussion about these issues you are bound to be controversial."

He recently attacked the trial system, the centrepiece of English justice. This stone dropped into the calm legal pool could eventually produce waves of change.

The judge argues that our adversary trial system is outgrowing its usefulness, becoming too unwieldy and expensive.

Our court system leaves much to be desired, whatever side of the bench you are on. Mr Justice Kirby argues that it's time to overhaul the system and take the combat out of the court.

He argues that Australia needs an alternative system based on European trials.

Judges, he says, are becoming frustrated with the present system in which they are "passive umpires in a furious game."

Their sole function is occasionally to blow the whistle when there is a foul, to restart the match and take no part in it nor tell the players how to play.

Mr Justice Kirby uses terms like "drama," "verbal pugilism" and "combat" to describe this trial system, which breaks down often because one barrister is better than his opponent in court.

In the European system judges call the shots. They call and question witnesses and use initiative to streamline court procedures and speed up cases.

"We've got to look for a system which is an alternative to ours and cheaper," Mr Justice Kirby says.

"I think the chief obstacles to change are the enormous vested interests in the present system. The legal profession has grown up in this system and most members of it genuinely believe it is the best and fairest.

"But as Lord Devlin, the distinguished English judge, said, the system is very good if you can afford it."

His solution is to graft the European system on to Australian law.

The basic aim of renovating the system is to make courts more efficient.

"I think an efficiency expert would look at our system with horror," the judge says.

"You just can't keep appointing more judges.

"It has been said that by the end of the century judges will tell litigants they have one day to present their case. I think there's a lot in that suggestion.

"I think the future of the legal process will not be in spinning out cases, but finding efficient methods of making the best use of judges."

Because of the cost of long court cases there are two options, the judge says - restricting the system to people who can afford it or changing it and the laws of evidence so everyone can benefit.

"Where a society has a choice it must choose the latter," he says.

The judge believes changes may be made to the trial system in the next few years. A report on the law of evidence being prepared by the commission will include such recommendations.

Examples of new-look courts are the Planning and Environment Court being set up by the NSW Government and the Commonwealth Administrative Appeals Tribunal.

Such courts have experts sitting with the judge. This reduces the need to call and examine a lot of evidence which would confuse the layman.

One of the biggest changes for the legal profession will be the

appointment of more to the bench, according to Judge.

Women such as Justice Mitchell, Justice Gill, Justice Mary G, others in the Family Court in lower courts are "help to turn the tide" against dominance.

"That's a thoroughly thing," Mr Justice Kirby says.

He sees healthy lawyers' attitudes.

About 25 per cent of lawyers are still the sons and daughters of the top 1 per cent of earners.

Though lawyers come from a privileged background they are now sensitive to the rights of the poor and deprived, underprivileged," the judge says.

Healthy

"Young lawyers are more sympathetic to people. That's a healthy sign. The hope of the future is the young lawyers."

"A lawyer should not be implementing this or that simply because it is the professionalism requires stand back and ask in the law, and if it isn't to do thing about it."

Part of the reason for social conscience is the re of legal study - poverty, social security law.

"It has to be remembered the judge says, that the problems of the poor are problems of all people. They are the common money. They are the common legal problems."

Tomorrow: How the law reformers work for you

Third and last in a series by Gary Martin

THE REFORMER



CHANGING the law is a formidable task even for reformist governments — and Australia has never had many of them.

Any government, it could be argued, can make a law reform body a white elephant by ignoring its proposals.

That hasn't happened to the Australian Law Reform Commission, its chairman, Mr Justice Kirby, says.

"In fairness it ought to be said that all of our reports are in law or being considered to become law," he says.

"The involvement of the community is a kind of insurance policy against irrelevance."

But for all its independence, the commission must consider the "likely acceptability" of its proposals to the Government and Parliament, according to the Senate Standing Committee on Constitutional and Legal Affairs.

It should not "live in ivory towers," which rules out radical attempts to reform areas of the law that are politically sensitive.

This does not suggest that the government of the day leans on the 12 part and full-time commissioners. It is more a reminder that they tread carefully.

Reports

The commission, which was

How law reform works for you

LAW reform is an admirable notion, though it doesn't guarantee real changes to outdated laws. But the Federal Law Reform Commission, its



Mr Justice Kirby has strong views on many other subjects that concern the law commission, for example:

LEGAL EDUCATION: The lack of basic education at school, legal jargon and the sheer weight of laws make people's legal knowledge poor.

"We've got to ask are we smart enough? And the plain answer is that in terms of our citizen knowledge of the law, no, we are not. If a citizen doesn't know the law and can't readily find it, he despairs and gives it away as a bad job."

Basic school education in consumer and contract law, dealing with the police, and other matters is required — and the way in NSW following the success of a pilot scheme in Victoria.

CIVIL LIBERTIES: "The important area" of law, people will have to accept a trade-off — some restricted freedoms in return for the benefits of computer technology.

"Who is going to say we'll stop that banks from opening? Obviously the advantages are enormous and they will be important to individuals as well as to the public."

ment in 1975, has completed reports on complaints against police, criminal investigation, alcohol, drugs and driving, consumers in debt, human tissue transplants, defamation and privacy, and privacy and the census.

Other areas of reform referred to it by the Federal Attorney-General include sentencing, child welfare, land acquisition, insurance contract, access to the courts and Aboriginal laws.

Mr Justice Kirby feels the commission has made "notable achievements" in having its proposals accepted.

He believes the reports on criminal investigation and privacy protection will become law. Some States have adopted the commission's proposals even though it is confined to Federal law.

"Queensland has picked up our report on human tissue transplants — it must be some sort of a record for a Federal commission to have its proposals adopted in Queensland," the judge said.

But even more important in

toothless tiger.

the long term, he says, is the Senate committee's plan to process commission reports and stop "a logjam."

"This plan calls for a report to be referred automatically to a parliamentary committee which would then submit it to Parliament. Within six months, the Government would have to act on the report.

"The basic problem is finding machinery that will make Parliament work better," the judge says.

"If Parliament can find a routine, orderly fashion (to assess our reports), follow it through and reform the law, our achievement would be most significant.

"I feel that Law Reform Commissions are depoliticising controversial issues so they're not put into the too hard basket."

All the commission's tasks have been "highly controversial," according to the judge. One such job was an investigation of

Mr Justice Kirby

Australian Federal police procedures.

Mr Justice Kirby argues that the ground rules of police work need to be spelled out.

One of the problems about regulating the police is that the laws they work under are not generally available to the community.

"They won't be supplied if you ask for them," the judge said.

There should be a statute covering police rules which all citizens should learn.

"It's not a matter of putting more burdens on the police, who deserve our strong support," Justice Kirby said.

"It's a matter of making clear what are the rules society lays down for police conduct."

A Bill based on a commission report covers the issue of warrants, rules of bail, entrapment, interrogation of children and migrants and tape recording of confessions. It is expected to be reintroduced to Parliament this year.

as possible protect the individual.

A BILL OF RIGHTS: "Human rights need fresh protection in Australia. The danger is human rights is not so much in a frontal attack as some erosion of rights. The danger is that they will evaporate under the pressure of these new laws and the pressure of new technology.

"We tend to assume in Australia that we have an impeccable system of protection of human rights which is superior to none in the world. This illusion is a dangerous one. There is no doubt that our legal protections fall short, in many respects, of international accepted standards."

Challenge

TECHNOLOGY: "The impact of science as a whole is perhaps the issue that should concern us most, the challenge of the 80's. Computers don't only challenge privacy — they also raise questions of the vulnerability of society to terrorism. In Italy, for example, computer records have been sabotaged.

"New technology is going to force the pace of change in the law. It won't go away; the law will have to adapt."

RESPECT FOR LAW: "Some people in the legal profession would say that mystique is a good thing because it encourages obedience to the law and respect for its institutions. I don't hold that view. I think respect for the law is better based on understanding of its principles, the way it operates and above all and I think that it can be changed and improved."

DRESS: "Wigs seem to uplaymen more than they uplay me. When I was a barrister my clients liked to have you dressed up. They felt that they were paying all the more they wanted the full theatrical performance. Many people's wigs as a symbol of the 18th century."

Kiwi fights for survival

THE kiwi, the flightless bird that is also New Zealand's national symbol, is endangered.

It has survived the coming of the Maori and the white man and the introduction of predators. But now its future is threatened because of the sudden surge in popularity of possum fur on the New York market.

Prices have doubled for high-quality possum pelts over the past two seasons and this has sent more hunters into the bush after the nocturnal pest.

The trouble is the kiwi has become the innocent casualty.

NEW ZEALAND

from RICHARD LONG

Most hunters lay cyanide baits near their possum traps. The kiwi, another nocturnal browser, often blunders into the traps or is killed by the bait.

The director of environmental forestry, Mr Ken Milers, says kiwi colonies estimated at many thousand still exist in the far north of the North Island, in the West Coast province of Taranaki and in

the bushlands of the South Island, but the increasing use of cyanide and ground traps is making deep inroads.

However, the Government has acted swiftly and new regulations come into force on April 1. These will require traps to be laid above ground level wherever possible — such as on a pile of logs or a tree itself — out of the way of the wandering kiwi.

Now only cyanide paste baits approved by the Agricultural Chemicals Board may be used and these have to be dyed green as research has shown that ground birds, including the kiwi, find green food unappealing.