

# THE LAWS OF AUSTRALIA – Q&A

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## Q & A

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**The Hon. Michael Kirby AC CMG**

1. What challenges do you think corporate counsel face today?

Just compare the present legislation governing Australian corporations and the law as it existed when I started in the law in 1962. The *Companies Act* 1936 (NSW) was 250 pages long with a mere 380 sections. And in those days, corporate counsel had nothing like the *Trade Practices Act* and the challenges of securities law, tax law, not to say consumer protection, civic awareness and media attention to corporate conduct. Moreover, shareholders are more assertive today and the general community is often looking over the shoulder of corporate counsel. They is why corporate counsel need all the legal help we can give them.

2. What challenges do you think practitioners outside larger law firms face today?

Many challenges. The traditional challenges of knowing and conceptualising the law. Seeing past the individual case decisions to the emerging principles. But also many new ones. The huge increase in legislation. The changing doctrines of common law. The altered nature of legal practice. The drift of legal business to the large city and international law firms. The loss of the old monopolies that allowed cross-subsidisation of legal work. With these challenges have come many new opportunities, of course. The secret is to grasp these and to keep ahead of the game.

3. There has been a distinct trend towards greater use of mediation and other forms of ADR in recent years. What implications do you think this has for the profession?

I am astonished by the growth of ADR during my three decades on the Bench. Mediation, in particular, has expanded greatly. I have myself recently undertaken a mediation accreditation course. No-one should be too proud to learn new techniques. Mediation is very different from judging. In theory, it aims to empower the disputants. In practice, achieving this may depend on the skills of the mediator and the capacity to provide a good process. Every lawyer knows the risks, costs and delays of court litigation. ADR offers procedures over which the parties will have greater control. Yet there will always be some matters that can only be resolved in independent courts. *Mabo* and *Deitrich* could not have been delivered by ADR.

4. Are there other trends you see in Australia or internationally that have implications for how lawyers should view their role?

The growth of international law, global trade and international human rights law provide big challenges and opportunities for lawyers. Off-shore legal business is growing and will expand greatly. When I started in the law, jurisdictionalism confined lawyers, essentially, to their own sub-national geography. Increasingly, the modern lawyer must be aware of regional and international law, practice and culture. Australian lawyers need to get over the hostility to human rights law. It is a growing feature of legal systems everywhere: even in Britain and New Zealand! I hope that the current national consultation will lead to Australian lawyers joining this important trans-national conversation. After all, we cannot pretend that our parliaments were always quick and effective in dealing with issues of legal inequality in the past: Aboriginal deprivations, White Australia, gay imprisonment, women's glass ceilings, show that, sometimes our democratic systems need a stimulus provided by considerations of basic principle. Australian lawyers in the future will have an important role to play as guardians of fundamental rights. The suggestion that Australia's judges are not competent or proper to do this is rubbish. It is an attribute of a legal system committed to equal justice

under law. That is how Australian lawyers of the future will view their role. Technicians, but with a special difference.

5. How can a legal encyclopaedia benefit researchers or practitioners outside large organisations?

No lawyer in Australia, however brilliant, can keep on top of the burgeoning developments of statute and common law today. It is just too overwhelming. No-one can be an expert in every branch of the law. What is needed is a source of basic principle that can take a lawyer, with a new problem, to find the way into solving the problem. This is what *The Laws of Australia* tries to do. We need to make the service up to date and universal. Our team is dedicated to these objectives. Eventually, online modalities will be universal and will assure up-to-dateness. There is a big forest of law out there. We want to help lawyers to sort out the wood from the trees. As a High Court judge, I had the privilege of viewing the entire legal system from that perspective. *The Laws* has a similar ambition to view and understand the great mosaic of our legal system and to see and describe how all the little pieces fit together. It is ambitious. This is why *The Laws* represents the flagship of the company and is so exciting to work with.

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