



ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

Justice Michael Kirby Farewell
High Court of Australia, Canberra
Monday 2 February 2009, 12:02pm

CHECK AGAINST DELIVERY

[Acknowledgements]

- **First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.**

[Other Acknowledgements]

- **Thank you Your Honour [you will be introduced by the Honourable Michael Kirby AC CMG]**
- **Distinguished guests, ladies and gentlemen**

[Introduction]

- 1. It is a privilege to be here today to pay tribute to the Honourable Justice Michael Kirby.**
- 2. Today we farewell a man from this court who has devoted his life to public service.**

[Service to Australia]

- 3. In addition to your distinguished service to the High Court, your Honour has served as Deputy President of the Australian Conciliation and Arbitration Commission, as the inaugural President of the Australian Law Reform Commission, as a Judge of both the New South Wales Supreme Court and the Federal Court of Australia, and as President of the New South Wales Court of Appeal.**

[International Work]

- 4. Internationally, you have been an ambassador for Australia through your contributions to the International Commission of Jurists, the OECD,**

UNESCO, the International Labour Organisation, the World Health Organisation and the United Nations.

- 5. You have gained tremendous respect for yourself and Australia on the international stage.**

[Law In Context]

- 6. Indeed, you will be remembered for bringing a global perspective to Australian domestic law.**
- 7. As a close observer of civil society, you have also sought to put the law in context and to examine how the law operates in practice.**
- 8. Take the time the High Court considered the prohibition on prisoners voting in federal elections. During argument, you inquired as to the effect of the provisions on Paris Hilton had she been an Australian citizen. After a patient explanation from counsel of the application of Commonwealth Electoral Act to the then wayward celebrity you gravely remarked:**

“I just wanted you to know I follow these things.”

[Commitment to the Development of the Law]

9. Your Honour will also be remembered for your dedication to the development of the law and your contributions to law reform, especially through your role as the first Chairperson of the Australian Law Reform Commission.

10. For example, your groundbreaking work on bioethics and organ transplants tackled not only the legal issues but also the moral and ethical dimensions. And you identified early the need for lawyers to engage with the difficult issues thrown up by genetic research. In 1997 you said:

“For a lawyer, like a theologian, it is somewhat intimidating to stand staring at this new era of genetics. The scientist and the technologist rush ahead. The lawyer, the ethicist and the theologian amble slowly along, their heads full of puzzlement at the problems which seem

insoluble. Yet to do nothing is to make a decision.”

- 11. This commitment to ensuring the law remains relevant to a changing community – a changing world – will continue to resonate long after you leave this building.**

[Special Place in High Court History]

- 12. You will hold a special place in the history of this Court.**
- 13. You have been tagged the “Great Dissenter”, but in reality you have played a vital part in the development of many areas such as the freedom of political communication. A right you described as belonging**
- “as much to the obsessive, the emotional and the inarticulate as it does to the logical, the cerebral and the restrained.”¹*
- 14. Unlike one or two politicians who fall into the first category, you will be remembered as the**

¹ *Coleman v Power* (2004) 209 CLR 1, 100 [260] (Kirby J).

“Great Communicator”. Your judgments demonstrated your strong commitment to explain the law. And your willingness to speak on a wide range of topics has shown a commitment to demystify and humanise the judiciary. In your speech in 1995 on judicial stress you were among the first to tackle the then-taboo issue of depression on the bench. You said:

“... a source of stress for many judicial officers derives from role expectation and role-playing. Judicial officers are expected, as Sir Ronald Megary once put it, to be as wise as they are paid to look.”

15. Above all, alongside your extensive achievements and contributions to the law, to academia and to the community, you will be remembered most for serving justice with a bold heart, a brilliant mind and respect for the fundamental rights of all citizens.

[Conclusion]

16. I know that you once famously listed *work* as your favourite form of recreation.

Well, I hope that your planned *quiet old retirement* affords you the opportunity to identify a less strenuous hobby.²

And to spend more time with your loved ones – particularly your partner Johan. But I suspect we are merely seeing the end of one tour of duty before you embark on another.

17. You have for many years carried an enormous workload with devotion and integrity. You will be greatly missed from the bench but welcomed in whatever area you choose to follow.

ENDS

² Justice Michael Kirby in M Romei & Z Sheftalovich, 'A reasonable person', *Lawyers Weekly Online*, 23 April 2008, http://www.lawyersweekly.com.au/articles/A-reasonable-person_z170691.htm