

# Justice for nurses

## Kirby for the defence



His great aunt was a nurse and his sister is a nurse, but like many healthy people, High Court judge Justice Michael Kirby had little appreciation of the importance of nursing until he met the nurses who cared for his mother until her death.

"Once you get beyond the utter dependence of an infant on its mother, you are encouraged to stand on your own two feet," he says. "But there are times in life when you can't be independent and terminal or grave illness is one of those times. That's when you come to appreciate the kindness and great professional skill of nurses and other health care providers. People might respect lawyers but you'd never say that lawyers are loved. Nurses, on the other hand, are loved, because of the very special role they play at critical times in people's lives."

Justice Kirby has spoken publicly of his high regard for nurses and their skills at the annual conference of the Royal College of Nursing and most recently, when he launched *The Legal and Professional Status of Nursing* which was written by University of Technology, Sydney Corrections Health Professor Mary Chiarella.

In launching the book, he acknowledged "the tyranny of niceness" which has beset the occupation since Florence Nightingale imposed on her nurses a regime similar to that of nuns in holy orders. "They had to be devout, chaste, good women," he said. "It elevated nursing to a role like motherhood, a universal source of admiration. Unfortunately, like motherhood, nursing traditionally has not been given a lot of economic support."

During an interview with *The Lamp*, Justice Kirby explained that he understood that the rationale behind inadequate remuneration for nurses was that because it is such a large profession, the public purse could simply not afford to pay them what they deserve.

"There are many professions that are

not financially rewarded as they should be," he observes. "Even judges have to take a dip in salary when they go on to the bench. While you can't compare the wages of judges and nurses, I do understand that the perception is that we both have a vocation or a calling, an interesting job and in some way that should compensate for the lack of money."

Justice Kirby says that he can't support that line of thinking, pointing out that as recently as 1985, nurses in Australia were earning only 107% of average weekly earnings whereas medical practitioners were earning, on average, 230%.

He adds that while change is occurring with nurses moving on from the

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"ministering angel" model to the modern concept of tertiary-qualified members of a hi-tech medical team, there remains a degree of ambiguity about their legal status.

"That's where Mary Chiarella's book is so useful," he says. "It's easy to read and has lots of anecdotes that chronicle the changing boundaries as nurses develop from domestic workers to professionals. To some extent the old-

fashioned subordination of nurses afforded them protection under the legal system. But Chiarella cites case after case where nurses are left alone with huge responsibilities. When the buck stops with the nurse, it has to follow that they deserve to be recognised adequately in terms of remuneration. There's an element of polemic to the book and I don't blame the author for that because there are lots of things that need to be addressed."

Justice Kirby also has high regard for the bravery of nurses who stood up to wrongs in their workplace, for example deep sleep therapy at the Chelmsford Hospital. "I was involved early on at the beginning of the HIV/AIDS epidemic," he says. "I was privileged to see the pioneering work done by nurses and other health care workers who showed great courage and compassion in the treatment of people with HIV. Their response to the epidemic was based on good science, not on mythology or hysteria. I remember the sisters at St Vincent's, for example, refusing to turn their hospital into a quarantine station, and resisting efforts to have them destroy eating utensils or to wear protective clothing like they were going on a moonwalk."

"At a time when the courts were not reacting in the same way, Australian hospitals set the gold standard for the world in terms of how they cared for the patients. In doing so they gained the confidence of the communities who are most at risk, and I believe, went a long way towards containing the epidemic in this country."

By Kirsty McKenzie