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ABORIGINAL EDUCATION COUNCIL (NSW)
INC.

50TH ANNIVERSARY AEC CONFERENCE

THE ONGOING QUEST FOR ABORIGINAL
EQUALITY

The Hon. Michael Kirby AC CMG

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Past Justice of the High Court of Australia

In his talk, the Hon. Michael Kirby described a number of elements in the journey towards equality of Australia's indigenous people and his engagement with that cause:

- * There was virtually no mention of Aboriginal Australians in his otherwise excellent education in public schools (1944-55);
- * Awareness began to dawn at university, thanks to Aboriginal leaders like Charles Perkins who also took part in student politics;
- * In 1964, he acted as honorary solicitor for Owen Westcott and other Sydney University students who took the initiative to travelling to Walgett, New South Wales, in order to accompany Aboriginals to the upstairs section of the local cinema where they were previously banned. The story is told in A.J. Brown's biography: *Michael Kirby – Paradoxes/Principles* (Federation Press, Sydney, 2013, 60-70);
- * Then in 1967 came the amendment to the *Australian Constitution*, section 51 (xxvi). This permitted federal laws with respect to Aboriginals. He voted for the amendment, as did 90% of

Australians. But later, on the High Court in *Kartinyeri v The Commonwealth*, (1998) 195 CLR 337 he was dismayed that when the races power was turned into allowing restrictive and negative legislation against Aboriginal Australians. This was neither what people of Australia were told when the referendum was proposed. Nor was it, in his view, what the paragraph permitted to Federal Parliament.

- * In 1992, the High Court of Australia, not an elected legislature, held that the common law recognised native title: something long denied in Australian court decisions. See *Mabo v Queensland [No.2]*, (1992) 175 CLR 1;
- * In 1996, after his appointment to the High Court, his was the casting vote that, in *Wik Peoples v Queensland*, (1996) 187 CLR held that the *Mabo* principle extended to recognising native title in the huge pastoral leases throughout Australia;
- * In 2008, the National Apology resonated in the dissenting opinion he wrote in the litigation that challenged the constitutional validity of the “intervention” by federal agents in the Northern Territory, supposedly to respond to Aboriginal child abuse, intoxication and possession of pornography: *Wurridjal v The Commonwealth* (2009) 237 CLR 309.

Michael Kirby urged the improvement of education about and for Aboriginals and their issues in Australian schools. Above all, more interaction between Aboriginals and other Australians, especially children. “There are demons in our minds – about women, about

Aboriginals, about non-white people, about GLBT citizens, indeed all minorities. We must, by education, chase those demons from our minds.”