

2755

PRESENT AT THE CREATION OF THE ALRC

The Hon. Michael Kirby AC CMG

Present at the Creation: Establishment of the ALRC — Hon Michael Kirby*

[Intro] To mark the ALRC's 40th anniversary, the Hon Michael Kirby AC CMG, foundational ALRC Chairman, recounts the early days of the Commission, and the people and personalities that brought it into being.

[Audio – attach file]

Transcript

This is Michael Kirby. I was the original Chairman of the Law Reform Commission. It was called 'Chairman' in those days. They were the days before political correctness. The name was changed later to 'President'. So effectively I was the first head of the ALRC. And even that was different because when the Commission was established under the Act setting it up, in 1973. It was simply known as The Law Reform Commission. The adjective 'Australian' was added a few years later in order to make it clear which law reform commission was being referred to.

I had originally been appointed a Deputy President of the Australian Conciliation and Arbitration Commission. Quite a lot of my practice as a barrister was in the field of industrial relations. I was quite proud to be appointed to that Commission and I had no inkling that I was going subsequently to be invited to be the Chair of the ALRC. Initially, the Attorney-General of the day, Lionel Murphy, approached me and asked me if I would serve concurrently as a Part-time Commissioner of the ALRC in addition to my work for the Arbitration Commission. I readily agreed to that. But Lionel Murphy was not content. He called me up to his chambers. I was accompanied by the noted young Australian barrister, practicing in London, Geoffrey Robertson, later Geoffrey Robertson QC. Lionel Murphy asked me if I would accept appointment as Chairman of the ALRC. I told him that he should get somebody much older and wiser—I was then only 35 years of age. Lionel Murphy would have none of it. He said he wanted somebody who was young, not one of those 'old fuddy duddies', as he so rudely described the judges of the time. Anyway, with a bit of persuading, because I was reluctant at first, I accepted the appointment. So, in early February 1975, what had begun

as a commission as a Part-time Commissioner, flourished into a full-time commission and chairmanship of The Law Reform Commission.

Then came the problem of finding premises for the Commission. Mr Kevin Crotty, an officer of the Federal Attorney-General's Department, was assigned to me. I was immediately removed from the chambers as a Deputy President of the Arbitration Commission. I was placed in an ante-room to what were then the chambers of the Federal Judge in Bankruptcy, Justice Bernard Riley. It was a small room, and into that room had to be packed, myself, my associate Bill Koeck, and my secretary, Mrs Jennifer Seely. As well as that, Kevin Crotty became a constant companion. He took me on a search for the appropriate accommodation for the ALRC. We found that accommodation at 99 Elizabeth Street, Sydney, opposite the building in which the Arbitration Commission chambers were then housed. And so we set about building the institutional structure of the ALRC.

But what mattered about the ALRC was the personnel—the personalities, the people who soon joined the Commission to be the original Commissioners. I still have on my wall in my chambers the photograph of the six original commissioners. They were Gareth Evans, later a QC, later a senator, later the federal Attorney-General and Minister in the Hawke and Keating governments and an outstanding lawyer who is now the Chancellor of the Australian National University. Also in the photograph was Mr F.G. Brennan QC, later Sir Gerard Brennan, later a judge of the Federal Court of Australia, and later still a Justice, and subsequently Chief Justice of the High Court of Australia. I think he was appointed to the Commission to give it weight and gravitas. He was a very experienced Brisbane barrister and he was a great acquisition to the Commission and went on to a most illustrious judicial career, in the course of which he wrote the *Mabo* Decision. The *Mabo* Decision reversed 150 years of land law in Australia and recognised the right of Indigenous people in Australia to land rights over their traditional land. Another Commissioner was Mr John Cain. He was a Part-Time Commissioner and was an experienced Victorian solicitor. He subsequently became Premier of Victoria. A further Commissioner was Professor Alex Castles. Alex Castles was a professor of legal history, and a constant source of knowledge about the history of the law in Australia into which our proposals for law reform had to fit. Finally, there

was Professor Gordon Hawkins. Professor Gordon Hawkins was a professor of criminology at the University of Sydney. He was a social scientist rather than a lawyer. He brought to bear in his advice to us a great deal of wisdom and insight derived from the social services. Subsequent Commissioners included Sir Zelman Cowen, then the Vice Chancellor of the University of Queensland. He later, of course, became the Governor-General of Australia. Sir Maurice Byers QC and Mr John Ewens QC, the former First Parliamentary Counsel, and many other lawyers of the greatest distinction became Commissioners of the ALRC. Our earliest projects related to complaints against the police; the law on criminal investigation; law on debt recovery; and many other projects of great controversy and enormous success. The Director of Research of the Commission and its foundation Secretary was George Brouwer. Mr Brouwer subsequently became the Ombudsman of the State of Victoria, a position from which he has only recently retired. The first full-time Commissioner, apart from myself, was Professor David St L Kelly. He was subsequently to write the reports on debt recovery, to play a large part in the report on privacy, and to be the Commissioner in charge of the extremely successful report on the *Insurance Contracts Act 1984* and associated matters.

So, they were a remarkable team. It was an amazing time. We lived off the smell of an oil rag in the first few months. But when our Commission premises were set up, the whole thing worked like clockwork. And why was that so? It was because we had wonderful employees, great Commissioners and, above all, an outstanding Chairman!

* Hon Michael Kirby was inaugural Chairman of the ALRC (1975-1984); Judge of the federal Court of Australia (1983-84); President of the NSW Court of Appeal (1984-96); and Justice of the High Court of Australia (1996-2009).