

## Foreword

### *Her Excellency The Hon Ms Sam Mostyn AC Governor-General of Australia*

This is a very big book – as it should be. Michael Kirby has been an indefatigable and thoughtful contributor to ideas in Australia for more than 50 years.

It has been a gift to have known Michael for over 30 years – and his impact on me across my life and career has been profound.

Michael held many high offices early. He was first appointed to judicial office in January 1975, serving as a Deputy President of the Australian Conciliation and Arbitration Commission. Soon, he was seconded as inaugural Chair of the Australian Law Reform Commission. In 1983, he was appointed to the Federal Court of Australia and, a year later, as President of the Court of Appeal of the Supreme Court of New South Wales. In 1995, he served concurrently as the President of the Court of Appeal of Solomon Islands, and a year later he was appointed as a Justice of the High Court of Australia.

As I saw at close range in the year I worked for Michael, these judicial appointments were always accompanied by a remarkable commitment to other causes and engagements, both in Australia and internationally. His prodigious work ethic has not changed over the decades, and he is still working on international arbitrations, accepting university appointments, and taking on complex tasks for the United Nations. Vitally, he continues to contribute exceptionally and generously to our public dialogue.

In 1988, Michael appointed me as one of his Associates while he was President of the New South Wales Court of Appeal. I had just completed my law degree at the Australian National University. Working with him and the other judges of the court was a unique and remarkable experience. At that time, no woman had yet been appointed a judge of that court, and Michael decided he would play his part in opening the court to women by always having a woman and a man in the position of Associate. His somewhat revolutionary early act of gender equality had lasting, significant impacts. One of my predecessors as Associate, Justice Sarah McNaughton, went on to become the Commonwealth Director of Public Prosecutions and now serves as a Judge of the Supreme Court of New South Wales. Several other women were subsequently appointed as President of the Court of Appeal, and that role is now held by the Honourable Julie Ward. The first woman to be appointed as President, the Honourable Margaret Beazley AC KC, is now the Governor of New South Wales. Michael predicted that things would change for women, and it is due, in no small measure, to the actions and leadership he exercised earlier than most.

I recall my time in his chambers with great fondness and gratitude. Witnessing his dedication to his many duties, and his unfailing kindness and courtesy to all he met, Michael left indelible impressions on me. He was as approachable to the young

Associates as he was with his senior colleagues. He taught me many things – the importance of working respectfully with others; always showing genuine courtesy to members of the public, litigants and lawyers; and always seeking to edge the law forward to a brighter future. He made the law accessible and understandable to the general public and taught a generation of young lawyers the art of logic, fine legal reasoning and powerful rhetoric in support of the rule of law.

There were also the many moments which speak to the sensitive and artistic side of Michael. Having arrived in Chambers by 5.30 am, he often brought with him leaves and flowers purchased the previous day and carried by him through Hyde Park on his way to work. He often asked us to use them to decorate the tables where he hosted lunches, to the delight of guests. He also regularly called on poetry to augment his judgments.

Some of his values were clearly learned from his parents and family, whom we would frequently meet on their visits to our chambers. His devoted Personal Assistant, the late Janet Saleh, had us all working hard and living every day the principle of equal justice for all, where no one was elevated through status or importance.

To this day, my close exposure to Michael as a young lawyer has shaped my career. He was the first person in high office who spoke publicly of love – love within the law, and love framing our common humanity.

We were united early as the product of public school education, a cause we both continue to champion. His experiences at school, universities, as an articled clerk, and in the legal profession in times of change are all told in this book in his own words. As he explains, his years as inaugural Chair of the Australian Law Reform Commission (1975–84) encouraged Michael to expand his egalitarian values and forward-looking approach. At the Commission, he learned of the obstacles to securing reform; and of the need of struggle and persistence to gain reform. He was not uncritical of the legal profession and its values. But, as his speeches reveal, he is proud of serving as a Judge in a society governed by law, declared and explained by independent and uncorrupted judges after hearings in open court in which both sides of the argument are heard, tested and ultimately resolved.

Many of the chapters in this book describe the controversies of those earlier times. They include the need for enhanced respect and recognition for the legal rights of the First Nations people of Australia. From his early days in the Law Reform Commission, Michael struggled with the issues of recognition of Aboriginal customary laws; the prejudice suffered as a result of the inequality of Australia's Indigenous peoples; and the need for many changes in the law.

In 1988, he made a speech, reproduced in this book, on the perception of the Bicentenary by Aboriginal people. I was working in his Chambers at that time, and remember clearly his deep commitment to the task. It follows other chapters explaining the inequality of treatment, including in the criminal law, and the way in which Australians could learn to improve their legal system by reference to international human rights law.

Michael advocated new approaches to human rights on a global level. His work for the United Nations in Cambodia and on the UN Commission of Inquiry on North Korea led him to share the approaches and values he had always taught as a law reformer and judge in Australia.

When the HIV/AIDS pandemic arose, and reached Australia, in the mid-1980s, Michael became involved with a number of international initiatives of the World Health Organization, including UNAIDS and the United Nations Development Programme. Because of the disproportional impact of HIV on the LGBTIQ+ community in Australia and beyond, those of us close to him noticed his growing and forthright reflections on his own discrimination and disadvantages as a young gay man. At first tentatively, and later with increasing clarity, he interpreted his own experiences of discrimination to a wider national audience. He spoke at events where the ‘new realm of bereavement’, caused by AIDS was resulting in the deaths of many friends. Together with the then Governor of New South Wales, Her Excellency Marie Bashir AD, he enthusiastically participated in the opening of the Gay Games VI in 2002. At the time he explained the importance of courage and of the challenge to discrimination and disrespect for LGBTIQ+ people. He traced the journey of achieving human rights and equality for LGBTIQ+ people. Eventually, he did so passionately, openly and with growing insistence, in company with his partner, and later spouse, Johan van Vloten.

Our small group of former Associates who worked closely with Michael came to know his partner, Johan, well. Sadly, I recall events in 1988 that Johan was not able to attend as Michael’s partner – where it was decided that his presence might not be well received. I am pleased that over time that changed. Simeon and I attended a dinner held in honour of Michael and Johan in Sydney in the 1990s. We reflected then on the burden carried by LGBTIQ+ Australians as an effective consequence of the criminal laws targeted at them in earlier days. Especially if they were, or aspired to be, leaders in the Australian community. A price was paid – a price of invisibility and denial of their relationships in public. As Johan poignantly expressed, he had to become a ‘non-person’. The fact that this was demanded, often by highly intelligent and moral people who should have known better, is an important lesson of this book.

So, it was a great pleasure to recently tour the Macquarie University campus, and to visit the Law School, named the ‘Michael Kirby Law Building’, and to see the Johan van Vloten Theatre – with a magnificent portrait of Michael at the side of its entrance. This generous and touching tribute to Michael’s devoted partner is a meaningful gesture of care and recognition for a relationship that had to be kept secret for so much of their time together. And which defines so much of Michael’s life.

Many chapters explore particular features of the corrosive disease of homophobia. If the chapters are read chronologically, they disclose the growing strength with which Michael found his public voice, encouraging us to recognise the price that was exacted over so many years. He was honoured for his work in human rights for others. But for a long period, he was reticent in explaining how his own human rights, and those of Johan, were undermined by criminal laws, antipathy, and weak responses of anti-discrimination and social remedies.

Thankfully, in the end, the Marriage Equality law was enacted in Australia, with overwhelming approval from the Commonwealth Parliament and the Australian public. However, although this is explained and supported in this book, it took a long time, and a lot of tears were shed. I always considered that Michael’s own experiences and tears strengthened his commitment to freedom, equality and the dignity and human rights of individuals everywhere. They had to be advocated, sometimes against religious

and other fierce opposition. They had to be advocated with the same persistence as the earlier abolition of capital punishment in Australia and other countries. They had to be fought in the courts and in parliament and in government circles. Internationally, they had to be unpacked alongside the more traditional efforts for human rights (in countries like Cambodia and North Korea) with which Michael became increasingly engaged.

His journey as a leader in human rights has been a long one. And it has not yet ended. New challenges constantly face every country. In Australia they still arise for First Nations people, women, people of diverse cultural backgrounds, LGBTIQ+ people, people with disabilities, and new frontiers accompanying developments in technology.

In the last chapter of this book, written especially for its publication, Michael returns to Johan, to acknowledge the burden carried by him. All of the speeches in this book are important. They are, in a sense, a chronicle of many of the personal burdens suffered from human rights deprivations over the last 50 years. Michael could have added to his survey the challenge of homophobia in some areas of sport, nationally and internationally. His lack of engagement with sport is possibly the only value that he shared with Justice R.P. Meagher, who was a Judge of Appeal when we served together in the Court of Appeal in 1988. His chapter on Roddy Meagher brought back many memories of that year. But his generous spirit leads naturally to the last chapter that proclaims Michael's love and debt to his partner of 56 years, Johan. It is sobering to think that Michael and Johan have been together throughout all the 50 years captured in this book. This closing chapter explains the wrongs that were done to them and people like them. They were not the most grievous wrongs in the calendar of human rights grievances, but they mattered deeply to Michael and Johan and those who knew them as dear friends. To some extent, although not wholly, they have been redressed and repaired.

The message that I take from this book is that we must identify all the wrongs that are gathered here. And address them with a reforming, generous and caring spirit. So that they can be corrected. So that love prevails. That, I feel sure, is the message that Michael is offering Australia through a reading of this book recounting his remarkable 50-year journey as one of the great proponents of universal human rights.

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