

# Inaugural Michael Kirby Lecture

Monday 5 December 2022 at 5.00pm AEDT

Federal Court of Australia Melbourne and via live stream

## TRANSCRIPT

00:00:00:18 - 00:00:32:27

The Hon Justice Sarah Derrington AM

Good Evening everyone.

I acknowledge Aboriginal and Torres Strait Islander people as the traditional custodians of the lands of Australia on which we live and work and pay my respects to Elders, past and present. Chief Justice the Honourable James Allsop AO, Chief Justice the Honourable Will Alstergren AO, judicial colleagues, members of the academy and the profession, distinguished guests, one and all.

00:00:32:28 - 00:01:02:28

The Hon Justice Sarah Derrington AM

Whether you are here with us in Melbourne or out there on, we hope, a reliable video broadcasting system. On behalf of the Australian Law Reform Commission, I am delighted to welcome you to the Inaugural Michael Kirby Lecture. Many of you will know that the Honourable Michael Kirby AC CMG was the first chairman of the Law Reform Commission, as it then was, between 1975 and 1984.

00:01:03:27 - 00:02:07:16

The Hon Justice Sarah Derrington AM

He presided over seven inquiries in that decade: foreign state immunity; privacy; insurance agents, brokers and contracts; child welfare laws and practices in the ACT; complaints against police; criminal investigations; alcohol, drugs and driving. He has, as you will all know, given very many speeches and written very many papers. Some of those that related to law reform in more recent times include 'Changing fashions and enduring values in law reform', 'Reforming Law Reform', 'Michael Kirby - The Originals', '40 Years On - Lessons of the ALRC', and in 2019 'Where next for law reform'. He has been a most gracious mentor and advisor to me and my predecessors in this role, and it is only fitting that a lecture be named in honour of one of our most formidable Presidents Emeritus.

00:02:09:05 - 00:02:52:02

The Hon Justice Sarah Derrington AM

And so I am delighted and the ALRC is honoured that the Honourable Mark Dreyfus KC agreed to present this Inaugural Kirby Lecture. A true lawyer's lawyer, Mr Dreyfus, worked as a barrister for 20 years before entering Parliament. He had an extensive practice in commercial defamation, constitutional and environmental law. He appeared before the High Court in two of the most important cases on implied freedom of political communication in *Theophanous v Herald and Weekly Times Ltd* in 1994 and *Lange* in the Australian Broadcasting Corporation in 1997.



Australian Government

Australian Law Reform Commission

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00:02:53:02 - 00:03:28:01

The Hon Justice Sarah Derrington AM

He served as a director of the Law Council of Australia and on the Victorian Bar Council and Victorian Bar Ethics Committee. Mr Dreyfus has always demonstrated a keen interest in law reform. The first few months of this Government have shown that that interest has not waned since his last term as Attorney-General, when he referred three significant inquiries to the ALRC, one into serious invasions of privacy, one relating to the Native Title Act and one on equality capacity, and disability in Commonwealth laws.

00:03:29:03 - 00:03:56:16

The Hon Justice Sarah Derrington AM

His first reference to the ALRC this term is, of course, the uncontroversial topic of issues concerning religious educational institutions and anti-discrimination law. Mr Dreyfus is eminently suited to delivering the Inaugural Michael Kirby Lecture and I am delighted now to invite him to address us.

00:03:56:27 - 00:04:29:21

The Hon Mark Dreyfus KC MP

Good evening. I acknowledge the traditional custodians of the land in which I speak to you tonight, the Gadigal people of the Eora nation. I pay my respects to their Elders, past and present and also to other Aboriginal and Torres Strait Islander people with us today. I reiterate the Government's commitment to implementing the Uluru Statement from the Heart in full - beginning with a referendum to enshrine an Aboriginal and Torres Strait Islander voice in the Australian Constitution during this term of parliament.

00:04:30:16 - 00:04:56:27

The Hon Mark Dreyfus KC MP

I am very sorry, but I am unable to be in Melbourne with you today, but so glad that the Australian Law Reform Commission has been able to facilitate my appearance via livestream. I thank the staff of the ALRC very much for their efforts, and I also acknowledge Chief Justice James Allsop of the Federal Court of Australia. Chief Justice Will Alstergren and Deputy Chief Justice Robert McClelland of the Federal Circuit and Family Court of Australia.

00:04:57:13 - 00:05:28:00

The Hon Mark Dreyfus KC MP

Honourable judges and magistrates of federal and state courts, the President of the Australian Law Reform Commission, Justice Sarah Derrington, (and I think Justice Derrington very much for her warm introduction) and former President Professor Rosalind Croucher and of course, Justice Michael Kirby, former judge of the High Court of Australia and inaugural chair of the Law Reform Commission. I would also like to particularly acknowledge the outgoing commissioner of the ALRC, Justice John Middleton.

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The Hon Mark Dreyfus KC MP

On behalf of the Commonwealth and the Australian people, I sincerely thank you for your stewardship of a diverse range of law reform inquiries over the past decade, including copyright law, family violence, elder abuse and financial services legislation. I especially want to thank Justice Middleton for his role on the Advisory Committee for the Inquiry into the National Legal Response into Elder Abuse.

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The Hon Mark Dreyfus KC MP

This inquiry made 43 recommendations for law reform to safeguard older people from abuse and safeguard their autonomy. Most recently, his Honour worked on the report entitled 'Without Fear or Favor: Judicial Impartiality and the Law on Bias'. This report made 14 recommendations to promote and protect judicial impartiality and public confidence in the Commonwealth judiciary. These contributions come after more than a decade serving as a judge of the Federal Court of Australia, as well as His Honour's work leading the Australian Competition Tribunal and as a presidential member of the Administrative Appeals Tribunal.

00:06:37:15 - 00:07:12:03

The Hon Mark Dreyfus KC MP

This work has made a significant contribution to Australia's legal system and I thank him very much indeed. I'm honoured to be invited by the ALRC to deliver the Inaugural Michael Kirby Lecture. This is not the first time I've appeared before one of Australia's most distinguished, gifted and admired jurists. Justice Kirby. Even though I now appear before Justice Kirby as Attorney-General rather than as counsel, I'm conscious that I will still be judged on the coherence and strength of my argument.

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The Hon Mark Dreyfus KC MP

Justice Kirby's contributions to this nation are significant and go far beyond the courtroom. It is absolutely right that the Australian Law Reform Commission has chosen to honour its inaugural chair, Justice Kirby, with this lecture series, highlighting his record not only as a jurist but as a great advocate of reform. He has been a dazzling presence throughout my professional life.

00:07:41:04 - 00:08:42:06

The Hon Mark Dreyfus KC MP

I can think of no one in the law more worthy of celebration. The ALRC was, of course, a creation of the Whitlam Government with former Attorney-General Lionel Murphy introducing its foundational Act in 1973. It was only three days ago, last Friday on the 2nd of December, that we celebrated the 50th anniversary of Gough Whitlam's election. In the three short years he was Prime Minister, Whitlam changed the nation through extraordinary and lasting law reform - no fault divorce, the Family Court and the Racial Discrimination Act are only a few examples. Whitlam's record of law reform was in fact the subject of a paper in the Federal Law Review by Justice Kirby in 1979. In this paper, Justice Kirby notes an oft-repeated phrase of Whitlam that, and I quote, "The way of the reformer is hard in Australia."

00:08:43:15 - 00:09:42:05

The Hon Mark Dreyfus KC MP

After a well-informed discussion of Whitlam's most significant reforms, Justice Kirby concluded his paper with the following observation, and I quote, "The way of the reformer in Australia is still hard. But the provision of permanent machinery may ensure that reform is achieved in a routine way and that the notion of orderly renewal of our legal system in all its parts is accepted: change not for its own sake; change for the better." The ALRC is the permanent machinery Justice Kirby refers to. By nature of its very existence, it positions the Commonwealth in favour of reform. Its work provides the Attorney-General and the Government of the day with non-partisan and well-considered advice on pathways to change on even the most controversial of subjects.

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The Hon Mark Dreyfus KC MP

There is no doubt that the ALRC assists the Commonwealth with the 'hard' task of reform recognised by both Whitlam and Justice Kirby. Five decades after these observations were made with a new government in place, it is worth reviewing this question once more. Is the way of the reformer still hard in Australia? If you can forgive me a moment of reflection, I think it is fair to say that the last near-decade under the former government was not an era of ambitious law reform.

00:10:21:17 - 00:11:29:07

The Hon Mark Dreyfus KC MP

It is not accidental that this coincided with a period of shameful underuse of the Australian Law Reform Commission. Over the past decade, the government, sorry, over the past decade, the parliament did not lead the nation on law reform. Rather, the nation led the parliament. There are two recent reforms I will discuss, which I think illustrate this. One which took place under the former government and one which took place last week - marriage equality and the National Anti-Corruption Commission. By the time the Commonwealth legislated for marriage equality on a joyous day in December 2017, the nation had been waiting a long time. Cultural mores had shifted years before, when New Zealand recognised marriage equality in 2013, followed by the United States and Ireland in 2015. There was a sense of bewilderment here in Australia.

00:11:29:25 - 00:11:56:21

The Hon Mark Dreyfus KC MP

How could we be so badly behind? Were we not mature enough as a nation to make this change? In truth, the delay said little about our nation, but a lot about its politicians. The nation's leaders at that time were not brave enough to do the obvious - the obvious thing and the just thing - recognise what all the social research was telling them at the time.

00:11:57:02 - 00:12:37:01

The Hon Mark Dreyfus KC MP

That Australians wanted marriage equality and they wanted the parliament to just get on with it. In the end, of course, we did get marriage equality, but through the least courageous means. Instead of the parliament doing its job and legislating, the government of the day sent the decision off to a plebiscite. It was a decision rightfully criticised by Justice Kirby, who said at the time, and I quote, "The elected politicians should get to work on what we the people elected them to do - to decide on the law, one way or another, in parliament."

00:12:37:13 - 00:13:04:16

The Hon Mark Dreyfus KC MP

The results of the plebiscite showed very clearly that it was never necessary. Every state and territory voted in favor. Only 17 of Australia's 150 electorates voted no. It cleared the pathway to legislative reform in favour of marriage equality. But the pathway had been obvious and clear. It should not have taken a damaging and hurtful plebiscite to get there.

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The Hon Mark Dreyfus KC MP

The lack of courage shown by the nation's leaders had an enormous cost. My second example is the National Anti-Corruption Commission. This has been described as reform whose time had come. Well, the truth is, its time came probably a decade ago. The Commonwealth should have been among the first jurisdictions in the country to have an anti-corruption commission, not the last.

00:13:36:15 - 00:14:04:28

The Hon Mark Dreyfus KC MP

Questions about how a National Anti-Corruption Commission would operate are, of course, a matter for legitimate debate. I've been a participant in that debate over recent months through both cabinet and parliamentary processes. But the question of whether the nation needed an anti-corruption commission has been clear for a very long time. By the time this year's election came round, 75% of Australians were in favour of an anti-corruption commission.

00:14:05:15 - 00:14:36:10

The Hon Mark Dreyfus KC MP

It's the clearest mandate you could ever have needed. Yet only one party of government took a pledge to legislate a National Anti-Corruption Commission, with teeth, and a deadline, to the May election. The former government's decision to make a promise to introduce a national anti-corruption commission, and then break it, cost it dearly. This, and its failure to meet community demand for climate action, propelled a wave of teal independents into the national parliament.

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The Hon Mark Dreyfus KC MP

While there was debate about the detail, I had little doubt the National Anti-Corruption Commission bills, which passed Parliament last week would ultimately be successful. No parliamentarian could ignore a mandate that was so clear. While the reform is historic - and I'm immensely proud we got it done when we said we would - it would be wrong to say that it was brave because the need for the body had become so widely accepted.

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The Hon Mark Dreyfus KC MP

It is another example of Australians leading the national parliament on law reform, when the parliament should have got there much earlier. All this begs the question - is this a sorry state of affairs or not? Should the nation's parliament wait until the case for major law reform is so clear that the act of legislative change is a formality? Is it not better to approach

controversial change when there's an obvious and widespread support?

00:15:41:24 - 00:16:10:01

The Hon Mark Dreyfus KC MP

I submit that it is not. There are both practical and theoretical reasons for this. The first reason is that not every major law reform can or should wait for a specific mandate. In examples I've used, legislative change followed a clear endorsement by the people - a plebiscite in the case of marriage equality and a federal election in the case of the National Anti-Corruption Commission.

00:16:11:19 - 00:16:37:05

The Hon Mark Dreyfus KC MP

If we were to wait for a vote before pursuing difficult or controversial law reform, there would be a flurry of activity following every election and then nothing for the remainder of the term. It cannot work that way. The second reason is this. Voters elect leaders to do just that - lead. To make difficult decisions in their name. To be forward thinking.

00:16:37:21 - 00:17:35:01

The Hon Mark Dreyfus KC MP

To make the case for legislative change, even if unpopular. Sometimes prime ministers and ministers have to stick their heads above the parapet and be brave. That's what Whitlam did. His reforms are so accepted now that it is easy to forget. Many were deeply controversial at the time. When Paul Keating spoke on the 20th anniversary of the Racial Discrimination Act, he called it, his words, "a brave piece of legislation". And he was right. He reminded those present that the bill was passed only a few years earlier with the White Australia policy. Keating said this, "The Racial Discrimination Act got through against great opposition almost by definition, groundbreaking legislation nearly always faces bitter opponents. But it was good legislation and has done Australia good" end quote.

00:17:36:02 - 00:18:07:13

The Hon Mark Dreyfus KC MP

This brings me back to where I began this speech with a quote from Justice Kirby in 1979: "the way of the reformer is hard in Australia". I do not believe this has changed. In fact, perhaps the only good reform is hard reform by its very definition. In any case, significant law reform still requires bravery. But one thing can change and must change - our attitude to law reform.

00:18:08:24 - 00:19:06:19

The Hon Mark Dreyfus KC MP

In the last near decade, the nation's leaders became timid. They waited for a roaring call to action before lifting a finger. No longer. The Albanese government has already shown it is not afraid to pursue law reform. Indeed, we've committed to the biggest reform of all - constitutional change. The Prime Minister's commitment to enshrine an Aboriginal and Torres Strait Islander voice in the Australian Constitution this term is strong, true and heartfelt. It responds to a call by First Nations people for Voice, Treaty and Truth, expressed in the Uluru Statement from the Heart. The former government should have responded to that call when it was first made in 2017. But shamefully, it did not. The task of holding this referendum has fallen to the Albanese government when it should have been held much earlier.

00:19:07:07 - 00:19:33:26

The Hon Mark Dreyfus KC MP

It is a momentous task. But it is a task, once fulfilled, that will change our country for the better. I've now been Attorney-General in the Albanese Government for six months. I know that if I finish my time as Attorney-General without pursuing things that are brave, I will have failed. Law reform is hard because it changes the country. Law reform is hard because it sparks heated debate.

00:19:34:16 - 00:20:05:11

The Hon Mark Dreyfus KC MP

Law reform is hard because it really matters. These are reasons to pursue it, not to abandon it. In this pursuit, I am very glad to have the Australian Law Reform Commission at my side. I plan to keep it busy and unlike some of my immediate predecessors, I will take its recommendations seriously. In this regard, I note my ready acceptance of the ALRC's recommendation that the government consider establishing a federal judicial commission.

00:20:07:05 - 00:20:42:17

The Hon Mark Dreyfus KC MP

Having recommended then legislated a long overdue whistleblower scheme when lost in government. Last week I introduced a bill implementing 21 of the 33 recommendations made in the 2006 Moss Review. It is an important step in improving Australia's whistleblowing framework for the public sector. One I'm determined to see through. Last week the Parliament passed amendments to the Privacy Act, including much increased penalties for companies and organizations that don't properly manage the personal information they collect.

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The Hon Mark Dreyfus KC MP

Once again, an important first step with more to be done next year following my department's completion of its review of the Privacy Act. In conclusion, writing about the Australian Law Reform Commission three decades ago, Justice Kirby observed, and I quote, "Mobilising some of the best legal talent in the country to work in harmony with people with relevant expertise is the way that more of our laws should be developed. Law reform that is to last will require nothing less". I heartily agree. Thank you, Justice Kirby, for being such a guiding light on the principles and practice of law reform. I hope that by the time the 20th or 30th Michael Kirby Lecture is given, there will be plenty of lasting law reform from the Albanese Government to talk about. Thank you very much.

00:21:52:06 - 00:22:27:27

The Hon Justice Sarah Derrington AM

Thank you very much Attorney-General. You will get no argument from me or my team that law reform is hard. But I'm very pleased to say that over the last five years the ALRC has assembled an exceptional group of young scholars who have worked tirelessly and I hope have produced reports of the quality you expect from your standing machinery for law reform. Now, I understand that you very kindly agreed to take some questions.

If I've been misled, let me know.

00:22:27:27 - 00:22:31:14

The Hon Mark Dreyfus KC MP

No, I'm very happy to answer some questions.

00:22:33:06 - 00:23:13:07

The Hon Justice Sarah Derrington AM

So we have received one question, in late 2021, the Department of Home Affairs issued a discussion paper about electronic surveillance reform. And that paper drew on much previous work in relation to electronic surveillance in Australia, including the comprehensive review of the legal framework of the National Intelligence Community by Dennis Richardson AC. Now, since the election, the reform project has moved to your department, and we understand your department is currently drafting a bill to replace the Telecommunications Interception Access Act of 1979 and the Surveillance Devices Act of 2004 and other legislation.

00:23:13:28 - 00:23:21:22

The Hon Justice Sarah Derrington AM

How will the Albanese Government progress that reform project during this term and when will the draft bill be released for public comment?

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The Hon Mark Dreyfus KC MP

Thanks very much Justice Derrington for that question. It's a big project. The Comprehensive Review by Dennis Richardson, which looked at the Telecommunications Interception Access Act 1979 and the Surveillance Devices Act 2004 and other legislation was a really important and necessary part of reviewing the legal framework that governs the Australian National Intelligence Community. It is a priority for this term.

00:23:57:07 - 00:24:25:00

The Hon Mark Dreyfus KC MP

The fact that the former government wasn't able to respond is perhaps not so much a criticism of the former government, but an indication of the scale of the project. It's a very, particularly the telecommunications Interception and Access Act, is a very outdated piece of legislation. It's got a whole range of technology-specific provisions, including references to telexes and facsimile machines and the like.

00:24:26:21 - 00:25:16:16

The Hon Mark Dreyfus KC MP

And as Dennis Richardson identified, the existing framework is not just outdated, it's inconsistent, it's complex, and it's needing the reform. I think that I can say that we will get to, following a very comprehensive consultation process with the intelligence agencies, with state and territory government agencies, with the oversight bodies, with civil society groups. We are likely to get to a draft bill in this term, and it's certainly my intention that we will have full public consultation on that project when it is completed.

00:25:17:02 - 00:25:56:16

The Hon Justice Sarah Derrington AM

Thank you. Your reference to complexity in that respect is a nice segue into the next question and it is certainly something that the Law Reform Commission has been grappling with in our most current inquiry into financial services regulation. And that is the incredible complexity of the Commonwealth Statute book and it's constantly growing in scale and complexity. Is the Commonwealth Government doing enough, in your opinion, to ensure the care and maintenance of our laws, including by regular review and regular pruning?

00:25:57:06 - 00:26:26:10

The Hon Mark Dreyfus KC MP

I think probably you would have sensed from the address that I've just given that I think that we've been lagging. It's because of the complexity of the Commonwealth Statute book, because there's so much of it, the task of law reform is a constant one. If you slip, if you stop paying attention to that, what should be a constant task of law reform for the better part of a decade.

00:26:26:10 - 00:26:52:10

The Hon Mark Dreyfus KC MP

It'll make the task when it is returned to, as I plan to do and as the Albanese Government plans to do, that much more weighty. It's hard quite to know which to pick as an example, but you could pick the Privacy Act, which hasn't been seriously looked at for a couple of decades. You could point to the financial services legislation that the ALRC is currently examining.

00:26:53:06 - 00:27:25:18

The Hon Mark Dreyfus KC MP

You could point to anti-discrimination legislation or the Bankruptcy Act, which hasn't been seriously looked at since about 1987, or indeed whistleblower reform, something dear to my heart because I brought the Public Interest Disclosure Act to the Parliament in 2013 and provided for a statutory review to take place, which did take place because statutory reviews tend to, but only to find that in the six years since that review was delivered to the government, nothing happened.

00:27:26:01 - 00:27:53:21

The Hon Mark Dreyfus KC MP

Which means that I am now needing to, as I showed with the first stage of reform, to the public interest Disclosure Act that I brought to the Parliament last week, having to not only do it in stages, but also needing to examine whether or not the recommendations that the eminent public servant, Philip Moss, made back in 2016 themselves need updating, which proved to be the case.

00:27:54:27 - 00:28:16:24

The Hon Mark Dreyfus KC MP

We have got, as a government, a commitment to law reform. I've got a commitment to making sure that the Australian Law Reform Commission plays a part in that. But it's also something that every minister needs to pay attention to. And keep in mind the need for regular reviews, regular updating of the Commonwealth Statute book.

00:28:18:18 - 00:28:46:01

The Hon Justice Sarah Derrington AM

You've made a number of references to the big reforms that you have in mind, and you made a couple of references to Mr Whitlam's lasting reform agenda. Have you got any other big Whitlam-esque type reforms in mind for the remainder of your term as Attorney-General that you're prepared to share with us at this point?

00:28:47:27 - 00:29:21:13

The Hon Mark Dreyfus KC MP

I have to wait to get Cabinet approval is the short answer.

And I've outlined a couple at the end of the address I've just given. I've bought reforms to the Privacy Act in this session of Parliament, and I do have Cabinet approval and have announced that we will be bringing major reforms to the Privacy Act, to the parliament next year. But I need to have the Attorney-General's Department complete its review of the Privacy Act first.

00:29:23:02 - 00:30:11:04

The Hon Mark Dreyfus KC MP

I've brought reforms to the Public Interest Disclosure Act forward in the last week and indicated that I intend to bring more reforms forward next year. There's a range of other Commonwealth Statutes that are certainly in need of reform. I'll mention one which is in prospect, which is the Native Title Act. As you correctly noted in your introduction, Justice Derrington, I commissioned the Law Reform Commission in 2013 to do a review of, not the whole of the Native Title Act, although that thought did occur to me when I was commissioning the Law Reform Commission, I thought it preferable, rather than to give the Commission a really huge task.

00:30:11:21 - 00:31:05:16

The Hon Mark Dreyfus KC MP

On the 20th anniversary of the Native Title Act, I thought it preferable to pick out known problem areas in the Native Title Act. The really good report that the Australian Law Reform Commission provided to the Australian community in 2015 has gone unanswered by the former government. It's something that I intend to go back to look at and see whether there are appropriate reforms that can be made in Native Title. There's actually a long list of unanswered, uncommented on reports by both the Australian Law Reform Commission and a range of other parliamentary committee inquiries. So there's fertile ground to till in the years ahead.

00:31:07:07 - 00:31:24:16

The Hon Justice Sarah Derrington AM

So we're three years away from the 50th anniversary of the Australian Law Reform Commission, what do you hope to be able to say to the assembled throng on that occasion about the work of the ALRC in your time?

00:31:25:16 - 00:32:06:00

The Hon Mark Dreyfus KC MP

I hope to be able to say congratulations, but I'd say it already. In it's almost 50 years the ALRC has produced some, more than, 130 law reform reports. Some of them have produced nation changing legislation, nation changing reform. And I think that it's possible to say that the Australian Law Reform Commission has amply fulfilled the promise that Gough Whitlam held out when he passed the predecessor statute to the current statute for the Law Reform Commission.

00:32:06:00 - 00:32:43:28

The Hon Mark Dreyfus KC MP

As I said in the address, Gough Whitlam was right to say that the way of the law reform was hard, but having a permanent body engaged in review processes, engaged in evidence-based reports that suggest ways to improve and modernise and simplify the law has proved to be a terrific innovation. I very much doubt that I'm going to be disappointed over the next three years as we approach the 50th anniversary of the ALRC or the establishment of the ALRC.

00:32:44:05 - 00:33:22:16

The Hon Mark Dreyfus KC MP

I'd perhaps say that one of the things that has been increasingly apparent, both the nature of the task that confronts government, but also the nature of the reports that the ALRC is increasingly engaged in, is the rate of technological change and complexity, that's a feature of the society that we live in. And it not only presents many opportunities for law reform, but constant challenges as to the relevance of legislation that governs our community.

00:33:24:00 - 00:33:55:18

The Hon Justice Sarah Derrington AM

Thank you, Attorney-General. I will especially look forward to what the next three years brings up to the date of the 50th anniversary. I thank you very much for your insights. I thank you very much indeed for agreeing to deliver this most important Inaugural Lecture, and I will ask everybody in the audience to join me in thanking you most sincerely.

00:33:55:18 - 00:35:19:07

The Hon Justice Sarah Derrington AM

It now turns to thank and farewell the Honourable Justice Middleton, about whom Attorney-General you have already spoken, and we're here to thank him for his decade of service to the Australian Law Reform Commission. As said on the occasion of my farewell last week, I've had the pleasure of assembling what I've described as my own elite little law school within the ALRC, with a group of very academically-minded staff with access to the finest academics Australia and the world has to offer (two of whom are sitting right here, Jeannie Paterson and Rosemary Langford), access to the profession and access to the judiciary. So it is fair to say, I think, that the last five years have shown a rather academic bent to the Law Reform Commission, and Justice Middleton has been no exception. He is an honorary principal fellow of the University of Melbourne, an alum of the Melbourne University Law Review. He has lectured and taught at the University of Melbourne now for many years, particularly in the subject of civil regulatory litigation within the Melbourne Law Masters, which I know is exceptionally well received.

00:35:20:00 - 00:36:26:02

The Hon Justice Sarah Derrington AM

He served on the University of Melbourne Council, is a member of the American Law Institute, a fellow of the Academy of Law, a member of the Editorial Board of the Journal of Intellectual Property Society of Australia and New Zealand. A member of the AICA Advisory Board and Judicial Liaison Committee and patron of the Oxford University Society in Victoria. So his academic credentials are well established. As the Attorney-General has already recounted, he has been a commissioner during many important inquiries, including those for which I've been responsible: financial services legislation, judicial impartiality, family law for the future, an inquiry into class action proceedings and third party litigation funders, and just as I arrived, Pathways to Justice, the inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples, the groundbreaking elder abuse report, the review of the Native Title Act and the other three inquiries which you, Attorney-General, commissioned.

00:36:26:02 - 00:36:58:04

The Hon Justice Sarah Derrington AM

He has chaired and presented at numerous public seminars and webinars for the Australian Law Reform Commission. He has very properly cited many of the Australian Law Reform Commission reports, in his judgment, as any good Commissioner should do. And he has also cited Australian Law Reform Commission reports in many speeches. I won't talk about his other extracurricular activities because that would be to breach trust and confidence.

00:36:58:10 - 00:37:19:27

The Hon Justice Sarah Derrington AM

And much of those will be recounted no doubt later in the week on the occasion of his valedictory from this Court. He has given enormous service to the people of Australia and to the Law Reform Commission over that decade. The Law Reform Commission owes you a huge debt and will be sorry that you are no longer part of the team.

00:37:19:27 - 00:37:52:06

The Hon Justice Sarah Derrington AM

But we know where you'll be and we know whether working for the Law Reform Commission or not that we will always be able to call on your expert wisdom and advice. And so on behalf of the Law Reform Commission, we have a gift for you, and we thank you very much indeed for that service. Thank you.

00:37:52:06 - 00:39:12:13

The Hon Justice John Middleton AM

Ladies and gentlemen. Thank you, Sarah. And thank you, Mr Attorney, for your kind comments. I'm particularly happy that there's been a warm farewell today because I have a nasty feeling on Thursday that there'll be some stories told that perhaps shouldn't be. And I have already tried to bribe Mr Sam Hay KC, President of the Victorian Bar, who is going to speak on Thursday, but he seems to be unbribable. I have enjoyed so much my ten years on the Australian Law Reform Commission, a number of reasons. The leadership under Ros Croucher and Sarah Derrington has just been marvelous and it's hard to describe any other way. In every way they have proved to be great leaders of what is, as the Attorney has said, and Justice Kirby has said, and Mr Whitlam has said, it is a hard job to have is to try and persuade people that certain laws have to be reformed because human nature being what it is, we don't like too much change, even if it's obviously for the better.

00:39:13:19 - 00:39:48:10

The Hon Justice John Middleton AM

Then we have the team which has been spoken about it. at every time we celebrate the Law Reform Commission, young, talented, enthusiastic lawyers and staff. It is a joy at the time we have been working through things to be with them and to see the enthusiasm. Then you have the consultative committees and we have people from all walks of life, terrible word, stakeholders, but sometimes that's how we refer to them as being people who can bring a different perspective to the particular issues.

00:39:48:21 - 00:40:10:12

The Hon Justice John Middleton AM

So we're not just narrowly focused on what lawyers think about or judges think about or old people think about or whatever color we are think about. It's a very broad spectrum which is great to have that debate. And then I think from my point of view, actually, believe it or not, I know some of you who read my decisions won't believe this.

00:40:10:12 - 00:40:38:23

The Hon Justice John Middleton AM

I do actually enjoy the law and enjoy the discussion of the law. And whilst you do that as a judge, you do it in a very much a litigious framework. You're channeled into one way of having to argue about something. Whereas on the Law Reform Commission, even though we have to wait upon a reference from the Attorney-General, the topics are wide and you can actually get into areas which you otherwise wouldn't have the opportunity to do, even though the Federal Court jurisdiction, as you know, is very wide.

00:40:39:12 - 00:41:14:11

The Hon Justice John Middleton AM

So I've had a great time, I thank everybody for assisting me in that and the ten years has gone very, very quickly. I just want to finish by saying how heartened I am, Mr Attorney, by your comments about the future of law reform in this country and your reliance upon the Commission. History has shown, as you have indicated and as Sarah has indicated, the Commission has done some magnificent work and has done work, which has been recognised in the courts and by the academy as well.

00:41:15:00 - 00:41:41:29

The Hon Justice John Middleton AM

And to have the support of government is essential. Not only for the reference but also for the financial support that any independent agency has to have. So on that note, thank you very much for your comments and I wish everybody a happy night.

00:41:42:20 - 00:42:13:27

The Hon Justice Sarah Derrington AM

Thank you, John. Well, I hope Michael Kirby would have been pleased and proud with this evening's event. An excellent lecture and an excellent chance to farewell and thank Justice Middleton. I said at the beginning that he'd been a most gracious mentor and advisor to me, but I did ignore one piece of advice that he gave me, and that was that I should appear on daytime television as he used to do.

00:42:15:18 - 00:42:37:24

The Hon Justice Sarah Derrington AM

To discuss what we should have topics with the general public. I thanked him for that advice. I hope graciously declined.

Please, well those of you in Melbourne, join us for refreshments outside and those of you not in Melbourne, I hope you have your own refreshments waiting for you somewhere. Thank you all very much and good evening.

**Recording of webinar on ALRC website:**

<https://www.alrc.gov.au/news/recording-2022-michael-kirby-lecture>