



# SEEK THE TRUTH AND SERVE HUMANITY

# the Beacon

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## WE ARE SUPPORTING REPRESSIVE GOVERNMENTS

EDITORIAL

Serious attention and action must be applied to any government that employs repression, anti-democratic legislation, corruption and propaganda to mislead the people. These actions are simply to strengthen their position as apologists for and supporters of transnational corporations, and worse, at the same time providing military aid and training to extremist and fascist-style governments in countries such as the Philippines, Saudi Arabia and the Congo.

Human rights groups say it is 'unthinkable' that Australia has been secretly exporting arms to the war-ravaged Democratic Republic of Congo and other countries whose militaries have been consistently accused of war crimes and crimes against humanity.

*The Guardian* revealed that the Australian government had approved the export of weapons to the Democratic Republic of Congo four times in 2018–19. It has also issued more than 80 weapons export permits to Sri Lanka, the United Arab Emirates and Saudi Arabia.

Australia has shipped a range of military hardware to the Philippine government, which is responsible for the deaths of an estimated 12,000 people, mostly poor urban dwellers in a 15-month 'war on drugs', according to Human Rights Watch, a US-based rights lobby (31 Jan 2018).

Our Government has been exposed by the media on a range of fronts, including corruption and anti-democratic legislation, and there is no question that they continue to provide support for corrupt and extreme right-wing governments around the world.

Minister Dutton is currently looking at ways to 'protect the Australian people from foreign interference in our internal affairs, but we need to be

very wary of this proposal when our Government is selective in the countries it targets. We are continuing to promote and support such countries as those mentioned above where human rights abuses occur and those battling for democracy and social justice are being labelled as enemies and slaughtered by state authorities in the name of 'national security'.

We have a federal government that is devoid of policies, lacks leadership, continues to introduce suspect legislation that serves the few while leaving many in abject poverty, without a secure roof over their head, insecure employment, underpaid and overworked.

It is time for those who are deeply concerned about all of these areas to stand up and say enough! Our resources belong to the people, they must be reclaimed and renationalised, not sold off to transnationals overseas who profit from our pauperisation.

We want an immediate national program providing public housing for all those struggling to find a home. We want respect for our trade unions trying to protect their members from rank exploitation and we reject the farcical 'Ensuring Integrity' legislation that is simply intended to destroy the unions' ability to do its work for its members.

We want immediate attention to the emergency of global warming, and we want a completely independent foreign policy so that we are not drawn into the aggressive wars of imperialist nations.

Our church is proud to demand these because it should be the responsibility of all churches to 'seek the truth and serve humanity'.



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BY PETER SUTTON

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FORMER NEWSTART RECIPIENT

A TALK GIVEN AT THE MELBOURNE UNITARIAN PEACE MEMORIAL CHURCH ON 9 FEBRUARY 2020



# Raise the Rate Program

I am a volunteer with the Australian Council of Social Services (ACOSS) Raise the Rate Campaign and I am speaking on the important topic of raising the rate of Newstart. Appropriately, I have noted the Unitarian message to 'Seek the Truth and Serve Humanity'.

I would like to begin with a quotation from Nelson Mandela, whom I find to be an inspirational man. Mandela said, 'Like slavery and apartheid poverty is not natural. It is manmade and it can be overcome by the action of human beings.'

The Irish statesmen Edmund Burke once stated: 'All it takes for evil to triumph is for good men to do nothing'.

There are a number of groups and individuals calling for an increase to Newstart of at least \$75 per week. These include the Business Council of Australia who have argued the current rate of Newstart is too low and an impediment to getting a job. Others include Dr John Hewson, an economist, academic, journalist and adviser to former prime minister Malcolm Fraser, as well as being a former Liberal Party and opposition leader; Deloitte Access Economics; and former prime minister John Howard. KPMG, the international accounting firm, has gone further suggesting an increase of \$100 per week. Others include the Council of the Ageing and National Seniors Australia. It also includes the National Party concerned for those in rural and regional communities.

For those not familiar with Newstart, it is \$559 per fortnight for a single person, \$504 each for a couple both on Newstart. Other allowances include a rental

allowance, which is based upon the amount of rent paid. The maximum rental allowance is \$138 per fortnight. It is not available to those who own their own home and have a mortgage.

Contrary to the perceptions of many, the majority of those on Newstart are not young dole bludgers but those over 50 years of age. This includes many women, who have low superannuation balances and little money after raising children, having worked less. Economic modelling has demonstrated that an increase of \$75 per week would cost the budget \$3.3 billion. That same modelling shows that there would be a stimulatory effect upon the economy as low income people would spend more. The net cost would be about a billion dollars.


I was on Newstart until November 2019 when I was approved for the disability pension. Qualifying for the Disability Pension is very difficult now. Many of those on Newstart are older people, or those with chronic health conditions as a result of illness and injury.

A little bit about me. I was born the eldest of seven children in Shepparton Victoria. I then grew up and was educated in Cobram Victoria, which is on the Murray River. My parents operated a garage and light engineering business. I came to Melbourne first for university and then I became employed at the Commonwealth Bank of Australia where I worked for twenty years. At the time, the Commonwealth Bank underwent a group restructure and all business banking positions were spilled. I was re-appointed to my position. Twenty years was a long time and I


was seeking a break, so I approached the CBA for retrenchment. I was swapped for a surplus employee who wanted to remain. My intention was to travel and to work casual jobs in between jobs. It was ultimately my intention to return to employment within the financial sector. I worked casual and temp positions at Australian Unity in health insurance, tele begging for Wheelchair Sports Victoria and for a short time at the Australian Taxation Office. I found employment as a casual at Myer.

In 2006, as a pedestrian, I was struck by a motor vehicle whilst crossing the road. I was then off work for about seven months before returning to Myer. This job was suitable as it allowed me postural change and I was able to maintain that job. Whilst at Myer, I won four national and Vic/Tas awards. I think that it showed I was a pretty good employee. As I have aged, my injuries have worsened. I was then taking time off work. As I had a life policy at AMP, they assisted me with an occupational therapist. With that help we developed a return to work program. It started as low as 4 hours and worked up to 30 hours. In 2018, I had a severe flu and required time away from work. Myer terminated my employment as an alleged breach of the return to work program. I had always intended to be self-reliant. I had life insurance, private health and extras insurance. I donated money to charity and volunteered for medical research studies. I maintained my health and had regular dental and optical examinations.

That all changed. I no longer had dental check-ups as it was too costly. After ignoring it for a few years, I had to address it when I required emergency dental care as I had lost two teeth. Community dental services have a nominal fee of \$20–25; however, on Newstart this is a burden. I could not afford hair-cuts, so I let these go. This of course impacts grooming and presentation. There are other impacts. I became socially isolated, which impacts mental health and self-esteem. I would receive invitations from friends for drinks, for dinner or for coffee. As this involved expense, I would decline the invitations. My pride was such that I would not accept charity where others would offer to pay. It affected my self-worth. As a single person, with a mortgage and utilities, I ate less. I would eat one meal per day and to save money it would be pasta or eggs: boiled eggs, poached eggs, fried eggs and scrambled eggs. As a result of my accident injuries, I experienced post-traumatic stress and anxiety issues. The TAC funds a psychologist. My psychologist would often provide me with lunch and give me some foodstuffs to take home. Last



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year I had plumbing issues as I had a hot water tap in the shower that I could not turn off. I could not afford to have it repaired so I would turn the hot water service off and turn it on when required. The hot water service then died. I wasn't able to pay my loan obligations and lenders were seeking to take my home. I had accessed superannuation under financial hardship provisions. This is restricted, however, to \$10,000 in a year. This sum is taxed at 22%, so the net amount is \$7800. Fortunately, I told my story to the ABC and I received some free legal help. I have been able to access some of my superannuation and a TPD benefit from a life policy and I have been able to secure my home. Many others on Newstart cannot. There is a large group who sleep in cars and couch surf. Let me conclude with another quotation. This is from the Irish playwright George Bernard Shaw. He said, 'Money is like manure; to do the most good it needs to be spread around.'



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## THE EXTENT OF DESTRUCTION

Ten million hectares of vegetation burnt, mostly in the eastern states, is one of the largest devastations in Australian history [27 January 2020, Nature Magazine].

'The scale of the destruction, devastation and death resulting from Australia's climate change fires is almost impossible to comprehend. It's like nothing we have seen before and it has been likened to an "atomic bomb", with more earth scorched than three times that of the recent Amazon and Californian fires combined' [6 January 2020, Byline Times].

These fires are pushing 'the increase in global carbon dioxide past their record this year'.

'Most recent estimates suggest that fires on the driest inhabited continent will release about 900 million metric tons of carbon dioxide to the atmosphere – about the same emitted by all commercial aircraft in 2018' [24 January 2020, Bloomberg Green].

CSIRO microbiologist Gavin Rees indicated ash and soil being washed into the rivers would result in massive fish deaths. 'You can have large tracks of water where there's no oxygen' [25 January 2020, ABC Mildura-Swan Hill].

There are well-founded fears that more than a billion animals have perished in the fires. RMIT-ABC Fact Check has a discussion of the evidence on the ABC News website. NSW Rural Fire Service Inspector Ben Shepherd made it very clear that lightning was predominantly responsible for the bushfire crisis.

'Only about 1 per cent of the land burnt in NSW this bushfire season can be officially attributed to arson, and it is even less in Victoria, the ABC can reveal' [18 January 2020, ABC News].

## CLIMATE CHANGE THE CAUSE

Despite the extreme situation, the Australian government has acted almost as if nothing unusual is happening.

In November, deputy prime minister Michael McCormack dismissed the role of climate change in the current fires as the 'ravings of some pure, enlightened and woke capital-city greenies'. *New Scientist* was not impressed with the response, noting the refusal of Morrison to increase Australia's emissions reduction targets when 'according to 2019 figures 93 per cent of Australia's energy comes from fossil fuels, compared with the 80 per cent average for countries in the Organisation for Economic Co-operation and Development' [8 January 2020, New Scientist].

Insane conspiracy theories have been used by Morrison defenders and climate change deniers.

'These conspiracies include: blaming environmentalists for opposing hazard reduction burns, erroneously blaming the Green Party's fuel reduction policies, a failure to clear deadwood from forests or create firebreaks, the expansion of settlements in wooded areas, the "sun's magnetic fields", and even gay sex – as former Australian rugby union player Israel Folau suggested' [6 January 2020, Byline Times].

There is no doubt that climate change is a driving factor. In 2008, a report commissioned by the Australian government predicted that from about 2020, global warming would cause Australia's fire seasons to start earlier, end later and be more intense. 'We knew this was going to happen,' says Perkins-Kirkpatrick [8 January 2020, New Scientist].

Our Academy of Science was also defending reality: 'The scientific evidence base shows that as the world



warms due to human induced climate change, we experience an increase in the frequency and severity of extreme weather events' [10 January 2020, Australian Academy of Science Statement regarding Australian bushfires].

NASA and the National Oceanic and Atmospheric Administration (NOAA), in their annual report on global temperatures and climate conditions, pointed to the fact that '2019 was the second warmest year on record and the past decade was the warmest ever.'

Australia was portrayed as an example of what is to come for the world. 'The fires raging in Australia are just a recent example of the challenges a continuously warming Earth will present' [16 Jan 2020, CBC News].

Chris Bowen pointed to the dangerous effects of the warming planet: 'The World Health Organisation estimates 250,000 people a year will die globally as a result of a warming planet by 2030'. He argues: 'Australia is just as, if not more, exposed than other nations. Heatwaves already claim lives in Australia. They will claim more' [20 January 2020, SMH].

There will also be a threat to food supply. 'We estimate that the shift in climate has cut average annual broadacre farm profits by around 22%, which is an average of \$18,600 per farm per year, controlling for all other factors. At a national level this amounts to an average loss in production of broadacre crops of around \$1.1 billion a year' [18 December 2020, The Conversation].

## THE STENCH OF CORRUPTION

Australia is the world's largest exporter of both coal and gas and is the world's largest emitter of carbon emissions per capita. 'It is ranked 57 out of 57 countries on climate change action, while holding the second greatest share of climate change deniers in the developed world.'

'It is no secret that Australia's Government is working hand-in-hand with the now dominant right-wing media ecosystem in denying or minimising climate change and, within this, the power and influence of the mining industry – the country's most lucrative pursuit – is hidden in plain sight. Since 2011, mining and energy corporations have donated \$8.4 million to the conservative coalition state and federal branches. Comparatively, the Labor Party that accepts climate science, has received only \$2.8 million' [6 January 2020, Byline Times].

According to Basav Sev: 'Dig beneath the world's far-right governments – you'll find fossil fuels'. Oil and gas companies have been lobbying US Congress to insert provisions criminalising protests against fossil fuel infrastructure into a pipeline safety bill. Opponents of the devastation threatened by Adani in Queensland should note the close links between Adani and Modi, the BJP fascist leader of India.

'Adani has also been a vocal supporter of Modi, including when the latter faced scrutiny for his role in covering up an anti-Muslim pogrom when he led the state of Gujarat.'



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'And like the US government, the Modi government is also criminalizing Indigenous resistance to extractivism by equating it with "terrorism".'

'For cross-border movements for justice to successfully dismantle far-right ethnonationalism backed by fossil fuel and other corporate interests, in the US, India, Brazil, and elsewhere, we must start with a shared understanding of the common material and ideological foundations of the global far right' [10 October 2020, Foreign Policy in Focus].

Not only do they lobby effectively for criminalising opposition to the extractive industry, they do not pay tax. 'It's Top 40 Tax Dodgers time and Exxon has topped the charts again. This year, we are announcing all 40 in one go. ExxonMobil Australia has racked up total income of \$42.3 billion over the past five years of available Tax Office data. Yet it paid not one cent in income tax in this country.'

'It begs the question, as bushfires rage across this drought-ravaged land, and as throngs of individual taxpayers make their personal donations, are these corporations pulling their weight? Should there be a fossil fuel levy?' [31 January 2020, Michael West Media].

## BECOMING CLIMATE REFUGEES

We have seen our first climate refugees over December and January in NSW and Victoria. There is a strong indication that central Australia will soon see a significant climate refugee problem. 'We can't keep going on the way we're going,' says Douglas, who is manager of policy and research at the Central Land Council.

'Without action to stop climate change, people will be forced to leave their country and leave behind much of what makes them Aboriginal. Climate change is a clear and present threat to the survival of our people and their culture' [18 December 2019, Guardian].

They will not be the only climate refugees if Dr Mann, director of the Earth System Science Center at Pennsylvania State University is correct. 'It is conceivable that much of Australia simply becomes too hot and dry for human habitation.'

'In that case, yes, unfortunately, we could well see Australians join the ranks of the world's climate refugees' [15 January 2020, SBS News].

The nation that has accepted the detention and abuse of asylum seekers may soon contribute to the

international flow of refugees. But not only Australia will suffer. The whole world is under threat.

UN High Commissioner for Refugees, António Guterres, predicted at the 2009 Climate Change Conference in Copenhagen, that climate change will become the biggest driver of population displacements, both inside and across national borders, within the not too distant future. 'Stressing that climate change should not be considered a distant worry, Guterres noted that a staggering 36 million people were displaced by natural disasters last year, of whom more than 20 million were forced on the move by climate change-related factors' [16 December 2009, Melissa Fleming UNHCR].

We are at the beginning of something very dangerous to the planet and how we deal with it will have profound effects for many years to come.



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BY CHRISTOPHER KNAUS

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## Courage Etched in Australian History

Peter Galbraith was playing a high stakes game. It was 2004 and Timor-Leste's government, with Galbraith as its chief negotiator, was desperate to get a fair deal from the bountiful underwater oil and gas reserves that lay between it and Australia, a trusted ally and regional powerhouse.

Success would give it a significant share of fields worth \$40–\$50bn, helping lift the fledgling nation out of poverty. The game, though, was rigged.

Unbeknownst to Galbraith, Australian Secret Intelligence Service (ASIS) agents had been instructed to bug key offices of the Timor-Leste government. The listening devices would reveal Timor-Leste's bottom line, its negotiating tactics and the competing views of cabinet members.

'It was outrageous,' Galbraith tells *Guardian Australia* from his home in the US. 'I'd taken protective measures against Australian espionage, which I thought would be based on cell phones and internet, but I thought it was pretty crude to be bugging the prime minister's offices.'

'It was not what you do to a friendly state. And it was not something you do for commercial advantage.'

The ASIS operation remained secret. The treaty was signed.

Australia secured a 50/50 split of the Greater Sunrise fields, positioned 450 km north-west of Darwin and 150 km south of Timor-Leste. It was a good deal for the Australian government, and a boon for the joint venture of multinationals, led by Woodside, seeking to exploit the Timor Sea.

'The whole experience of the negotiation from 2000 on was to see a country where corporate greed was a big part of it, because the Howard and Downer government, they were shills for the corporations,' Galbraith said. 'That was what was really important to them. It was pretty shocking.'

Australia's actions would have been buried in perpetuity, had it not been for one ASIS operative, known only as Witness K. The senior intelligence officer felt deeply uncomfortable about the operation, which was mounted during a heightened regional terror threat due to the 2002 Bali bombings. He eventually approached the intelligence watchdog, the Inspector General of Intelligence and Security (IGIS).

The spy obtained permission to talk to an approved lawyer, Bernard Collaery, a barrister and one-time attorney general for the ACT.

Collaery helped the Timor-Leste government build a case against Australia at The Hague, alleging the bugging had rendered the treaty void.

The revelations were splashed across mainstream media. In Timor-Leste, the pair were seen as heroes. Former Timor-Leste president, José Ramos-Horta, last month called for the pair to be awarded his nation's highest honour. 'They are individuals with a conscience and courage, representing the very best of Australians as I know them – instinctively sympathetic to the underdog, the weak and vulnerable.'

'There's another aspect to this affair that most Australians haven't appreciated,' according to Prof. Clinton Fernandes of the University of NSW, who has followed the case closely. 'The moral injury is felt deeply by the people of Timor-Leste,' Fernandes said. 'They want Australia to be a good neighbour, not an eavesdropper who breaks the 10th commandment repeatedly. Collaery is a great Australian in their eyes.'

It's a stark contrast to their treatment in Australia. Witness K and Collaery now face jail time for helping correct what they saw as a gross injustice. Witness K has pleaded guilty to sharing protected ASIS information. Collaery will fight on, facing a partially secret trial in the ACT supreme court, the court where he has spent much of his life practising.

The pair's actions embarrassed powerful forces within government, intelligence, and corporate Australia. Those forces would wait almost a decade to exact revenge.

In the summer of 2013, Collaery had flown to The Hague to ready Timor-Leste's case against Australia, when 10 officers, including agents from the Australian Security Intelligence Organisation (ASIO) raided his home office. The officers produced a warrant, most of which had been blacked out, and offered a simple explanation for their presence: 'national security'.

This was a blatant bullying tactic by the Australian government, designed to intimidate. The raid lasted six hours, with officers rifling through Collaery's documents, including documents directly related to the arbitration between Timor-Leste and Australia. A second raid was taking place at the home of Witness K, who was preparing to give evidence at The Hague. The raids were just the start. Witness K's passport was seized, preventing him from flying to The Hague. His efforts to get it back stretched across six years of secret hearings in the administrative appeals tribunal.

The most shocking development came midway through last year. Timor-Leste had by then dropped its case against Australia, paving the way for the signing of a new treaty on the Timor Sea maritime boundary in March 2018. The revised deal was far more favourable to the smaller nation, and it is

now expected to reap between 70% and 80% of total revenue.

Three months after the treaty was signed, independent MP Andrew Wilkie revealed the Australian government had approved the prosecution of Witness K and Collaery. Crossbench senator Rex Patrick accused prosecutors of sitting on evidence for three years to avoid a diplomatic incident. The pair were charged with conspiring to breach section 39 of the Intelligence Services Act for allegedly communicating information they obtained in the course of employment or an agreement with ASIS.

The case drew immediate condemnation from lawyers, former judges, academics, and civil society groups. Labor has, so far, been relatively quiet on the case. It has fallen on individuals such as former Victorian premier Steve Bracks and NSW shadow attorney general Paul Lynch to take up the cause.

The case against Collaery and Witness K comes as Australia pursues a range of whistleblowers with vigour.

Prosecutors have lodged separate criminal proceedings against Richard Boyle, a tax office whistleblower, and David McBride, a military lawyer who leaked documents to ABC journalists. The cases have opened a debate about the adequacy of Australia's whistleblowing protections.

A Griffith University report identified a need to reform blanket criminal prohibitions on the unauthorised release of information. Instead, secrecy laws should make allowances for disclosures in the public interest, the report said. Such an approach was recommended in 2010 by the Australian Law Reform Commission's inquiry into secrecy laws but has not been implemented.

Many questions remain about the Witness K and Collaery affair, not least about Alexander Downer, the former foreign affairs minister who went on to work for Woodside as a consultant after leaving office.

'The bottom line here is that Downer (and Woodside) wanted to force East Timor, one of the poorest countries in the world, to surrender most of the revenues from Greater Sunrise, revenue it could have used to deal with its infant mortality rate – currently 45 out of 1,000 children in East Timor don't live past the age of one,' Senator Patrick told parliament. 'And yet our plan was to deprive them of oil revenue.'

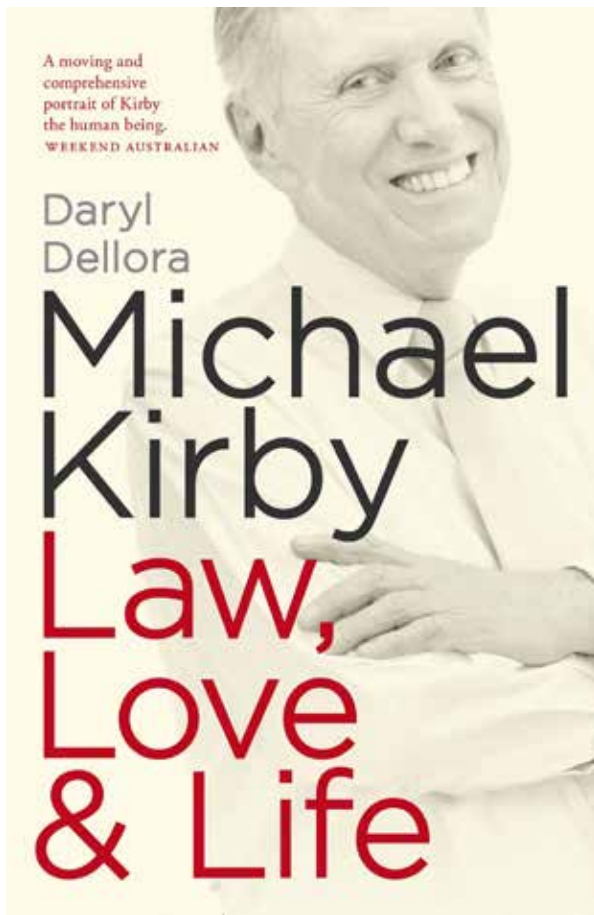
But for all the questions, one thing remains clear for Chloe Preston, Collaery's former law clerk.

'Whatever happens from here, the courage they have displayed is already etched into Australian political history,' she says. 'For years to come, Australians, young and old, will learn of the two heroes who revealed the farce of politics in this country.'

Source: *Adelaide Voices* September 2019 – February 2020

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Thank you for inviting me here today. It is an honour to be asked to address the church. Michael Kirby would think it entirely appropriate. He, of course, is a religious person, although he is of the Anglican faith. But when I saw the words of the song that we all sang this morning, I immediately thought that Michael Kirby would be very much in agreement with the sentiments of love expressed there. As many of you know, I directed the film *Mr Neal is Entitled to be an Agitator* about the late and great High Court Justice Lionel Murphy QC. The film was screened here in the church not that long ago. It was in the making of that film that I first met Michael Kirby, then Justice Michael Kirby, President of the NSW Court of Appeal. He generously agreed to take part in the film. From then on, we kept in contact and later I made a film about the High Court of Australia, *The Highest Court*, when he was first appointed to the court. Then, more recently, I returned to the High Court in Canberra to make a biographical film about Michael Kirby's life. This then led to the book *Michael Kirby: Law, Love & Life* (Penguin 2012).

Today I would like to do a short reading from that book. Only this week an important judgement was handed down by the High Court of Australia in *Love v Commonwealth of Australia* and *Thoms v Commonwealth of Australia* where the court found that Indigenous Australians could not be considered aliens in their own land, under the *Migration Act*, and deported. Why any Australian government would be wanting to deport Indigenous people remains

a deeply troubling mystery. Nevertheless, for the particular individuals involved, their life and liberty being at stake, and in that case the result was very heartening. In the case I am about to tell you about, unfortunately, nothing could be further from the truth. Here the Constitution of Australia and the Howard government and the relevant legislation failed the Indigenous people of this country. It is a sad but true statement that more often than not this is the case.

The following is from *Michael Kirby: Law, Love & Life*:

'In February 1998 a major constitutional case, *Kartinyeri v Commonwealth*, came before the Full Court and for the first time, TV cameras were there to record it. Justice Toohey had retired and given John Howard a second opportunity to shape the court in his own image. His replacement would placate the calls from Howard's front bench for a capital "C" Conservative. *Kartinyeri* was to be only the second case that the new justice, Ian Callinan, was to sit on. Callinan was a Queensland barrister widely known as the QC who had prosecuted Lionel Murphy. There had been a big celebration, in some quarters, when he secured a conviction of the radical judge on charges of attempting to pervert the course of justice. (Unfortunately for them the champagne had gone a bit flat when Murphy was finally acquitted after an appeal and a retrial.) *Kartinyeri* had its origins in a dispute between developers of a marina complex in South Australia and local Indigenous people.

The Hindmarsh Island bridge was intended to join the sleepy island community 90 kilometres south of Adelaide to the township of Goolwa on the mainland; it was to cost \$14 million and was to be funded by the South Australian Government. The prime beneficiaries, however, were developers Tom and Wendy Chapman, who needed the bridge in order for their massive marina complex to turn the greatest profit.

There was community unease over the Chapmans' proposal because it would change the nature of the quiet seaside resort forever. Stage-one work commenced on the bridge in October 1991 but by 1993 there was substantial opposition from a broad-based group, including the Conservation Council of South Australia, the Construction, Forestry, Mining and Energy Union (CFMEU), the Goolwa Residents and Ratepayers Association, Greenpeace, local residents and holiday-home owners, and the Ngarrindjeri Aboriginal people. The issue came to a head the following year, when the federal Aboriginal Affairs minister in the Keating government, Robert Tickner, made a declaration under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* stopping the building of the bridge for twenty-five years. The basis for the ruling was the minister's obligation under the Act to preserve and protect from injury "areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition".



A group of Aboriginal elders had presented evidence about their beliefs to Tickner in envelopes marked 'Confidential: to be read by women only'. This was sensitive material that no man could see, and it was referred to as "secret women's business". A campaign began, circulating the view that the "secret women's business" had simply been made up by the Ngarrindjeri women. The Keating government was lashed for being so politically correct and naive that they could be duped by "lying Aborigines" into stopping important economic development. The Aboriginal women's beliefs were ridiculed by largely white, male politicians and commentators who, by their own admission, knew nothing about it.

By the time Ngarrindjeri elders Doreen Kartinyeri and Neville Gollan took their action in the High Court, Howard had won the 1996 election and as prime minister had introduced the Hindmarsh Island Bridge Act. Under Howard's new legislation, Aboriginal heritage protection was made inapplicable in relation to just one thing: the proposed bridge. In fewer than 700 words he excised the Hindmarsh Island bridge from the purview of the original Aboriginal and Torres Strait Islander Heritage Protection Act. The Hindmarsh Island bridge development was simply no longer subject to the law protecting valuable Aboriginal heritage sites. (This was a method Howard would employ again later, excising geographical parts of the Australian nation from the *Migration Act 1958* in order to deny refugees landing on outlying islands full legal rights in their claims for asylum.)

The South Australian Liberals, who had opposed the construction of the bridge, had won the state election in December 1993, changed their position and, under pressure from John Howard, set up a royal commission into the Ngarrindjeri people's religious beliefs. It was to be a farce. The royal commissioner was never told what the 'secret women's business' was but decided to make a series of assumptions about what it might be and test those assumptions. In a staggering piece of logical contortion, the royal commissioner found that the Ngarrindjeri did not hold the religious beliefs they claimed to hold, even though the royal commission remained unaware as to exactly what they were. By now, the bridge itself was well under construction and the very phrase, 'secret women's business', had become a national joke.

Generally speaking, if a justice has already stated his or her opinion on a matter that subsequently comes before the Court, then they must recuse themselves from the hearing. Justice Ian Callinan had indeed given advice on this specific controversy; in fact, he had done so on two separate occasions as a QC in Queensland. First, he had prepared a draft of suggested terms of reference of the South Australian royal commission on the Hindmarsh Island bridge, and second, he had written a joint opinion for the Howard government on the constitutionality of the very legislation now before the High Court. Nevertheless, he did not feel the need to stand aside. Jim Spigelman QC, appearing for Doreen Kartinyeri, thought otherwise. Callinan listened attentively to Spigelman's arguments but rejected them, appearing

on the bench with the others on the first day of the hearing. Spigelman then said that if the justice would not recuse himself, he would ask the other six justices to make a ruling. This had never happened before and the idea of such a spectacle – the six brother and sister judges sitting in judgement on one of their own – was unthinkable. Callinan sensibly withdrew.

In 1967 the Australian people had altered the Constitution in the celebrated referendum on Aboriginal rights. It meant that the constitutional prohibition on the federal government making 'special laws' for Aboriginal people was removed. As a result, the federal government could pass legislation like the Aboriginal and Torres Strait Islander Heritage Protection Act. At its heart, the constitutional question proposed in Kartinyeri was very simple. There was no doubt that the removal of the requirement that the Aboriginal and Torres Strait Islander Heritage Protection Act apply to Hindmarsh Island was detrimental to the Ngarrindjeri, but was it constitutional? It all turned on the following passage in the Constitution:

*The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:*

*(xxvi) the people of any race, other than the aboriginal race in any State, [as amended in the 1967 referendum] for whom it is deemed necessary to make special laws*

Did this mean only laws for the benefit of Aboriginal people, or could the Australian Government use this power to make laws to the detriment of Aboriginal people? Many constitutional experts, including Justice Lionel Murphy years before, believed that the use of the word 'for' in the Constitution ('for whom it is deemed necessary') meant that the power must only be used for the benefit. Until the advent of the Howard government, the very idea that laws might be made in modern Australia that would be to the detriment of Aboriginal people was not a concept that anyone had ever sensibly propounded. In Kartinyeri he sent Solicitor-General Dr Gavan Griffith QC into the High Court to argue that there was no restriction on the race power and that it could therefore be used to the benefit of Aboriginal people or to their detriment.

As the Government presented its case, Michael Kirby began to squirm. He was deeply troubled by the line of argument, and felt angry. He addressed Dr Griffith directly from the bench:

*'I mean, it seems unthinkable that a law such as the Nazi race laws could be enacted under the race power and that this Court could do nothing about it [...] How would you apply that distinction to the case of Nuremberg-type laws which, after all, were race laws or to land area laws such as were enacted in South Africa? Would they be permissible under this power?'*

*Griffith: 'Your Honour, they may well be. The races power is inherently a discriminatory law.'*

It was a simple question: “for the benefit” or not? But the answers that came back from the six High Court justices were anything but simple. Like crows in a cornfield scared by a shotgun, the justices all flew in different directions. Only Kirby and Mary Gaudron found that the Constitution restricted governments to enacting laws for the benefit of Aboriginal people. Only Kirby found in favour of Kartinyeri and Gollan. All the other five judges, including Gaudron, found that the Government’s Bridge Act was constitutional, but each for different reasons. It was heartbreaking for the Ngarrindjeri who, like many Aboriginal people after Mabo, had come to believe that the High Court was their last refuge in a struggle to uphold their human rights, but it was also mystifying. To the layman it seemed extraordinary that all six justices could come to different findings. The adversarial nature of the law suggests there are two sides to every case; Kartinyeri was the clearest example of how wrong that assumption can be. In truth, there are as many sides to each case as there are justices. Kirby’s position could not have been stated more clearly.

The *Bridge Act 1997* does not answer to the description of a law with respect to the people of any race for whom it is deemed necessary to make special laws. It is a special law; that is true. But it is detrimental to, and adversely discriminatory against, people of the Aboriginal race of Australia by reference to their race. As such it falls outside the class of laws which the race power in the Australian Constitution permits. No other head of power was being propounded to support the validity of the Bridge Act; it is wholly unconstitutional.

The Ngarrindjeri people had to stand by and watch the SA Liberal Government literally bulldoze their sacred sites. In 2001, long after the bridge had been built, they had a Pyrrhic victory when Justice John von Doussa of the Federal Court threw out a damages claim by the Chapmans. “Upon the evidence before this Court,” he determined, “I am not satisfied that the restricted women’s knowledge

was fabricated or that it was not part of genuine Aboriginal tradition.” Nine years later, in 2010, the last chapter in this tragic saga was finally written when the SA Government acknowledged the Ngarrindjeri people’s claims were truthful.

The ABC reported:

*Environment Minister Paul Caica says the Government accepts a Federal Court ruling, made in the wake of the royal commission, which acknowledged that secret women’s business was not made up to try to stop the bridge construction. “The state government of South Australia acknowledges the decision of Justice von Doussa and the conclusion he makes that Ngarrindjeri knowledge was a genuine part of Aboriginal tradition and was not fabricated,” he said.*

In a sad coda, Ngarrindjeri elder Tom Trevor was left to make comment for his people: “We may use the bridge to access our land and waters but culturally and morally we cannot come to terms with this bridge.”

Kartinyeri was to be one in a long line of cases where Michael Kirby would be dissenting, often in a minority of one. As time passed, he began to look fondly back at his time on the NSW Court of Appeal, where he was a leader, respected and liked by his judicial colleagues and regularly writing for the majority or all members of the Court. As the High Court became, with each new appointment by the Howard government, more and more conservative, Kirby was to find himself increasingly out in the cold. Justices would openly joke about the very thought of joining with Michael Kirby in a judgement. It was not a happy time.

*Daryl Dellora is an author, director and executive producer at Film Art Media and an Adjunct Fellow in the School of Law and Justice Studies at Southern Cross University in Lismore. Above is an extract from his book Michael Kirby: Law, Love & Life (Penguin 2012) ©copyright Daryl Dellora*

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# from our readers

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## DEAR FRIENDS

Please find enclosed a cheque for \$20. Sorry it isn't more, for subscription to the *Beacon*.

Keep up the great work.

Yours sincerely

**B Carroll, NSW**

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## DEAR BEACON

Enclosed is my subscription/donation to the *Beacon* for 2020.

I always look forward to reading the editorials and articles (and letters) in the *Beacon*, especially on human rights, needed more than ever as the climate crisis overturns the lives of so many people, our wildlife and environments around our precious planet.

Best wishes and thanks again.

Yours sincerely

**H Williams, Qld**

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## DEAR MARION

I was impressed with the *Beacon* editorial for December/January. It brought to mind *The Age* editorial (16/10) that totally destroyed the federal government's policies on refugees. But, in practical terms, it had little effect. The Government simply ignored it.

The federal government believes that having been elected, it has the moral authority to implement all of its policies.

Would you agree that to beat this government, it must be placed in a position where it has to respond to questioning? In this regard, do you think that academics in political science could (at long last) help by pointing out that a government really only has a mandate when it is willing to respond to questioning of its policies?

Please find a copy of *The Age* editorial mentioned earlier, enclosed with this letter. There is a touch of irony here. In today's *Age* (28/1), Katie Allen, the federal member for Higgins, writes an article that is an attempt to whitewash the government in regard to refugees. I think that she will succeed unless she is subjected to detailed questioning.

*The Age* at the time of the editorial was quite progressive, but is this the case now? If the questioning of Katie Allen and the Coalition generally were to a large extent presented as a defence of its editorial in *The Age*, this would be a good move.

Designing a set of questions about refugees and promoting them would obviously need many people and organisations getting together. If, internationally, this could be promoted as a test of how democratic Australia really is, this could give the campaign real impetus.

A breakthrough on refugees and a precedent would be set for similar moves in other policy areas (especially robodebt).

I cannot help thinking that with the right thinking, Australia's slide into totalitarianism could be halted; but in a couple of years it could be too late.

In closing, I would like to thank the church for all the good work it does, but also express my great disappointment with political studies' academia. Would we have as many problems now if they had insisted that the term 'the government has a mandate' be properly defined?

Yours faithfully

**R Bryce, Vic**

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## DEAR FRIENDS

Melbourne Unitarian Peace Memorial Church

Please find enclosed my cheque for \$100 for renewal/donation.

Again, many thanks for the important, interesting and historical information in our monthly journals.

At 86 this month, I am aware how much those much younger than me appear to have little knowledge of past history and the links re progress to the present and the danger of repeating past mistakes. We must remain ever vigilant.

**P Lemoine, NSW**

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**Raise the rate program**

**Devastation: The result of ignoring reality**

**Courage etched in Australian history**

**Letters to the Editor**

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