

# Retirement

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## Keppel Earl Enderby

*Address by Jeff Shaw QC MLC to the dinner sponsored by the NSW Society of Labor Lawyers, 11 September 1992, to mark the retirement of the Hon Justice K E Enderby from the Supreme Court of NSW.*

In a life which reflects the symbiotic relationship between the law and politics, Kep Enderby has shown a commitment to the Enlightenment values of freedom and equality.

There are many aspects of this Renaissance man's activities that should be noted - his golfing prowess (being the 1946 NSW Amateur Gold Champion); his war service in the RAAF; his championing of the cause of the international language Esperanto; and his active interest in international affairs.

However, it is Kep Enderby's role as a lawyer and politician that I shall discuss.

After growing up in Dubbo, and attending the local high school, Kep studied law at Sydney University and took a Master's degree from London University. He was admitted to the NSW Bar in 1955. After working away at the Sydney Bar for some years, Enderby changed course, and in 1963 took a job as senior lecturer in law at the ANU. This academic phase lasted only a few years and, by 1965, he was building up a successful practice at the Canberra Bar.

As a member of the Canberra branch of the Labor Party in the late 1960s, Kep witnessed much internal controversy. The long-time local member, Jim Fraser, was an earnest, parochial politician. He had been the member since 1931. But the local branches, full of academics, public servants and others concerned with the big issues of the day, were disenchanted. The old-style, stalwart MP faced rebellion. In the tradition of the Labor Party, he clung to his seat until he died in 1970. The newly preselected candidate was K E Enderby, local barrister, who duly won the seat of Canberra in a by-election on 30 May 1970.

Enderby quickly proved himself in this new environment. Perhaps surprisingly to some, he managed to get himself elected by the Labor Caucus to the first Whitlam ministry - a numbers game in the Caucus which must have been a hard-fought scramble, after all those long years in Opposition.

On 19 December 1972, Whitlam appointed Enderby Minister for the Australian Capital Territory and the Northern Territory. Later, in October 1973, he was appointed Minister for Supply; in June 1974, the Minister for Manufacturing Industry; and in February 1975, the Minister for Customs and Excise. But it was the appointment of Kep Enderby as Attorney-General on 10 February 1975 that marked the most significant phase of his career as a Cabinet Minister and the beginnings of nine months and one day of activism in law reform.

It was the formidable task of Kep Enderby to carry through the law-reform momentum which had been generated in the preceding hectic years when Lionel Murphy was Attorney-

General. Whitlam has said: "I appointed Enderby as Attorney-General to continue and complete Murphy's pioneering and innovative work." It was Kep who finalised the passage of the *Family Law Act*, the *Racial Discrimination Act*, the *Administrative Appeals Tribunal Act*, the *Ombudsman Act* and the *Federal Court of Australia Act*.

Some other reforms were pushed by the new Attorney-General which were unable to be completed before the demise of the Government, and these included a Bill to abolish appeals to the Privy Council, the legal aid Bill and a uniform companies' law. The correctness of all those measures has been vindicated by subsequent history.

It was Kep Enderby's fate to become a leading player in the maelstrom of controversy which surrounded the dismissal of the Whitlam Government by Sir John Kerr. As Attorney-General, Enderby, in co-operation with the Solicitor-General, Maurice Byers QC, provided advice to the Governor-General that the use of the reserve powers, in the way being urged by the Opposition, in the circumstances of November 1975, would be wrong and contrary to principle.

The ensuing election, of course, saw Enderby out of office and out of Parliament.

He returned to the Sydney Bar to re-establish a practice as a silk. And he did so with success from the newly opened Ground Floor of Wentworth Chambers. Briefs came in both civil and criminal matters.

This period back at the Bar was cut short by his appointment to the Supreme Court in 1982. There followed 10 years of distinguished service as a judge - predominantly in the Common Law Division, but also sitting in the Administrative Law Division, on criminal cases and on the Court of Criminal Appeal. This did not stop Kep taking an active interest in international matters, and in preserving his relations with old friends from political and legal days gone by. He was certainly not an aloof judge, but rather one who remained very much in touch with community feelings and values.

Enderby J's independence of mind was readily apparent as a member of the Court of Criminal Appeal. He was prepared to dissent, including on questions of penalty.

The judge was a great defender of the tolerance and commonsense which the jury brought to a trial. And he contrasted this with the judges, whom he said (at the opening of the Wollongong sessions in 1987) could become "callous, cranky and intolerant".

This is a story of achievement and commitment. And the retired judge has more to contribute yet to our public life. □