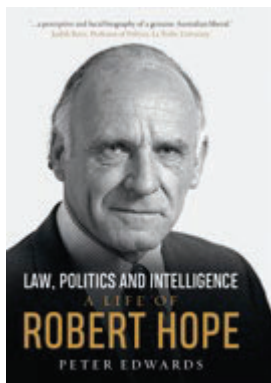


## BOOK



*Law, Politics and  
Intelligence  
A Life of Robert Hope*

By Peter Edwards

**On 6 March 2020 in the President's Court Her Excellency the Honourable Margaret Beazley AC QC, Governor of New South Wales, launched Peter Edwards' biography of Robert Marsden Hope. Here, Peter writes for Bar News on the enduring legacy of Justice Hope's inquiries on Australian intelligence agencies. Edwards' book is not only a valuable historical record, but also highly relevant to current debates on the extent of the agencies' compulsory questioning powers, online intelligence, and largely secret prosecutions.**

How much can the biography of a Supreme Court judge of the 1970s and 1980s tell us about the issues of the 2020s? A great deal, if that judge is Robert Marsden Hope.

Justice Hope ended twenty years of service on the NSW Supreme Court as the senior puisne judge of the Court of Appeal, having narrowly missed appointment to the High Court, and later as President of the Appeal Court.

But his greatest legacy was to be, in the words of former Commonwealth Attorney-General Gareth Evans, one of 'the giants of

Australian public policy and governance'. And events in recent years have served to underline the scale and the continuing relevance of his achievement.

Between the mid 1970s and the mid 1980s, three successive Prime Ministers – Gough Whitlam, Malcolm Fraser and Bob Hawke – appointed Justice Hope to conduct inquiries, two of which were royal commissions, which totally reconstructed the Australian intelligence community. Starting from first principles, and proceeding into great detail, Hope prescribed what agencies Australia should have; what each should do – and no less importantly, what it should not do; how each one should operate within its charter, within the law, and with 'propriety'; how they should strike the appropriate balance between secrecy and transparency; and what relations they should have with each other, with ministers, with departments and agencies, and with the international partners we now call the Five Eyes.

At the time the only agency of which the public was aware was the Australian Security Intelligence Organisation (ASIO). As its own official history has recognised, ASIO at the time was widely distrusted, because it was blatantly partisan, focussing its attention on domestic subversion instead of foreign espionage. Some politicians and activists campaigned for its abolition. Hope took the more difficult but constructive path of setting out the legislation, structures and operational doctrines that would ensure that ASIO operated effectively to protect national security in a non-partisan and accountable manner.

Similarly, he recommended that two agencies that were not even publicly acknowledged, the Australian Secret Intelligence Service (ASIS) and the Defence Signals Directorate (DSD), should not only continue to exist and be publicly acknowledged but also be given expanded roles, under legislation and accountability measures which set clear limits on their powers and operations.

Fundamental to all Hope's recommendations was the relationship between effectiveness in protecting national security and accountability for the protection of civil liberties. He recommended a number of oversight mechanisms, the most significant of which was the office of the Inspector-General of Intelligence and Security.

National security and civil liberties, as Hope perceived, are not polar opposites that need to be balanced, but mutually supportive. Intelligence and security agencies

cannot be effective in protecting national security unless the public has confidence that they are accountable for their respect for civil liberties.

The most significant measure of Hope's success was the gradual but steady growth of public trust in ASIO and the other agencies during four decades after his first major reports in the 1970s, as governments of all persuasions consistently, albeit slowly, implemented most of Hope's recommendations, often in the face of bureaucratic opposition.

In recent years, before the COVID-19 pandemic swept almost all other considerations aside, a number of incidents raised fresh concerns about the structures and operations of the intelligence and security agencies, especially their respect for the civil liberties and legal norms. A former military intelligence officer, identified only as Witness J, was convicted in a secret trial. A former ASIS officer, known as Witness K, and his lawyer are currently facing largely secret prosecutions. The Australian Federal Police made highly publicised raids on the offices of the ABC and the home of a News Corp journalist. Governments have introduced a large number of amendments to national security legislation, many of which granted executive powers to ASIO. Whatever the individual merits of each of these matters, their combination is troubling.

It is probably no coincidence that many of these events occurred as what might be called 'the Hope model' for the intelligence community has been challenged, particularly by the establishment in 2017 of the Department of Home Affairs, which brings several intelligence agencies, including ASIO, as well as the Australian Federal Police and the Border Force into one powerful portfolio.

This conflicts with many of Hope's fundamental principles. He emphasised that the intelligence agencies should serve 'government as a whole', and not be dominated by one or two policy departments. ASIO, he said, should not be given executive powers and should be clearly separated from law enforcement bodies. The Department of Home Affairs was said to be modelled on Britain's Home Office, after an earlier proposal, modelled on the US Department of Homeland Security, had been rejected. Hope designed an intelligence community for Australian conditions, deliberately rejecting many British and American models.

It is likely that, for some time yet, there will be tension and conflict between the

Hope model and its challengers. For that reason, I suggest that the book will provide valuable background information for the participants in, and observers of, the debate over the role and powers of the intelligence and security agencies.

My aim in writing the biography was to bring out not only the legal and political issues but also the personalities and values that have helped shape important policy decisions. The book makes, I hope, a useful contribution to the history of the NSW legal profession: and the accounts of Hope's appointments, and non-appointments, to high judicial office may be of some interest. The recent release of the palace letters renews the relevance of Hope's relationship with Sir John Kerr, first as Chief Justice and then as Governor-General, and his views on the dismissal of the Whitlam government. The book also offers some reflections on the appointment of judges as royal commissioners, a subject on which the New South Wales and Victorian judiciaries have long held contrasting positions.

As an historian of public policy, with no legal qualifications, I am deeply grateful for the support of the NSW Bar Association, and many of its individual members, from beginning to end of an extended project. The late Philip Selth was an enthusiastic supporter from the outset, and I was delighted that he, as he put it, 'hung on long enough' to attend the function, kindly organised by the NSWBA, at the Supreme Court when Her Excellency the Governor, the Hon. Margaret Beazley AC QC, launched the book in one of the courtrooms over which she had until recently presided as President of the Court of Appeal.

Several distinguished lawyers, including the last two chief justices of the High Court, have written generous endorsements. I am especially grateful for the comments of Bret Walker SC:

Peter Edwards tells the absorbing life and engagements of R M Hope, the outsider to the world of intelligence and security to whom most is owed for the reform of Australia's secret agencies. In its breadth, with its detail, and without rose-tinted-glasses, this is the book that this most capable, valuable and complex man warrants. The social history of a special generation of lawyers in service of the public that it presents, focussing on Hope, is an exceptional achievement.



The Hon Margaret Beazley  
with Peter Edwards