JOAN KIRNER SOCIAL JUSTICE ORATION 2013.

Melbourne, Australia, May 27, 2013

Presented by Hugh de Kretser

Communities in Control
One of the 16 Knowledge Centres of Our Community.

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Joan remains an enduring community activist and champion for the forgotten.

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ABOUT JOAN KIRNER

Courageous, ceaseless, clever, compassionate – over many years, and in many theatres, The Hon. Joan Kirner AM has fought for community, equality and social justice.

Joan is perhaps best known for her work as the front-woman for the grassroots campaign for educational reform in Victoria in the 1970s, and later as that state's first female Premier.

She has also been prominent in the nation-changing struggles for social inclusion, women's equality, environmental protection, and community-driven community development.

Having played an integral role in the development of the social fabric of Australia, Joan remains an enduring community activist and champion for the forgotten.

The 2013 Joan Kirner Social Justice Oration was delivered by Human Rights Law Centre Executive Director Hugh de Kretser at the Communities in Control Conference, an initiative of Our Community and CatholicCare, in Moonee Ponds on Monday, May 27, 2013.

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2013 ORATOR

HUGH DE KRETSER

Hugh de Kretser is Executive Director of the Human Rights Law Centre, a role he took up in February 2013.

Prior to that, Hugh was Executive Officer of the Federation of Community Legal Centres for five years from 2007.

Other roles have included Manager of Brimbank Melton Community Legal Centre (2004 to 2007) and employment lawyer with Mallesons (1999 to 2004).

Hugh served as a Board member of the Human Rights Law Centre from 2005 until 2007 and has also held statutory appointments as a Director of the Victorian Sentencing Advisory Council and a Commissioner of the Victorian Law Reform Commission.

He's a keen walker, a father of two, and a passionate defender of human rights and social justice.

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The evolution of Human Rights in Australia: A Vision For Stronger, More Universal Protection

HUGH DE KRETSER:

I'm going to start in East Gippsland, talking about bushwalking.

I am a keen bushwalker and it's in the beautiful country of East Gippsland that I have spent a lot of time hiking and camping.

On an overnight hike about eight years back, I fell asleep in a beautiful spot after lunch just off the beach. I woke up to find I was lying next to a midden – where the local Aboriginal people – the Kurnai – had been eating shellfish for thousands of years, discarding the shells to form a heap that still remained there.

The realisation jolted me. Despite being drawn to the natural beauty of the area for years, I knew little or nothing about its Indigenous history. So, when I returned to from the hike, I did something about it.

I spoke to friends, read books and interviewed a Kurnai man passionate about preserving his people's culture, and then wrote about it in a bushwalking magazine.

One of the books I read was *Caledonia Australis* by writer and historian Don Watson. The book recounts the frontier history of Gippsland and the cultural clash, misunderstanding, murder and dispossession that followed early settlement by Scottish pastoralists.

Don Watson, of course, is known for writing Paul Keating's famous Redfern Speech – rightly seen as a landmark speech in Australian history. The speech is remarkable, for both its sense of history and perspective.

But why am I talking about this at the start of the Joan Kirner oration?

For two reasons.

Firstly, because we all, but particularly someone like me, have a lot to thank Joan Kirner for – for her great efforts as Victoria's Minister for Conservation in protecting large parts of East Gippsland within National Parks – and in particular, for expanding the priceless Croajingolong National Park.

And secondly because in a recent interview on leadership with Our Community, Joan identified the "lack of understanding of the lessons of history" as one of the key barriers preventing new leaders from emerging in Australia.

So, I'm going to talk about the lessons of history – and Australian human rights history in particular.

I take on the topic with a little trepidation because it was Joan, as Minister for Education, who introduced the VCE system that governed my final year of high school in 1991 – so Joan, I hope I make the grade.

Human rights history interests me less because I want to know about things that happened decades ago, and more because of what it tells us about social justice today and how we can advance human rights.

In other words, I want to look back to look forward.

What are human rights?

I'll start briefly with the basics.

Human rights are the fundamental rights and freedoms that belong to all people.

They embody key principles of freedom, respect, equality and dignity.

Human rights span civil and political rights, such as freedom of speech, freedom of association and the right to life, and economic, social and cultural rights, such as rights to education, health and housing.

Most human rights can be lawfully restricted but, in broad terms, any restriction must be for a legitimate purpose, and the restriction must be reasonable and proportionate.

For example, freedom of speech isn't an absolute right and can lawfully be restricted to prevent defamation, to stop threats to kill, to stop false advertising or to ban child pornography.

"Human rights history interests me less because I want to know about things that happened decades ago, and more because of what it tells us about social justice today and how we can advance human rights."

A more common, everyday example is drink driving laws. Our laws authorise our police to stop drivers, without any suspicion of wrongdoing, and administer a breath test, and you'll lose your licence and be fined if you refuse.

These laws limit our freedom of movement and our privacy rights but they do so to protect against the threat to our rights to life and to personal safety that drunk drivers pose.

These aims are clearly legitimate and the means to achieve them are broadly reasonable and proportionate – so, under a human rights analysis, the policy outcome is sound.

Australian attitudes to human rights and the hierarchy of sympathy

Survey research shows Australians care about human rights and making sure they are properly protected.

Most Australians think human rights are important and a majority support stronger rights protections, including an Australian Human Rights Charter or Bill of Rights.

Australians want to know more about human rights and they want both the government and the courts to protect rights.

But dig deeper and the research shows that Australians' support for human rights depends on who the humans are.

A major survey on Australian attitudes to rights was conducted as part of the National Human Rights Consultation, the Frank Brennan-led consultation whose recommendation for an Australian Human Rights Charter was rejected by the Rudd Government.

The survey asked 1200 randomly selected Australians whether the amount of protection given to some groups should be more, less or the same as it currently is.

About three quarters of respondents thought that the disabled, the elderly and people with a mental illness needed more human rights protection than they currently got.

A slim majority thought that children and Indigenous Australians living in remote areas needed more protection.

Less than a third thought gays and lesbians needed more protection.

And a greater proportion of respondents thought asylum seekers needed less human rights protection than more. In other words, there's more community support for stripping back asylum seeker protections, than there is for increasing them.

The survey results confirmed what many might intuitively suspect, that when it comes to rights protection, there is a hierarchy of sympathy in public opinion – equal rights for some, but not all.

"Australians' support for human rights depends on who the humans are."

But while Australians think some individuals deserve more rights protections than others, we're not overly worried about our own human rights protection.

For many Australians, human rights violations are something that happens to other people in other places:

- either to people overseas in Syria, North Korea or the Congo; or
- to people in Australia in very different life circumstances – people in remote Aboriginal communities, detention centres or psychiatric institutions.

Only 10% of respondents to the survey reported they had ever had their own rights infringed in any way, and a large majority of people agreed that human rights in Australia were adequately protected.

I just want to pause there.

Firstly because I think it's genuinely good news that the vast majority of Australians say their rights have never been infringed – but secondly because I think there are major problems with the assertion that rights in Australia are adequately protected.

And the fact that many Australians think this – and think that rights of groups like asylum seekers should be stripped back – underscores the challenge for those of us who believe in social justice.

Rights aren't adequately protected in Australia

The perception that rights are adequately protected in Australia sits very uncomfortably against some key facts:

- the large gap in life expectancy between Indigenous and non-Indigenous Australians;
- the fact that if you are an Aboriginal man between the ages of 18 and 34 you are statistically more likely to be in jail than enrolled in higher education including TAFE;
- the 100,000 or so homeless people in Australia;
- the fact that less than 10% of directors in the 200 largest publicly listed companies are women;

- the fact that around one in three Australian women over 15 has experienced physical or sexual violence;
- the even higher rates of sexual violence against women with cognitive disabilities – mental illness, an acquired brain injury or an intellectual disability;
- the research showing Australians with foreign sounding surnames are less likely to secure job interviews;
- the high rates of abuse and discrimination experienced by gay, lesbian, bisexual, transgender and intersex Australians; and
- the 1000 or so children currently detained in immigration detention.

Looking back

But relative comfort on rights protections is nothing new.

Former Prime Minister Robert Menzies proclaimed in 1967 that "the rights of individuals in Australia are as adequately protected as they are in any other country in the world" and he, and other commentators who made similar statements, meant what they said.

With hindsight, we can look back and point to the gaping holes in these sentiments –

- the government policies until the late 1960s which caused the forced removal of Aboriginal children from their families;
- the criminalisation of consensual homosexual sex;
- the White Australia policy;
- entrenched sexual discrimination;
- and the fact that in 1967, it was perfectly legal to refuse to employ someone because of their race, religion or sex because there were no anti-discrimination laws other than in progressive South Australia which introduced the first racial discrimination laws in 1966.

Victoria didn't get anti-discrimination laws until 1977 and one of the best cases that shows how far we've come involved Deborah Wardley, who applied in the late 1970s to become the first female pilot at Ansett.

Ansett refused her application and the General Manager wrote:

> "Ansett has adopted a policy of only employing men as pilots. This does not mean that women cannot be good pilots, but we are concerned with the provision of the safest and most efficient air service possible. In this regard, we feel that an all-male pilot crew is safer than one in which the sexes are mixed."

Deborah challenged the refusal to employ her under the new laws and won – and eventually went onto a successful career.

And just on the White Australia policy, my own family's history highlights the prejudice and incoherence of the policy – and also how fortunate I am to have grown up here.

My father's family are Dutch Burgher Sri Lankans – the descendants of Portuguese and Dutch settlers in Sri Lanka from the 16th and 17th Century and who are of mixed European and Sri Lankan descent.

The only reason my father's family was able to immigrate to Australia in 1949 under the White Australia policy was by proving their European heritage – tracing our family line back to a sailor who left Holland for Sri Lanka in the 1600s.

But apparently the arrival of "European" Sri Lankans with non-European appearances caused consternation – and in 1951 the Department of Immigration told the Australian High Commission in Colombo it:

> "should not authorise the entry of persons who are likely to cause adverse comment on arrival or be restricted from landing by immigration officers at the ports as being predominantly non-European in appearance."

So, in many ways we were lucky.

My grandparents, like others, sought the promise of a better life in Australia. This promise was realised by opportunities available to me and my brothers and is perhaps best shown by the fact that my father arrived at Station Pier as a nine-year-old Sri Lankan boy and went on to serve as Victoria's Governor from 2006-2011.

"I have no doubt that in 40 or so years, Australians will look back on today's society and think, 'What were they doing?' "

Looking back to look forward

My point is, we can look back in hindsight at the White Australia policy and Stolen Generations and be shocked at these attitudes and the lack of legal protections against them.

But in a similar way, I have no doubt that in 40 or so years, Australians will look back on today's society and think, "What were they doing?"

There was majority support for same-sex marriage yet neither major party acted on it.

They locked up thousands of refugees fleeing persecution, arbitrary detention and torture in remote detention camps in Australia and also outsourced the detention and rights abuses to former colonies in the Pacific.

They had one of the strongest economies in the world and yet income inequality was increasing, the gender pay gap was increasing and Indigenous infant mortality was twice the rate of other Australian babies.

Human rights: common humanity

So what can we do about it now? How can we avoid a 79-year-old me looking back on 2013 and thinking we didn't do enough?

This a huge topic and there are many answers but to end I'm going to focus on three: human rights education, legal protection of rights, and a rights culture.

Human rights education

I studied human rights at university but I didn't get my real human rights education – about rights breaches and the lack of formal and informal protection against them – until I started working in a community legal centre in Melbourne's west, helping people to deal with family violence, childhood sexual assault, mental illness – helping prisoners, refugees, people in deep poverty and ill health – people struggling with entrenched disadvantage.

I don't need to tell you about this. For most of you here today in one way or another this is the work you do. It is the work that has framed Joan Kirner's career.

Working in a nursing home, in drug and alcohol counselling, in a school in a disadvantaged area or in a sexual assault crisis centre brings you into contact with the sharp end of human rights issues.

Caring for a relative with dementia or seeing a friend discriminated against also brings this proximity and understanding.

And for some, the experience of the fragility of rights will be far more personal – through the perspective of being a person with a disability, a migrant or a victim of violence.

The challenge for those who care about social justice is to broaden the understanding that while most Australians are doing well, there are some who aren't and we must take action to address it.

The 2009 National Human Rights Consultation recommended that education be the highest priority for improving and protecting human rights in Australia.

While at first the lawyer in me struggled with this, Bill of Rights versus human rights education as the top priority – I agree.

We need to build understanding of what human rights are and how they work and how they aren't adequately protected in Australia and what this means for vulnerable Australians.

And we need to do this through our school curriculum, through the media, through websites, through social media, through volunteering and through forums like this.

Legal protections

But education alone is not enough. We also need stronger legal protection of human rights. In many ways they go hand in hand.

The Racial Discrimination Act in 1975 established legal protections against racial prejudice but it's the actions of Nicky Winmar and Adam Goodes that help to educate and build a culture of not tolerating it.

Legal protection of human rights tends to matter most for Australians who don't enjoy majority or political support. And this is where the human rights principle of universality should help.

The key human rights treaties which bind Australia and more than 160 other nations around the world embody the fundamental principle that rights are universal – they attach to all of us by the mere reason of our being human, regardless of popular or political support.

They embody what Joan Kirner described in her oration at this conference last year as "our common humanity".

"We need to build understanding of what human rights are and how they work and how they aren't adequately protected in Australia and what this means for vulnerable Australians."

And the flip side of the universality of human rights is that when rights aren't enjoyed equally, it diminishes society as a whole. As Paul Keating said in the Redfern Speech, the injustice delivered to Aboriginal and Torres Strait Islanders over our history "degraded all of us".

These treaties stem from the landmark 1948 Universal Declaration of Human Rights, a document forged from the horrors of World War II.

The two key treaties – the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights – enjoy bipartisan support.

The Whitlam Government signed them and the Fraser Government ratified them – both steps are required to bind Australia.

The treaties and the rights set out in them are intended to place limits on government actions. They are intended to focus government's attention on rights issues and to protect against popular will overriding the fundamental freedoms of a minorities.

Yet, the treaties aren't adequately incorporated into Australian law. International law doesn't automatically become incorporated into domestic Australian law when we ratify a treaty. It needs to be implemented by legislation passed by the Federal or state Parliaments.

And the principal way to implement key international human rights is through a Human Rights Charter or Bill of Rights.

Unlike every other western nation, unlike the UK, Canada, the US and New Zealand, we have no legislative or constitutional bill of rights. Instead, we rely on a patchwork of individual pieces of legislation and judge-made common law.

And the patchwork has holes in it.

The Citizenship Test – remember the citizenship test? It is supposed to test whether prospective citizens know enough about Australia and the responsibilities and privileges of citizenship.

The questions are based on a resource booklet that tells aspiring Australian citizens about our society, culture and values.

"...the flip side of the universality of human rights is that when rights aren't enjoyed equally, it diminishes society as a whole."

It has separate sections devoted to freedom and equality and it proudly talks about freedom of speech, freedom of association, gender equality and equality of opportunity.

But it doesn't talk about how these rights are inadequately protected and difficult to enforce under Australian law.

Freedom of speech, for example, is not well protected under Australian law and the protection that there is stems from strained interpretation of "implied rights" in our Constitution. Even the right to vote isn't expressly protected in our Constitution.

Only Victoria and the ACT have state and territory based Human Rights Charters which protect free speech – and to give one example of how they work we can look at the recent issue with Victorian public housing guidelines.

These guidelines which were introduced by the Victorian Government earlier this year:

- banned residents from holding political rallies on housing estates;
- banned residents from placing political material on common noticeboards; and
- banned doorknocking on housing estates by politicians.

And the bans came against the backdrop of residents organising and protesting against the government's public housing policy.

We worked with two residents to write to the relevant Minister and her Department, relying on the free speech and peaceful assembly rights in Victoria's Human Rights Charter, to ask that the policies be withdrawn and reviewed – and I'm happy to say the Department is currently doing that review.

Rights culture

Human rights education and legal protections both contribute in turn to a rights culture, a culture of understanding and respecting rights.

Law-making processes set up by the Victorian Charter show how a rights culture can work to the benefit of society.

In Victoria, any proposed legislation introduced to the Parliament must be accompanied by a statement from the relevant Minister assessing its compatibility with human rights. A parliamentary committee then independently assesses the bill against human rights protections.

These processes, while by no means failsafe in guaranteeing protection, focus attention on human rights.

They help to identify where rights are impacted – and where they are impacted they help to ensure that any limitation on a right is for a legitimate aim and is tailored towards meeting that aim. This in turn promotes better policy outcomes for government and Victorians.

"I believe that a human rights framework has a key role to play in action to advance social justice."

Protecting human rights in Australia

We have come a long way in protecting rights in Australia but the advances in our rights protection didn't come easily at the time, and they are easily taken for granted now.

Human rights are still vulnerable for many in Australia – and particularly those who don't enjoy popular support.

In her oration last year, Joan Kirner noted the gains that have been made and urged us not to give up hope, telling us to "Get together, get angry and get organised." And so we should.

I believe that a human rights framework has a key role to play in action to advance social justice.

Better education about human rights, a stronger human rights culture and an enforceable Human Rights Charter or Bill of Rights are three keys way we could improve rights protections to realise the promise of human rights for all Australians.

WHAT IS COMMUNITIES IN CONTROL?

Communities in Control is the biggest annual gathering of community sector workers, volunteers and supporters – each year bringing together a stellar list of speakers and more than 1000 delegates to listen, debate, network, exchange tips and strategies, and – perhaps most importantly – recharge.

Since its inception in 2003, the conference has provided a platform and outlet for the very premise of Communities in Control – that for communities to survive and thrive, they must be in charge of their own destinies; that they must be given practical support to set their own priorities, design their own approaches, and create their own solutions; and that to do this will ultimately create safer, healthier communities.

Allowing communities to take control can be a hard pill to swallow - because it is hard, because the results can be slow to emerge, and because it raises all manner of practical questions:

1. How does a community group get off the treadmill of the old, pragmatic, one-small-problem-at-a-time approach that constrains its capacity for more strategic innovation and reform? (Many community groups and organisations are quite clearly caught up in this perennial problem of "projectitis".)
2. What are the key criteria for building a new generation of community groups and organisations whose heritage is no longer their destiny?
3. What are the generic principles of this new community innovation and reform agenda?

Working together, Communities in Control supporters are marching towards the answers.

The Communities in Control Conference is the result of an ongoing partnership between the Group Managing Director of Our Community, Denis Moriarty, and the CEO of CatholicCare, Fr Joe Caddy, and their respective organisations.

www.ourcommunity.com.au
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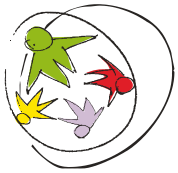
ABOUT US

Our Community is a world-leading social enterprise that provides advice, tools and training for Australia's 600,000 community groups and schools, and practical linkages between the community sector and the general public, business and government. Our major offerings include:



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1. **www.ourcommunity.com.au –** Australia's most useful website (comprising the online Knowledge Centres) and publishing house – accelerating the impact of Australia's 600,000 community organisations and schools
2. **GiveNow.com.au –** helping individuals and businesses give more, give smarter, give better, Give Now!
3. **Institute for Community Directors Australia –** practical and accessible certificated training and community sector conferences delivered locally through our training institute
4. **Australian Institute of Grants Management –** the unique suite of grants management services, including the groundbreaking online grants management system, SmartyGrants

CatholicCare works on behalf of the Archdiocese in Melbourne to fulfil the Church's mission of service to the community. We provide programs and services that help families and individuals in the development of strong and healthy relationships, and encourage connectedness within their communities. Inspired by our vision of 'life to the full' for families and individuals in all their diversity, we are especially concerned with offering services that ensure improved opportunities for those experiencing disadvantage and hardship in order for them to achieve enhanced living conditions, and a better future for their children.