

# Keynote Address F+E Con 2024 Video.m4a

[ 00:00:03 ] I begin by paying respects to the First Nations people, and to all the minorities in our country, and all people who have suffered deprivation of human rights. I learned about human rights in my primary school within the public school system of New South Wales. I'm a proud product of public education, free, secular, and compulsory.

[ 00:00:38 ] I don't hate private schools or religious schools; I love teachers everywhere because they teach us to think in new thoughts, and that's why we're here today. When I was in sixth class at the Summerhill OC Class, I had a very good teacher, Mr. Gorrige. I didn't know his first name because in those days you never knew your teachers' first names and I'm talking about 1949, a long time ago. But on a certain day early in '49 he gave all the necessary information about the public schools and the public schools in New South Wales to all of his students something valuable that had come from Lake Success in New York where the UN headquarters was then based. It was a little publication.

[ 00:01:37 ] It was actually printed on airmail paper, which I hadn't seen before - a very lightweight paper because they'd sent it out from New York in hundreds of thousands for all children, at least all children in public schools. The President of the United Nations at the time the Universal Declaration of Human Rights was adopted was an Australian, Dr. H. V. Evatt. He was a former Justice of the High Court. He'd resigned his post on the High Court when the war came along. He became Federal Attorney General and also the Federal Minister for External Affairs. And he had been in the chair at the moment when the Universal Declaration of Human Rights was adopted as the core charter of the new United Nations organisation, which is dedicated to defend peace and security, human rights, and dignity of people everywhere.

[ 00:02:51 ] And Mr. Corringe taught us the contents of this document. He'd been a soldier in the AIF during the Second World War, and he wasn't a soldier who gloried about war. He was a soldier, an ex-soldier who thought that it was dreadful and he told us we had to learn about these principles because unless we got them into our heads at a young age we would go on killing each other, and the world would suffer grievously because of the new nuclear weapons which were much on our mind at that time. And so he started at Article 1. It's a very beautiful article. All persons are born free and equal in dignity and rights. You thought Ross Croucher had made up free and equal, but that is the fundamental norm of the United Nations and of the new world, and we, the school children at the Summerhill class, taught it.

[ 00:04:21 ] It would be a good thing if schoolchildren in Australia, public, private, Catholic, religious schools were taught the Universal Declaration of Human Rights. We don't have a national charter in our Constitution but we do have the Universal Declaration and Australians played a very important part in its formulation. And so I agree with Ros Croucher, and I agree with Ros Croucher, and I agree with Ros Croucher. It was true for a certain number of years in the naive belief that, in my country, Australia, in the sunshine, full of sport and happiness, we were born free and equal in dignity and rights. But at a certain point not too far into my life journey, when I discovered of my sexual orientation, I found that we were not free and equal, and that dignity was not what we had

and not what I had.

[ 00:05:30 ] It was fear. It was terror. It was shame. It was something I had to keep very deeply in myself, never mention it, never talk about it to my mum, never talk about it to my father, mother, both of whom were very engaged young parents, never talked to my siblings or to my grandmother. This was something I was programmed from a very early age to be unequal. And I didn't like it. But I was a clever kid and I had studied at that time what Dr. Kinsey had researched in the most unlikely place of Bloomington, Indiana, in a very conservative part of the United States. He'd been the world expert on gall wasps, but he got bored with gall wasps and he turned to human sexuality.

[ 00:06:37 ] And it was a sensation in Australia, and I knew about it; I couldn't get enough information about it at libraries, at the universities, to understand what he was saying. He was saying: you are born free and equal in dignity and rights. This is a big mistake. It's a mistake, mainly by religions, but also by lawmakers and by society. And we've got to overcome that mistake. And that became a very important principle in my life, to try to overcome it whilst at the same time being very quiet. I'm very quiet about my own situation. Yesterday, in New South Wales, the last of the states of Australia to do so, the Premier of New South Wales, Mr Minns, with the support of the opposition and all parts of the Parliament, joined in an apology.

[ 00:07:39 ] I am very sorry. We are all very sorry for what has been done to us. I'm very sorry for what has been done to this group of Australians who were denied fullness of equality in our country. But we weren't the only ones. When I was at law school, striving to do the very best in my exams, because I was always very ambitious, I never put my hand up to ask about equality. In that day, when I first studied for a course, a teacher was a teacher in the community college of high school, which is an anomaly. It would not be necessary now. I would put my hand up. That's a new interesting thing. And he's known through an eternity, during a lot of my life, to say, uh, we want someone like pissing with them that will promise them protection.

[ 00:08:32 ] It would be better. Keep things to themselves. If at all possible. Lord, did we learn anything? And in fact, that was just one topic. Women at that time well there were very few barristers who were women, few who were solicitors and none who were judges. It was a sort of gender-free zone of males, white males, very clever people, very serious people striving to be fair and just but burdened with their knowledge and their background, with presuppositions about the society that they were living in. They served, and so I never asked questions about why, in divorce law, the domicile of the parent that was important, and the only domicile that was important was the domicile of the father, the husband. I never learned about the other disadvantages that women suffered in the law; no one talked about it.

[ 00:10:03 ] I never heard a single question in my youth about white Australia, why we had white Australia. Many young people today don't remember those times, but in a way, Australia was South Africa-like; it was a country where racial difference was celebrated, and our different aspects, our whiteness, our heritage, were celebrated. I never asked a question; I never asked, 'Why do we do this?' The world is made up of people everywhere, in fact. It was only when I went to Nigeria as a student politician that I found that the world was watching and asking questions, and I was tasked

to explain and justify the White Australia policy. I never heard any comment or question, nor instruction on disability or on any other topic; least of all did I hear anything on LGBTQ+.

[ 00:11:20 ] Never, never, never, never. And I just had to sort all this out in my own brain, comforted a bit by Dr. Kinsey but not by my society, not by the media. The media made me very terrified that it would spill out and bring shame to my family; that was the deal: if you kept quiet about it, if you pretended, you would be left alone. So I'm telling you all these things on the eve of the election. Apology by the Premier, because it's very important to understand that the apology that was given yesterday was an apology about a functional weakness of our democratic system. The functional weakness, and the answer to those who say you can leave all this to Parliament. Parliament always fixes up injustices because if they don't, they'll lose their seats in the next election.

[ 00:12:39 ] That was the theory, and that was what we were told whenever any question of a Bill of Rights came up: 'Oh, we're British people; we don't need that; it's not part of our cultural heritage.' That wasn't actually entirely true, because the first Bill of Rights was in 1689, but it was what we were told. Sir Owen Dixon, the great Chief Justice of Australia, made it clear that he didn't agree with a Bill of Rights. We believe in Australia that settling these matters in Parliament and Sir Robert Menzies, our long-term Prime Minister, whose government created the Commonwealth scholarships which led to my brothers and me having a university education. A man who did many good things but he didn't like Bills of Rights, and that was the common ground in Australia: Parliament will fix things up.

[ 00:13:46 ] Well, why did we have the apology yesterday? We had the apology because Parliament doesn't fix all things up. Yesterday afternoon, I looked for the first time at the all-party joint committee on a human rights statute in Australia, and I must confess that I was surprised and saddened by the fact that the only members of the committee who supported what we've gathered here today to talk about were members from the government, from the Greens, from the Independents. And that the party of Menzies, the party of liberalism, did not support it. They presented the arguments which I had learned back at school. Well, I can tell them that Parliament doesn't always fix things up. Parliament is good in fixing up the problems of majorities. Parliament is successful. Parliament is successful. Parliament is successful.

[ 00:14:56 ] Parliament is seeking to fix up the problems in those outlying cities in our suburbs, in our big cities, those suburbs where governments are made and unmade. That's what controls politics, and politics is played very hard in Australia. So sometimes you need some deep principles as tools to ensure that the parliamentary system is helped, and the parliamentarians have knowledge of the basic core principles that unite us together as human beings.

In discussions about earlier versions of a Bill of Rights for Australia or Human Rights Act, there have been many discussions about what has been attempted in Victoria, in the ACT, and in Queensland. So far, discussed in other states, a charter... There have been many attempts to get this done.

[ 00:16:00 ]

I hope that what is now propounded by the Human Rights Commission will ensure that our whole country gets the benefit that I had of basic principles and the tools by which judges, lawyers, and politicians, lawmakers can achieve human rights for all. It can be done. In the Mabo case, which was a great decision in 1992 of the High Court of Australia, the High Court, by a majority of 5 to 1, 6 to 1, 6 to 1, Justice Dawson, a lone dissenting, held that it was unacceptable to deny the indigenous people across our country their land rights. We are one of the oldest parliamentary democracies in the world. But for a hundred and ninety-one years, it was unacceptable to deny the land rights of For a hundred and fifty years, we had not done that.

[ 00:17:15 ] Our parliaments had not done it. Our parliaments did not provide effective land rights everywhere for the First Nations people. And then we were surprised at their economic disadvantage, homelessness and so on. So Justice Brennan called on the principles of universal human rights. No deprivation on the basis of race. And that became the key that unlocked the door that the High Court found. We must provide those keys. We must provide the principles of human rights. And they must be taught to every Australian school child so that they know they are born free and equal in dignity and rights.

[ 00:18:16 ] How important to hear those words from one of Australia's most revered people, the Honourable Justice Michael Kirby, who has served on the highest court of the land since the beginning of the Civil War era, and from 1996 to 2009. Thank you so much, Justice Kirby. How inspiring that we can all be given the keys and have the tools to unlock human rights within this country. It now gives me absolute pleasure to introduce to you somebody else who is fearless in calling out people that need to be called out and setting things right. She is known as Julian Assange's mother. She is a lawyer, but she is so much more. Please make her very welcome international human rights expert, Jennifer Robinson. JENNIFER ROBINSON: Thank you. Thanks Narelda.

[ 00:19:11 ] It is such a pleasure to be home here in Australia and with you here in Sydney. Of course, I want to pay my respects to Elders past and present as we gather here on Gadigal land, land that was never ceded, and I pay my respects to all First Nations people here with us in the room. Now I have the unenviable task of following Justice Kirby, one of Australia's most beloved judges and most internationally recognized jurists. No pressure at all. Just the judge who was my law school hero and whose dissents, using international human rights law, urging more just outcomes, got me through my law degree. Just the judge that I was so excited to work for, I was about to turn down a Rhodes Scholarship.

[ 00:19:54 ] However, when I called Justice Kirby, she said, well, you know what? If you had asked Justice Kirby to tell him that this was my decision, he said words to the effect of, don't be ridiculous, you're going to Oxford. And so, Justice Kirby had spoken; off to Oxford I went. It was also Justice Kirby who encouraged me to reach out to Geoffrey Robertson QC, who became my mentor. And I now practise at Dalley Street Chambers, the chambers in London that Geoffrey founded. I wonder where I would be today if it had not been for Justice Kirby's example, advice, and advice and the inspiration he provided to me and to a whole generation of law students interested in human rights. Justice Kirby also showed me what was possible as a fellow proud product of public education, he

showed us that it wasn't just privileged heterosexual private school boys who could succeed in the law. So I can't start today with a big thank you to you, Michael, if I may, for what you've done for human rights in this country, for what you've done for me, and for what you've done for so many people in this room and in our human rights community, so thank you.

[ 00:21:10 ] But if I could go back to my 21-year-old self who would of course be pouring over your latest brilliant dissent and tell her that I'd be here giving a keynote with you, she would lose her mind. Again, no pressure. So thank you to the Human Rights Commission for this wonderful and yet terrifying opportunity. Australia is the only liberal democracy in the world without a Bill of Rights or even a federal Human Rights Act. This is, of course, the familiar catch-cry we hear in the campaign for better human rights protection in our country, and we hear it often. In fact, it causes surprise for my colleagues around the world when I have to explain to them: yes, you heard me correctly in Australia, we don't even have an express right to freedom of speech.

[ 00:21:57 ] In fact, we have barely any rights at all. But what we don't hear very often is why that is. When all 45 of our white male founding fathers sat down on Aboriginal land to create Australia and draft our Constitution, they looked around for inspiration and precedence. Back then, we may have been a group of British, little British colonies, but the Brits then and still now do not have a written Constitution, so they had to look elsewhere. Of course, they turned to the United States and cut and paste from the US Constitution, but stopped short when it came to the Bill of Rights. But why was that? Our founding fathers, or at least a majority of them, wanted to - did not want to be prevented from being able to discriminate against our First Nations people and migrants.

[ 00:22:53 ] To be certain, they included a clause to constitutionally mandate racial discrimination. Our first Prime Minister, Sir Edmund Barton, was one of the drafters, and as he explained at the 1898 Constitutional Convention, the race power was designed, and I quote, to regulate the affairs of people of coloured or inferior races. This is a dark history, and the racism, but it is one that I think it's important that we recognize, along with the racism that prevented all of us from having constitutionally protected rights. The majority of Australia's founding fathers also thought that representative and responsible government was enough to protect our rights, which was an interesting claim when we think back to that time. Considering that at that time, we had a majority of Australians who were not allowed to vote, or to practice law, or basically any rights at all, it seems surprising.

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Representative and responsible government may have protected white privileged men, but the reality was then that it did not protect women, migrants, or First Nations people. And what's changed since then? Just this week, we've heard from the dissenting coalition members of the Parliamentary Joint Committee on Human Rights, who made the same claim: representative democracy is enough for our rights. They rejected the committee's recommendation to adopt what the Australian Human Rights Commission has recommended, an Australian Human Rights Act, saying that Parliament is all we need, and even made the astonishing claim that Australia has a 'quote' enviable and incomparable human rights record. One wonders how possessed they are

with our history, or whether they even listened to the evidence before them, or read the submissions. Because it flies in the face of all of us.

[ 00:24:48 ] Since Federation, we have seen successive so-called responsible and representative governments from both sides of politics violate our fundamental rights. From the indefinite detention of asylum seekers, to national security laws that send whistleblowers and journalists to prison, to the failure to prevent and prosecute black deaths in custody, and the failure to protect women from gender-based violence. I could go on and on and on. The evidence is clear. We need a Bill of Rights. I'm proud, just like those members of, actually, one thing I agree with in that Coalition members' dissenting report, is that we should be proud that Australia has played a leading role in developing international human rights, starting with the likes of Doc Evatt and Jessie Street and the Universal Declaration of Human Rights.

[ 00:25:40 ] That transformative document, which Justice Kirby proudly held aloft, has shaped the development of Bills of Rights in democratic countries. It is a great irony, then, that we haven't adopted it into our own law. But in the end, it's not about what other democracies do or don't do. This is about us, and about the nation that we want to be. For Australia to come of age as a modern, independent, and just democracy, I believe we need constitutional reform, Indigenous recognition, a republic, and the creation of a Bill of Rights. The devastating failure of the voice referendum is a setback. That Australia said no to that generous ask, and modest ask, broke my heart. But we cannot allow our historically conservative and unambitious approach to our constitution to define our future.

[ 00:26:39 ] We have to keep trying. A Human Rights Act is a modest but fundamentally important step. We need to keep trying. It has half-heartedly acknowledged humanity's Sustainable Development and National Development goals, IANN well, and will make a meaningful difference in this country. Wait, wait. I don't think this is a long time ago. I'm not saying we've lost the Professor's seat. I want to say that the sabotage you're bringing forth right now is completely unacceptable. Because, this is the longest term we've had in a centre across Africa, many years ago, with the Greek government in political turmoil. But, you're ultimately forbidding us from doing change. The Defence Minister is part of our team in this country. You're fabulous. What I'm going beyond the next step... to respect human rights.

[ 00:27:18 ] Individuals have a cause of action when their rights are violated and the court has the power to find that legislation is incompatible with human rights, but it can't strike it down. In this way, it is a modest proposal compared to a constitutional bill of rights. For the naysayers, it has not been the lawyer's field day or picnic that you hear people warn of in Australia. The upstream effects of the Human Rights Act are arguably far more significant than the downstream effects because human rights are front and centre when legislation is being considered and drafted. We benefit from more efficient policy making which better protects rights and better stands up to outside scrutiny. As the late great Lord Bingham, another legal hero of mine, pointed out after the Human Rights Act was implemented, appeals to the European Court went down; they lapped.

[ 00:28:15 ] And it's not resulted in pesky judges constantly weighing into politics and policy

decisions to declare legislation incompatible. The mechanism has been used less than 50 times in 25 years. But what it has done is have a positive impact on human rights. It's been used to obtain truth and justice for the victims of the Hillsborough disaster. It's been used to strike down sweeping anti-protest injunctions to stop protests about climate change. It's been used to hold police accountable for their failure to properly investigate a serial rapist, the infamous black cab rapist, failures that meant he was able to go on and rape more women in violation of their rights. At a time when Australians are outraged by tragic deaths like that of Molly Ticehurst and are rallying to end gender-based violence in this country, this could be a useful legal tool.

[ 00:29:13 ] I've been asked to give you a few examples of this. I've been asked to give you a few examples of just how important the Human Rights Act has been from my practice, and I want to start with Julian Assange. The only thing standing between his extradition to the United States, or the only thing stopping his extradition to the United States and being extradited to prison conditions that will cause his death, is our Human Rights Act. Section 87 of the Extradition Act requires judges to consider whether extradition would be compatible with the rights protected under the Human Rights Act, which includes, I'm sure, the right to free speech under Article 10. The United States is seeking to extradite and prosecute Julian Assange and put him in prison for 175 years for publishing evidence of war crimes and human rights violations around the world; publications for which he's won the Sydney Peace Prize and the Walkley Award for the most outstanding contribution to journalism.

[ 00:30:08 ] In our appeal, we've argued that his right to free speech would be flagrantly violated if he was extradited. The US is arguing that once he is extradited to the United States, he will not benefit at all from the free speech constitutional protections under the First Amendment. It was on this basis that the High Court has granted us leave to appeal, and that appeal will be heard in the coming months. But it's not just in respect of Julian Assange. We've also been successful. In using the Human Rights Act to strike down sweeping anti-protest injunctions obtained by INEOS, a fracking and chemicals company, who went off to the Business and Property Court in the UK to obtain an injunction which stopped not just trespass, but a whole range of protests, including slow walking, so slow walking outside their premises to make it more difficult for trucks to get in, but also created this new innovative injunction to restrain the tort of interference with economic relationships.

[ 00:31:20 ] So broad was the application of this injunction, which was granted ex parte by a judge in the Business and Property Division, where he clearly did not have many opportunities to look at the Human Rights Act. So broad it was that it captured, as we argued, people sharing information online about where the protests would take place. You were contributing to interference. You were contributing to violence. You were contributing to violence, to restrain the tort of interference with economic relationships of this company. And INEOS put into evidence reams and reams of papers. We had a whole desk of binder folders filled with Facebook posts from activists that were apparently in violation of the order. And it was troubling because this private company had gone off to the court and got an injunction.

[ 00:32:05 ] These protesters were very happy to be arrested by the police and go down to the

Magistrates' Court and get a ticking off. But once the fracking company got an injunction, they were at pain of going to prison and thousands of dollars of fines for breaching that injunction. So we took it to court on behalf of one of the protesters and were successful in the Court of Appeal; having much of that injunction struck down on the basis of the Human Rights Act, and our right to protest, which it protects. This ruling has now redefined the shape of what anti-protest injunctions can look like in the United Kingdom, and I'm proud of it because when we're facing an existential crisis like climate change, we must diligently and passionately defend our right to protest about its impacts.

[ 00:32:54 ] And as the right to protest in Australia is under attack again, this could be a very useful legal tool. I know from my experience in the UK and from around the world that a Human Rights Act in Australia will make a very real difference to the protection of human rights in this country. It's also clear that Australia's human rights rights are not just the rights that Australians want it. According to Amnesty's research, 73% of Australians support it. But it's time that we demand it. Governments and politicians are not going to volunteer to hold themselves more accountable. We have waited too long for governments to do the right thing and to protect our rights, and everyone in this country deserves better than that.

[ 00:33:34 ] So I hope you'll join me in advocating for an Australian human rights, and educating your friends and family about why we need it and how we can do it. We need it so that we can move towards a more just and fair Australia. Thank you. Thank you so much, Jen. How amazing to hear, Jen Robinson. We've been lucky enough to be in TV studios at the same time but never on the stage at the same time, so it's my absolute honour to have done that, and for also Justice Kirby, a big thanks to you as well. Can we please give Jen Robinson and Justice Kirby another big round of applause.