



Jessie Street Trust Annual Lunch 2016

Friday 3 June
NSW Parliament House

I am pleased to join you today to honour the work and annual birthday of Jessie Mary Grey Lillingston Street, a remarkable, and very modern Australian woman. Well before the First World War, she was an advocate for many of the social issues we care about today; equality for women, constitutional recognition of indigenous Australians, world peace and for disarmament.

Born in India under the reign of Queen Victoria, Jessie was educated in England and later at the University of Sydney and become a pioneer as a political activist for equal rights to justice and joined the Labour party in 1939. Jessie was not successful in gaining political office, despite several attempts in Eden Monaro and Philip. She lost the election in Wentworth on preferences. Despite these setbacks, I imagine Jessie's voice was heard loud and clear in these electorates and one can only marvel at her tenacity and clarity of vision for an Australia she wanted to see founded on principles of equality and justice.

As a public international lawyer, I especially admire Jessie's internationalism. She caught the optimistic spirit of her age in the early years of the 20th century in believing that international democratic institutions with an equal vote for each sovereign nation could achieve world peace and justice for all. She supported the brave initiative of the United States' President Wilson to create the League of Nations in 1919 to provide a global rule of law that was to end war forever.

Jessie also understood the power of working with women throughout the world. At the League's beautiful building on the banks of Lake Geneva Jessie lobbied for the right to divorce and to fair custody of children, equal pay and birth control.

But, as the storm clouds gathered over Europe in the 1930's it became clear that the vision of the Covenant of the League and international rules to prevent war had failed with catastrophic consequences.

As the Second World War drew to an end, renewed attempts to regulate international conflict were made at the San Francisco Conference to create a new world order through the United Nations Charter in 1945. The Australian delegation to the Conference was led by another great Australian, Dr H.V Evatt, as Minister for External Affairs. Jessie Street was appointed by the Curtin government as the only woman on that delegation.

Seizing this opportunity she brought all 11 women at the conference together and lobbied the Conference delegates to incorporate into all post-war plans the principles of equality, opportunity, responsibility and reward for men and women, and the elimination of all sex discriminations based on sex. Jessie's leadership, along with that of others, was successful in, for the first time, linking world peace with human rights.

The Preamble to the Charter stated:

We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, reaffirm our faith in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small

Jessie and the group of women were also successful in including a provision in the Charter (Article 8) to prohibit any:

“restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs”.

Jessie was elected as vice-president of the newly created Commission for the Status of Women and ensured that Australian women had the opportunity to work with the Commission.

Jessie's exceptional commitment to ensuring equality for women through international agreement was matched over the following years by the work of Dr Evatt, who with Eleanor Roosevelt negotiated the Universal Declaration of Human Rights in 1948 that passed under Dr HV Evatt's presidency of the General Assembly, without a single negative vote.

These two great Australians laid the groundwork for what we now know as international human rights law including the many legally binding treaties to which Australia is a fully ratified party. Over the decades leading to the 90s, Australia played a leading role in negotiating the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966,¹ the Convention on the rights of the Child, the Refugee

Convention and more recently the Rome Statute for an International Criminal Court in 1996.

In summary, it is right to say that Australia's role in promoting human rights and non-discrimination laws has been one of genuine global leadership and commitment.

Then something went terribly wrong.

Since the start of the new millennium, Australia has faltered in its commitment to our freedoms and rights. We have been in retreat from the human rights obligations in the treaties developed in the last century. Indeed, Parliament that former bastion of support for freedom has adopted laws that explicitly violate some of the most fundamental common law rights that are as old as the Magna Carta itself.

I date this retreat from one tragic time in 2001. You will remember that early in that year we had the sailing of the *Tampa* into Australian territorial waters and, a few weeks later, the attacks on the Twin Towers and Pentagon in the United States.

I suggest that Australia has not matched its international commitments to human rights. It has failed to ensure that these rights are available in our national laws. Indeed, Jessie Street understood the importance of implementing human rights in Australia. She observed that:

'The nations of the world have adopted new standards ... it is for the peoples of the world ... to do what they can to assist their governments in following up these standards.'

While Australia has ratified all of the core human rights treaties, we have not implemented those treaty obligations in our domestic law, with three exceptions: the anti-discrimination laws on race, sex and disability.

These failures would not be fatal to human rights protection in Australia if we had other forms of legal rights. But Australia is exceptional in that we have few constitutional protections for human rights. The Constitution explicitly protects only the right to vote, to compensation for unjust acquisition of property and freedom of religion. All other freedoms depend for protection upon other legal mechanisms, especially the courts. It rested with the High Court, for example, to imply a right of political communication; a right that does not fully equate to the common law or international law rights to freedom of speech.

Australian exceptionalism is compounded by the fact that we are the only common law country in the world that does not have a Charter or Bill of Rights.

Rather than a legislative or constitutional approach to human rights protection, successive governments have employed three mechanisms:

- Parliament, through Joint Standing Committee on Treaties, and more recently the Parliamentary Joint Committee on Human Rights that examines all legislation for human rights compliance
- Courts and the judiciary in developing the common law (e.g. Mabo (no 2))
- The Australian Human Rights Commission

The Australian Human Rights Commission

The role of the Australian Human Rights Commission is to see that human rights and fundamental freedoms, as protected by the international human rights treaties to which Australia is a party, are understood and respected in law, policy and practice. We seek to carry out our mandate in a range of ways: engaging with governments to protect human rights, education, public inquiries and submission to parliament.

One of our most important functions is to provide free and effective access to justice through our Conciliation service. Each year we receive about 23,000 inquiries and complaints, which we try to investigate and conciliate where appropriate. We succeed in conciliating over 70% of the formal complaints and we have learned that about two thirds of these matters arise in the context of employment and the delivery of goods and services. There is no doubt that what concerns most Australian, as it should, is equality of access to employment.

This is why a priority for the Commission is to work closely with the business community. In short, business and commerce are both a primary cause of discrimination against Australians and the solution to the problem.

Willing to Work

The Commission has, for this reason, conducted a yearlong inquiry into workplace discrimination led by my colleague, the Age and Disability Discrimination Commissioner, the Hon. Susan Ryan. A week or so ago, Susan released the *Willing to Work* report into age and disability discrimination in employment.

The Inquiry found that those with a disability and older Australians have a greater likelihood of unemployment than people without disability and 1 in 12 claim to have been discriminated against by their employer. We all know that discrimination deprives people of economic security, independence, dignity and a sense of purpose that comes with work, having a devastating impact on health, self-esteem and financial autonomy.

The report made 56 recommendations to government and business on the measures we must take to overcome these barriers, to make specific commitments, such as targets in the public service, flexibility at work, better training on diversity.

I would like to take this opportunity to:

Honour Susan Ryan's work and legacy

The *Willing to Work* Report is the culmination of Susan's 5 years with the Commission, after a rich and fruitful career as a Senator from the ACT, the first woman to be appointed to a labour cabinet and the Minister for Education. It has been a privilege to work with Susan and I know her efforts to end discrimination in the workforce will inform policy and law over the coming years.

Indigenous issues and Constitutional recognition

Finally we come to another issue that was dear to Jessie Street's heart; that is, to recognise and respect Aboriginal and Torres Strait Islanders.

Jessie played a major role in the campaign for the 1967 referendum amending the Australian constitution to remove discrimination against Indigenous people in the Australian Constitution. This quote from Faith Bandler shows her determination and vision of how to bring change about:

- *"She rang me up late one night in 1956 (she always rang very late or very early) and said in her lovely, cultivated voice: 'You can't get anywhere without a change in the Constitution and you can't get that without a referendum. You'll need a petition with 100,000 signatures. We'd better start on it at once.' And we did. Jessie's role in our movement was absolutely vital. And she never wanted honour and glory. She'd give ideas away and the credit along with them."*

While we know that Jessie's ideas for Constitutional amendments were eventually carried in the 1967 referendum, she might be surprised by how much more work needs to be done for our first nations peoples.

In conclusion, I congratulate the Trust for remembering Jessie's birthday.

She was a leader of her generation, and exceptional in her activism for women's rights and for equality for all. In today's parlance, Jessie was a woman of influence. I do wish I had known her.

Thank you.

Gillian Triggs

¹ Dominique FJJ De Stoop, "Australia's Approach to International Treaties on Human Rights" [1970-1973] *Australian Yearbook of International Law* 27, 28.