

## EDITORIAL

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When the former Liberal–National Coalition Government won a Senate majority in the 2004 federal election, Prime Minister Howard vowed to make ‘modest, even humble’ use of the Government’s power. The subsequent enactment of the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) nine months after the Coalition took control of the Senate on 1 July 2005 rendered questionable this commitment. More importantly, it signalled a further reorientation (or destabilisation) of the federal balance that undergirds Australia’s politico-legal system. Notwithstanding, the validity of this controversial legislation was affirmed by a majority of the High Court in the now infamous *Work Choices* case. According to South Australian Premier Mike Rann, the finding ‘fundamentally changed the shape of [Australian] federalism’.<sup>1</sup> While this statement may be something of an exaggeration, the outcome sustained an established trajectory in Australian law and politics towards centralisation and the consolidation of Commonwealth power.

Since the *Work Choices* juggernaut, the question of federal–State relations in Australia has enjoyed something of a renaissance. Political developments have been both causative and effectual. The year 2007 bore witness to the Howard Government’s ‘aspirational nationalism’ and further Commonwealth incursions into areas of State and Territory, or shared, jurisdiction. In the same year the Labor Party, led by Kevin Rudd, defeated the Howard Government with the promise to end the ‘blame game’ and fix federal–State relations.

Significant statements, if not developments, have also occurred in 2008. One of the key recommendations arising from the Australia 2020 Summit was a reinvigoration of Australian federalism ‘to enhance Australian democracy and make it work for all Australians by reviewing the roles, responsibilities, functions, structures and financial arrangements at all levels of governance’.<sup>2</sup> In July 2008 the Council of Australian Governments released a Communiqué outlining 27 areas of regulatory reform and future intergovernmental cooperation. In the same month the (then incoming) Chief Justice of Australia, Robert French, remarked:

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\* Editor, Thematic Issue 31(2).

1 Mike Rann, Premier of South Australia, ‘Constitutional Convention need to sort out Fed/State Relations’ (Press Release, 15 November 2006) <<http://www.ministers.sa.gov.au/news.php?id=937&page=225>> at 3 August 2008.

2 Commonwealth, *Australia 2020 Summit: Final Report* (2008) 306.

Cooperative federalism today is in part extra-constitutional. Driven by political imperatives it yields results on a consensual basis which go well beyond those achievable by the exercise of Commonwealth legislative power and the separate exercise by the States of their powers.<sup>3</sup>

In bringing together many of Australia's leading contributors to the federalism debate, this Thematic Issue attempts to take stock of these, and other, developments. The Issue is intentionally inter-disciplinary. The intricacies of constitutional law and legal reform are inextricably linked to the very concept of federalism; so too, though, are politics, history and economics. In this respect, the Issue is intended to speak not only to those in the legal profession, but to all with an interest in Australian federalism.

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3 Justice Robert French, 'The Incredible Shrinking Federation – Voyage to a Singular State?' (Paper presented at The Future of Federalism' Conference, Brisbane, 10–12 July 2008) 40.