

EDITORIAL**THE FUTURE OF HUMAN RIGHTS IN AUSTRALIA**

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It is perhaps the word ‘dialogue’ that provides the most fruitful guiding thread in understanding the Australian human rights debate. First, it is the adoption of the dialogue model of a federal Human Rights Act (‘HRA’) that was a key recommendation in the Report of the National Human Rights Consultation Committee. This recommendation, of course, was deferred, if not ruled out, by the Australian government in its recent Human Rights Framework. Second, an examination of how Australia might better protect human rights would be incomplete without considering the potential of cooperative federalism, which as some of this issue’s contributors allude to, can be seen in this context as a form of dialogue between the Commonwealth and states with the intention of determining which measures for protecting rights are most effective. Third and more basically, however, the debate in Australia over how best to protect human rights is itself a dialogue, one involving a cacophony of voices that have included the three arms of government, the media, academics, legal practitioners, civil society and a large number of ordinary Australians. What was the National Human Rights Consultation (‘NHRC’) but an exercise in public deliberation, that is, a dialogue between the government and the governed?

The purpose of this thematic issue is to foster and inform this dialogue, by presenting the first sustained academic critique of the NHRC Report and the Human Rights Framework. Such analysis is no substitute for the perspectives of Parliament or the Australian public – and to think otherwise would be to transform dialogue into a monologue. Nevertheless, as the Commonwealth Solicitor-General helpfully reminds us, this analysis has a defined and valuable place in that dialogue.

For the *Journal* to contribute meaningfully to this dialogue, a number of design principles were constantly kept in view. First and possibly counter-intuitively, the issue was planned from the outset not to address solely the question whether Australia should adopt a federal HRA, or at least not directly and exclusively. Contributors were thus requested not to concern themselves predominantly with this question, though their stance on this could of course

* Editor, Thematic Issue 33(1).

emerge from their analysis. For as crucial as this normative question is, many others deserve attention. For example, what protection do economic, social and cultural rights warrant in addition to civil and political rights? Or, in the event that a HRA is adopted by the federal Parliament, what implications would it have for Australia's complex system of federalism? In order for dialogue to be effective, it must genuinely consider all relevant perspectives, and so such questions must not be left by the wayside.

Second, an array of perspectives was sought for this issue, in acknowledgment of how dialogue presupposes multiple differing viewpoints. The issue therefore collects articles by legal academics, practitioners, political scientists, and a human rights commissioner. The diverse starting points, guiding methodologies, and priorities that these contributors bring to the debate consequently have the potential to enrich that debate in a unique way.

Third, contributions to the present issue eschewed polemical rhetoric, in preference for calm, evidence-based analysis. This will enhance the value and durability of this issue to the debate on human rights protection in Australia, in contrast to polemics that tend mostly to persuade the already persuaded.

As acknowledged by all the contributors to this issue, the Australian government has elected not to adopt a HRA in the immediate term, nor has it set out a clear pathway towards the eventual adoption of such an Act. Far from detracting from the relevance or importance of the articles in this issue, the articles might be seen as an important call to the future. As the Human Rights Framework foreshadows, human rights reform is an iterative process, and the government has committed to a formal evaluation of human rights protection in 2014. In this context, assessment such as that found in this issue of the state of human rights in Australia and the measures taken to protect them is especially significant. Furthermore, such an assessment is of inherent value regardless of what lies in the future, since public attention to and continuous critical scrutiny of human rights measures is crucial to protect the fundamental tenets of any modern liberal democracy.¹

The dedication and effort of a large number of people made this publication possible. I thank my colleagues on the Editorial Board for their time and effort in editing the issue, and particularly Qi Jiang and Elizabeth Sivell for their invaluable input throughout the production process. I am also immensely grateful to Paul Kildea for his aid in some of the initial planning of the issue; and to Alex Steel and Michael Handler, the *Journal's* faculty advisors, and David Dixon, Dean of the UNSW Law Faculty, for their continued support of the *Journal*. Finally, I would like to thank the anonymous referees and contributors, all of whose collective endeavours form the intellectual lifeblood of the issue.

¹ As Habermas writes: 'A legal order ... owes its legitimacy to the forms of communication in which alone [rights] can express and prove [themselves]': Jürgen Habermas, *Between Facts and Norms* (William Rehg trans, Polity Press, 1996) 409 [trans of: *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats* (first published 1992)] (emphasis altered).

If human rights are to have a bright future in Australia, be it one with or without a federal HRA, we will need to maintain a dialogue that is reflective, sustained and most of all sincere. Given the fruit of the contributors' labours, I am confident that the present issue will represent an enduring example of the best of such dialogue.