Foreword

The Honourable Justice Michael Kirby AC CMG[1]

It is interesting, is it not, to reflect upon the rise and rise of the impact of international human rights norms? In 1998, we will celebrate the 50th anniversary of the *Universal Declaration of Human Rights*. In international human rights, we stand on the shoulders of those who went before.

It was my privilege to know John Humphrey. He was a Canadian jurist, who, after the Second World War, helped Mrs Eleanor Roosevelt and Professor René Cassin to draft the *Universal Declaration*. John Humphrey was a member of the International Commission of Jurists. We were proud to have him as our colleague. Often, in our meetings, he would hold us spellbound telling of how he scribbled the first draft of a part of the *Universal Declaration* on scraps of paper as he travelled to work in New York to confer with those who had the responsibility of perfecting the document and recommending it to the General Assembly of the United Nations. In the same way, nearly two centuries earlier, Thomas Jefferson had sat down in a lonely hotel room to pen the first draft of the *Declaration of Independence* with its ringing call to defend "life, liberty and the pursuit of happiness". Important advances in law begin with the mind and pen and actions of an individual jurist. We should never forget that.

Looking through the chapters of this symposium, Australian lawyers will see, once again, the growing impact upon their municipal law of the universal values recorded in John Humphrey's scraps of paper, polished in the *Universal Declaration*, translated into binding obligations of international treaties and rendered accessible to Australians by our country's signature to the First Optional Protocol of the *International Covenant on Civil and Political Rights*.

It is a mark of a strong and confident people — and of a true commitment of human rights for all — that Australia accepts accountability to the United Nations Human Rights Committee. It is a further sign of this strength that we rigorously examine the conduct of officials, parliaments and judges in the detailed chapters published here. There is no pulling of punches. The three branches of government, federal and state, come in for sharp criticism. Such criticism ranges form the analysis of the defects of the *Community Protection Act* 1994 (NSW) which gave

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rise to *Kable's* case, through the examination of the special vulnerability of "boat people" refugees, of people of a minority religious faith and young Australians as they come in contact with the law. Our administration of justice and our respect for civil liberties of vulnerable minorities, depend, in large part, upon combining the intellectual analysis provided in these pages with the popular and political movements required to translate ideas into action.

I especially welcome the closing chapters of this volume. They address new problems such as the changing modes of policing and the moves to private policing. They also include an examination of human rights issues which grow out of rapid technological change. Electronic surveillance, with its impact on privacy. DNA analysis with its heightened need for forensic neutrality. These are forerunners of many new problems which science and technology will present for human rights. Developments within the Human Genome Project promise what may become the greatest human rights challenge of the next millennium — the human rights of future generations. Who will be "humans" to enjoy human rights in a world which the fundamental building blocks of the species, can, potentially, be altered?

A reading of the problems and difficulties presented in this symposium may leave the casual reader discouraged. Be not so. In the last year there has been at least one major advance for human rights in Australia. I refer to the passage through the Tasmanian Parliament of the *Criminal Code Amendment Act* 1997. this repealed provisions of the last criminal statute of the Australian Commonwealth which punished adults for their private consenting sexual conduct. The achievement of homosexual law reform was made through parliaments. As in Tasmania, the change was sometimes a close run thing. In the case of Tasmania, it was only secured by the combined effect of a finding by the UN Human Rights Committee, the passage of the *Human Rights (Sexual Conduct) Act* 1994 (Cth) and proceedings brought to the High Court by Rodney Croome and Nick Toonen.

Australian courts can play a part in the defence of human rights. They can now do so with the help of jurisprudence which is fast developing around the international instruments which express universal rights. But the major battles belong, properly, to parliaments, executive governments and public forums of this country. That is where suggested wrongs must be identified and most reforms achieved. This symposium plays a useful part in the process of enlivening the necessary professional and community debate. Readers may not agree with everything written here. But they will rejoice in a country which repeatedly turns the spotlight on itself and declares that, in some respects, it is found seriously wanting.