

Introduction: A Bill of Rights for Australia?

The common objective of the Australian Human Rights Centre (AHRC) and the Gilbert + Tobin Centre of Public Law in convening the 2002 Bill of Rights Conference was to focus on an issue that, in our view, needed reflection and debate. We felt that it would be particularly beneficial to provide a forum where considered opinions would be aired to assess the future prospects of a Bill of Rights for Australia and the considerations that would need to be taken into account in that quest. The Conference, held on 21 June 2002 at New South Wales Parliament House, was structured to present a wide range of views, with an emphasis on input from the political, the academic and the law practitioner sectors.

This special edition of the *Australian Journal of Human Rights* on *A Bill of Rights for Australia?* involves substantial questions of human rights and of public law. As such, the Conference stands to contribute to both our Centres.

The AHRC has as its mandate the strengthening of awareness of international human rights law — through education — and the realisation of the norms that this law embodies. Moreover, the AHRC defines human rights in their totality, based on the premise that civil, cultural, economic, political and social rights are interdependent. A Bill of Rights would necessarily reflect this basic assumption. The views shared at the Conference are, therefore, of great value to the AHRC in assessing the orientation and content of its work in the coming years.

The Gilbert + Tobin Centre of Public Law has an ongoing project on Bills of Rights issues. The Centre continues to examine questions such as how human rights can best be accommodated with a public law framework and how any such instrument can balance the interests and contributions of the community, parliaments and the courts.

This volume reproduces the presentations made at the Conference (in most cases after substantial revision), as well as other contributions relevant to the topic that we felt would serve to complete this special edition. Together these articles and speeches further stimulate reflection and debate on the issue of a national Bill of Rights for Australia.

The range and content of the input to the subject are as rich as they are provocative. The Conference heard, first hand, of the experiences of other countries, mainly those who follow a common law system, who have adopted a Bill of Rights. It is always valuable to learn of the experience of others, while bearing in mind that the adoption

(or not) of a national Bill of Rights, as well as the modalities thereof, must always be the product of the national will and the result of the environment that it is intended to serve.

In addition, other views focused on aspects of the Australian reality, which was invoked as grounds for opposite conclusions. It was argued with equal conviction that aspects of Australian history showed that a Bill of Rights was necessary, and perhaps overdue. It was also argued that the existing system of balance of power between the legislature and the judiciary has worked and continues to work well in ensuring the protection of all human rights to all in Australia.

Another dimension of the substance of the Conference was the strengthening of the protection of human rights in Australia through a Bill of Rights that is consistent with Australia's human rights treaty obligations.

The result of the Conference as set out in this volume is impressive. In the first place, it confirms the need for such a reflection. To this extent, we hope that others will follow this experience and create conditions whereby this reflection is carried wide and far in Australian society. Our experience has been that this is but a step in a process whose evolution is complex and requires much reflection as the path towards the future unravels before us.

In the second place, the contributions to this volume show that a Bill of Rights is intended to provide the society where it is promulgated a formula for that society to realise the values on which that society is founded. This is achieved by providing the members of that society the awareness of those values and the means of securing their realisation — through a constitutional process.

Thirdly, a Bill of Rights is vital for society as an integral part of the international community. The International Bill of Human Rights, itself inspired to a large extent by the constitutional arrangements of the family of nations, sets out standards that are common to all components of the international community. Through the observance of these common standards, the respect for the dignity of the individual is enhanced, thereby contributing towards a just society and to the creation of conditions to reduce conflict. The debate on a Bill of Rights should therefore include the international paradigm.

Lastly, the Conference showed the importance of reconciling the technical aspects of the Constitution — the interrelationship of the powers of the State as the balance of power is sought and maintained — with the fundamental obligation of government to ensure the protection of human rights of individuals within its jurisdiction.

The increasingly multicultural composition of Australian society calls for change, in the name of adaptation to new realities. The strength of the values on which the existing system has been built dictates prudence in the search for this change. These two forces create a tension which, in turn, dictates an urgent need for constant, if measured, adaptation.

If any conclusion may be drawn, it is that the evolution of our society, its cultural and demographic dynamic, exclude inaction and impose an obligation to seek adaptation to new realities and the changes these realities necessitate. The question of a Bill of Rights for Australia remains an Australian matter, to be decided by Australians as and when they so determine. This requires guidance, sharing of views, and leadership. To that extent, we believe that this special edition of the *Australian Journal of Human Rights* will provide a stimulus towards this process of adaptation. ●

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