

**Speech to the Sydney Institute
by the NSW Attorney General, John Hatzistergos
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**THE WRONG ANSWER TO THE WRONG QUESTION: THE CHARTER
OF RIGHTS AND ABUSES OF OVERCENTRALISED POWER**

Good evening

Next week experts, advocates, community representatives, politicians and judges from all over Australia will be drawn to Canberra for three days of debate on the protection of human rights in the Great Hall of Parliament House.

The centralised power and influence of the Commonwealth Government, which set up the National Consultation, is on display in this debate

... a debate that has become dominated by one question

“Should Australia have a Charter of Rights or not?”

Despite the many different ways that human rights can and should be protected in this country, Charter advocates have decided that this is the only one worth asking.

Few would disagree that the protection of human rights is fundamental to our wellbeing.

Nor would they say that our systems of governance is perfect and could not be improved to better safeguard those rights which we all hold to be so important.

But would the introduction of a bill or charter of rights – the goal of those pushing for change – be of any use?

Would these documents address the imperfections of our democracy?

Just over a year ago when I last addressed the Sydney Institute, I made the point that the Australian Constitution was informed by an older model of rights protection

...where rights were secured through the constitutional order of a political regime of civil liberty.

On that occasion I stated that

“our constitutional system combines a range of federal institutions with parliamentary responsible government. The effect of combining features of federalism and parliamentary responsible government with largely bicameral legislatures is to ensure a decentralised system of government with institutional features consistent with rights protection.”

Reference was made to the following quotation from the late Sir Harry Gibbs former Chief Justice of the High Court from 1991:

“The most effective way to curb political power is to divide it. A Federal Constitution, which brings about a division of power in

actual practice is a more secure protection for basic political freedoms than a bill of rights which means those who have power to interpret it say what it means”

The context of the current debate on whether Australia should adopt a bill or charter of rights follows a long period of government with heightened concern about human rights.

Some of the issues that arose included concerns about indefinite detention and psychological and physical maltreatment of asylum seekers,

...the excesses of police power in the Haneef investigation

... the emasculatation of workers' rights under the work choices regime

...and federal intervention in the Northern Territory.

There were also acrimonious disputes between the States and the Commonwealth involving funding and service delivery

...in numerous areas affecting peoples rights to services as health, education and roads.

Invariably the Commonwealth used its dominance to prevail.

Intergovernmental agreements were submitted on a take it or leave it basis requiring exhaustive preconditions to be met and corresponding levels of state funding.

Limited flexibility was provided.

This is the environment where the charterists argument thrives.

Democracy is seen to have failed.

So enact a charter, shift power to the unelected courts and hope for a better outcome there.

It will be remembered however that this was a period when the Coalition controlled both houses of the Federal Parliament whilst the States and Territories all had Labor Governments .

Hence the institutional and political restraints that might otherwise have tempered executive and legislative action were not as robust.

It was but the latest chapter in the growing centralisation of government decision-making in Australia.

Ultimately that government paid the price that no Court can ever pay: defeat at the ballot box.

So the notion of a Charter or Bill of Rights is the wrong answer to the wrong question.

Surely the question to ask is how can our constitutional framework , the checks and balances of a federation based on bicameralism respond better to people's rights.

Fundamental to the question of the protection of human rights, particularly social and economic ones such as the right to healthcare and education, is the economic power of the government to fund essential services such as these.

This is a reality that is often ignored in the debate over the Charter of Rights and – given the preponderance of lawyers and academics amongst the charter advocates – perhaps it is not surprising.

But it is these economic and social rights which matter the most to people in their every day lives.

Indeed in my recent discussion with the Committee of the National Consultation they revealed that it was these rights which formed the basis of the great majority of submissions

...rather than the procedural rights so beloved of the legal profession.

For this reason in the examples that follow I will address the economic powers of both state and federal governments in Australia and the economic resources they are equipped with to fulfil their duties to protect the human rights of their citizens.

What happened to the Inter-state Commission?^[2]

One central part of this question is the role of the Inter-state Commission, a body explicitly provided for in the Constitution as a key element of the

^[2] see generally: Coper M, *The Second Coming of the Fourth Arm: The Role and Functions of the Inter-State Commission*, (1989) 63 ALR 731

economic machinery of the Federation and the governmental structure of the nation, but which has vanished from view.

The framers of our constitution recognized that apart from developing a national economy the states would have a legitimate interest in developing their own.

They felt that these competing interest should be reconciled through an impartial body with particular expertise in trade and commerce.

Hence Section 101 of Constitution provided for the Inter-state Commission –

“with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and all laws made thereunder”.

The potential for the Inter-state Commission to be an impartial body to oversee the development of autonomous, strong state economies was there in the Constitution from the beginning.

The responsibilities on states, in contrast to the Commonwealth, to provide the great majority of government services to their citizens

... necessitates a strong economic and financial base from which to draw the resources that are needed to do so.

When the first incarnation of the Inter-State Commission finally came to fruition in 1912, its legislative foundation gave it responsibility to adjudicate in respect of interstate trade and aspects of industrial arbitration.

However, in 1915 the High Court found that despite section 101 giving the Commission 'powers of adjudication, the Constitution prevented the Inter-State Commission from exercising the powers of a Court.'^[3]

This was the first move in the long process by which the Commonwealth and the High Court denied the Inter-state Commission the ability to play the role envisioned for it in the Constitution.

Despite the potential for the Inter-State Commission to look at a broader range of relative state disadvantages, attempts to revive it – especially following the 1929 Royal Commission into the Constitution recommendations to do so failed.

After years of inactivity the Act that established it was repealed in 1950.

Gough Whitlam, in the 1957 Chifley Memorial Lecture, spearheaded interest in its reinstatement and various reincarnations were discussed in the 60's & 70's.

Its reestablishment was part of the Labor Party platform when it came to power in 1972, and the Inter-State Commission Bill was introduced in 1975 but the Act was not proclaimed until 1984 under the Hawke Government.

^[3] *NSW v Commonwealth* (1915) 20 CLR 54 (the *Wheat Case*)

Adopted only as an advisory body, the Commission took a wide view of its objectives and in its examination of the efficiency of the Australian waterfront it considered:

...the entire structure and operation of the stevedoring industry, industrial relations, restrictive trade practices, electronic communications and the role and performance of government instrumentalities such as port authorities.

The subject matter of transport was seen to encompass both economic and social issues – the costs and impacts of transport choices being pervasive in Australian life.

Generally speaking, the advice of the Commission was directed to the achievement of economic unity in a Federal system.

This entailed consideration of the appropriate balance between national and local interests and between the competing interests of different States...

– an example of this is its work on harmonisation of road regulations.^[4]

In August 1989, the Government abolished the Commission by merging it into the Industries Assistance Commission and renaming it the Industry Commission.

Coper suggests that as a consequence there was a further centralisation of power to Treasury, with respect to policy making in relation to micro-

^[4] Coper, *supra*, p 740

economic reform. The absence of an independent body combined with the use of other levers of federal power that I will shortly refer to have effectively diminished the capacity of the States to embed their own economic policies.

Well what are these other levers?

The income tax laws & the role of Section 96 in the decline of the power of the States

The possibilities for the States to impose their own taxes and hence finance their expenditure were curtailed by the terms of Constitution itself specifically:

- Section 90: pursuant to which customs and excise duties is an exclusive power of the Commonwealth,
- Section 92: pursuant to which trade commerce and intercourse between the states shall be absolutely free, and hence preventing state taxes that impede such trade commerce or intercourse and
- Section 114: pursuant to which Commonwealth property cannot be taxed by the States

On this, Alfred Deakin commented in 1902:

“The rights of self government of the States have been fondly supposed to be self-guarded by the constitution. It has left them

legally free, but financially bound to the chariot wheels of the Commonwealth.”^[8]

Whilst it is true that the States had at federation considerably more financial strength than the Commonwealth, the later began to exert its dominance almost as soon as it was created.

Customs and excise duties were first handed over to the Commonwealth with a remittance, for the first ten years only, to the States of seventy five per cent of the revenues derived.

Although States had constitutional access to other taxation powers, including the power to tax income, any semblance of fiscal power was soon undermined.

First during the World War One when the Commonwealth found itself with an ever increasing financial burden it introduced new direct taxes the most important of which was income tax.

By the 1917 -1918 financial year this tax comprised some thirty percent of federal revenues.

By 1920 the Commonwealth decide to retain the tax notwithstanding the fact that it was levied in addition to State income tax .

A more direct attack on the State’s financial sovereignty was to come.

^[8] Warren N. *Benchmarking Australia’s Intergovernmental Fiscal Arrangements, NSW Government 2006, p17*

In April, 1942, following the outbreak of war in the Pacific and the threat from Japan, Prime Minister John Curtin held a conference with state Premiers

...where he proposed that in order to fund Australia's war effort the federal government would take over all income tax raising in Australia

... on the basis of the States withdrawing and the Commonwealth guaranteeing a right of re entry after the war.

The Commonwealth devised the Uniform Incomes Tax Agreement which meant that in return for the right to tax incomes, the Commonwealth would reimburse the States for its lost income tax revenue.

The mechanics of the scheme were:

- First, the Commonwealth raised its own tax level to a level equivalent to the total taxes levied by both it and the States
- Second, it legislated to give priority to the collection of Commonwealth income tax, and
- Third, it legislated to provide for annual grants to the States pursuant to section 96, on condition that the State did not impose its own income tax

Against his better judgment, but in line with the wishes of his party, New South Wales Premier William McKell agreed to this.

Despite assurances to the contrary McKell was aware that the proposal was likely to be a permanent centralisation of fiscal control and a strengthening of the power of the federal government.^[9]

Other Premiers refused to accept the Commonwealth proposal and challenged its legislative underpinning.

The scheme's constitutionality was upheld in its totality by the High Court in the First Uniform Tax Case (*South Australia v The Commonwealth*) and again, with reference to the use of section 96 in 1957 in the Second Uniform Tax Case *Victoria v The Commonwealth*.

^[9] Cunneen C, *William John McKell, Boilermaker, Premier, Governor-General*, University of NSW Press Ltd 2000 p145

Since then the Commonwealth has enjoyed excess revenue raising capacity with its control of all major tax sources.

To quote from a NSW Treasury Budget Statement 2007-08:

The Commonwealth collects around 82 per cent of total national taxation revenue (including the GST), but is responsible for only around 54 per cent of own-purpose expenses.

The States collect around 15 per cent of taxation revenue and account for around 40 per cent of own-purpose expenses.¹¹

As I have already stated Section 90 of the Constitution limits the range of taxes available to the States,

...and its interpretation by the High Court has perpetuated this position by taking an increasingly expansive definition of what amounts to an excise,

...with consequent limitations on the States seeking to increase their revenue by imposing taxes on the production or goods or broad sales taxes.

It is true that there was an attempt by Prime Minister Fraser at a New Federalism in the late 1970's and early 1980's.

¹¹ Based on the latest available data from Australian Bureau of Statistics, Government Finance Statistics, Cat No. 5512.0, 2005-06.

This however was thwarted by a federal Treasury perception of fiscal policy requirements relating to a resources boom and the winds of financial deregulation.^[10]

As Professor Warren says in his 2006 Report, *Benchmarking Australia's Intergovernmental Fiscal Arrangements*, this Vertical Fiscal Imbalance has continued, indeed been exacerbated, since.

The introduction of the GST (a growth tax) and the surrendering by the States of a range of other taxes in return meant that there developed an even larger revenue pool held by the Commonwealth albeit on behalf of the states with:

- consequent potential for further intrusion of Commonwealth policy into service delivery areas such as health and education, for which they are not primarily accountable, and
- the added lack of Commonwealth responsibility for any failure to provide such services.^[11]

The October 2008 *Review of State Taxation: Other Industries – Final Report of the Independent Pricing and Regulatory Tribunal*, notes that the methods of addressing the Vertical Fiscal Imbalance involve a redistribution of Commonwealth tax revenue by:

- a complex system of 'Horizontal Fiscal Equalisation' for untied General Purpose Grants and
- tied grants, known as Specific Purpose Payments,

^[10] Groenewegen P, Ch. 10, *Federalism*, p250 in *From Fraser to Hawke*, Head, B & Patience A (eds) Longman Cheshire, 1989

^[11] Warren N. *supra*, p xxii

with the result being that the Commonwealth Grants Commission effectively controls the level of financial resources available to the State,

...regardless of the State's own efforts to improve its revenue base (mainly by taxes on payroll and land) or the Commonwealth policy on distribution Specific Purpose Payments.

As Professor Warren noted in his 2006 review, Australia has the second lowest level of fiscal autonomy of State governments of the major federations he examined .¹²

That is lower than Canada, Germany, Italy, Switzerland and the United States.¹³

Moreover the growing use of section 96 specific purpose payments has meant that the Commonwealth has been able to use around 15% of total state revenues that it contributes in NSW to control around 30% of State outlays.

At the time of federation the philosophy behind the use of section 96 payments was in the nature of a safety valve.

Certainly its potential use as a means of furthering national policies was beyond the contemplation of all but an isolated minority of the founding fathers.

¹² Warren N. *supra*, p xxxiii

¹³ Warren N. *supra*, p. xxxii

Yet even before the uniform tax cases the High Court had sanctioned the use of section 96 to advance objectives outside the Commonwealth's constitutional responsibilities.

The breadth of this power was expounded by Chief Justice Dixon in the Second Uniform Tax case where his honour stated :

“Before the meaning of section 96 and the scope of the power it gives had been the subject of judicial decision no one seems to have been prepared to speak with any confidence as to its place in the constitutional plan and its intended operation.

It may be said perhaps that whilst others asked where the limits of what could be done in virtue of the power the section conferred were to be drawn, the Court has said that none are drawn and any enactment is valid if it can be brought within the literal meaning of the words “financial assistance” even that is unnecessary”.

The use of section 96 specific purpose grants has now expanded to cover around half the federal funding to the states and across virtually all portfolio responsibilities.

Nor have the conditions of the grants been confined to the delivery of outcomes; it has extended to the propagation of philosophies.

Consider statements made in the second reading speech of the then Commonwealth Minister for Education, Science and Training, Brendan Nelson, on introducing the 2004 Education Funding Bill^[12] which secured

^[12] Schools Assistance (Learning Together-Achievement Through Choice and Opportunity) Bill 2004

Commonwealth funding to States and Territories for government and non-government schools for the 2004-2008 such as:

- “This bill reflects the government’s policy decisions (and) is built upon principles ... that are not shared by the Australian Labor Party.” and,
- “Making values a core part of schooling is pivotal to this legislation.”

Needless to say “the values” in question were those held by the Howard government, although it was pretty clear that even they struggled to articulate what they were in the context of public education, beyond a certain nationalistic fervour reflected in the requirement set out in the second reading speech that:

“Additionally, every school will be required to have a functioning flag pole and fly the Australian flag, and the Australian government makes no apology for requiring it.”

In 1994 Sir Harry Gibbs highlighted for us some disturbing trends in the accretion of power to the Commonwealth when he said:

“By reason of the effect of s 96 and to a lesser but increasing extent of s 51(xxix), there has grown a Commonwealth bureaucracy which duplicates that of the States. Australians complain that they are over-governed; the fault largely lies with the Commonwealth for its intrusion into areas already serviced by the States.^[7]”

^[7] Gibbs, *supra*, p 5

The significance of this to the rights debate needs to be understood. In many of the submissions to the consultative group on human rights, demands are made for aspirational social and economic rights: the right to free and accessible education to quality healthcare, a clean environment and so on.

Whatever any document says these can only be delivered within the capacity of government.

To that end one must seriously question whether these rights or demands are best met by the existing dichotomy between the federal policy prescriptions and fiscal dominance and state service delivery obligations.

The Role of the High Court in the decline of State power

Quite apart from the tax cases, the High Court has, from the Engineer's Case onward interpreted the Constitution broadly – with the consequence of a continual decline in the authority of the States generally and a growth in the predominance of federal power.

While the Court's interpretation of the Commonwealth's power in respect of corporations is clearly the most recent incursion into the power of the States to regulate the affairs of its citizens, I want to draw particular attention to some of the High Court's cases concerning the foreign affairs and defence powers and consequences arising from those cases.

The growth in the external affairs power

Although the Commonwealth has no specific power to legislate with respect to the environment it can legislate in this area under the external affairs power in the Constitution – the *Fraser Island sandmining & Franklin Dam* cases being early examples of how this can be achieved.

While the decisions in those cases may have been welcomed on environmental grounds, there can be no doubt that the use of the external affairs power by the Commonwealth has a more insidious dimension.

More specifically, as so eloquently analysed by Sir Harry Gibbs^[13], section 51(xxix) of the Constitution allows the legislative power of the Commonwealth to be expanded by executive action in almost all the areas over which the State may think it has the power to make laws.

This may seem surprising on the face of it to many of you who thought that the States could legislate in areas where the Commonwealth had not been given a specific constitutional power to do so.

So how does it work?

Again, to quote Sir Harry:

“Under Australian law the Executive can enter into and ratify treaties without the authority or approval of the Parliament. There is no limit to the matters that may be dealt with by a treaty and the Executive is free to enter into an international agreement binding Australia to conduct its internal affairs in a particular manner, even

^[13] Gibbs, *supra*

though the Parliament has no power, apart from that given by s 51(xxix) to legislation with regard to such affairs. The result is that the legislative power of the Commonwealth can be expanded by Executive action and the expansion can be wide enough to extend over almost all, if not all, of the matters within State legislative power. The grant of power to the Commonwealth by s 51 becomes quite irrelevant. ...

It appears no exaggeration to say that the combined effect of s 51(xxix) and s 109 is that the Commonwealth can annihilate State legislative power in virtually every respect.^[14]

Treaty making and Commonwealth power

The Commonwealth has used its executive authority to regulate the economic affairs of the country, for instance by entering into a treaty with NZ for Closer Economic Relations.

This treaty in itself has been the foundation of many Commonwealth enactments.

But overall there are now some nine hundred treaties to which Australia is signatory...

... covering just about every ponderable matter giving the Commonwealth additional jurisdictional reach.

^[14] *ibid*, pp4-5

Ironically, the use of this power to import international human rights norms is growing rapidly^[17].

What does this mean in the context of the current debate about a Bill or Charter of Rights?

I think it means that it is not inconceivable that a Commonwealth Bill of Rights (which gave enforceable rights to individuals – the ultimate aim of many in the pro Charter/Bill camp)

...might be used to argue, by reference to a relevant international treaty, the foreign affairs power and section 109 (which says that a State law is invalid to the extent of any inconsistency with a Commonwealth law),

..that a state law that seeks to protect a person's human rights is invalid.

For instance, it could be argued that a State law which seeks to protect sexual assault victims

... by limiting their exposure to bullying cross-examination by defence counsel

...breached a right to a fair trial expressed in a Commonwealth Bill of Rights.

^[17] See Kirby, M *Domestic implementation of international human rights norms* (1999) 5(2) Australian Journal of Human Rights 109

This in my view, represents a serious and inappropriate threat to the power of State legislatures who, in the main, are responsible for the administration of the criminal law in this country,

...and have responsibility for example for ensuring that the human dignity of sexual assault victims who are brave enough to pursue the prosecution of their attacker and be protected from unwarranted bullying tactics of defence counsel in the course of such a prosecution.

The growth in the defence power

The decision of the majority in *Thomas v Mowbray* is the latest representation of the willingness of the High Court to continue the trend of upholding the central power of the Commonwealth to legislate

...this time by reference to the defence power in respect of the policing of terrorism.

This latest expansion occurred against the background of a lack of specific power in the Constitution to legislate with respect to the criminal law, and a clear presumption implicit in the States referral of power to the Commonwealth to legislate with respect to counter-terrorism, that it was a legislative power of the States to give away on its terms .

To conclude

Though I don't agree with the suggestion^[18] that the lack of a Bill of Rights creates a serious barrier to community understanding of the

^[18] Sackville R, *Techniques of constitutional interpretation: five recent cases*, *Constitutional Law and Policy Review*, Vol 10, No 2, February 2008, p22-23.

constitutional structure, I do believe that there is a general lack of 'constitutional literacy' in the community which has contributed to the appeal of proposals for a Bill or Charter of Rights.

There is however a frustration that more and more decision making is being made remotely from the people it serves.

As the 2008 Griffith University Constitutional Values Survey showed most people surveyed believe that decisions should be made at the lowest competent level.

Moreover the survey showed sixty nine percent of persons surveyed opposed abolishing State governments although sixty eight percent would restructure the current system.¹⁹

In 1994 it was Sir Harry Gibbs's assessment that, even in the face of the increasing influence of the Commonwealth in areas such as education that 'were formerly managed by the States',

'...there is little or no likelihood that the States will be abolished in the foreseeable future, and that accordingly the federal system for which our Constitution was designed to provide should be made to work effectively and without a costly and inefficient duplication of effort.'^[20]

¹⁹ A.J. Brown, *Ain't broke but it needs fixing*, Weekend Australian 26-7 July 2008, p. 29

²⁰ Sir Harry Gibbs, *The Decline of Federalism*, 18 U Queensland L.J. 1 1994-1995

This was a central theme of the discussion at the 2020 summit which resolved, under the theme of creating a modern federation, to pursue the following ideas:

- 9.4 Reinvigorate the federation 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 (including courts and the non-profit sector) by 2020. A three-stage process was proposed with:
 - a. an expert commission to propose a new mix of responsibilities
 - b. a convention of the people, informed by the commission and by a process of deliberative democracy
 - c. implementation by intergovernmental cooperation or referendum.

- 9.5 Drive effective intergovernmental collaboration by establishing a national cooperation commission to register, monitor and resolve disputes concerning intergovernmental agreements.

A federation is of course not the most efficient form of government but then again neither is democracy.

But as Gleeson CJ once commented : we have other values.¹⁴

I am not naïve enough to believe that federal fiscal dominance will be surrendered or the trend to centralisation of decision making is to be suddenly reversed.

However as Paul Kelly told the governance group at the 2020 summit fixing federalism properly is going to involve

¹⁴ M Gleeson, *Boyer lectures*

“two principles of power, moving in the opposite directions ...Power has to be both concentrated and devolved. Thinking of people at local levels along with centralised governance.”

This has to involve improving our democratic structures and how they are informed by ordinary citizens of their rights.

The current consultation process has yet to conclude and I hope that the focus of discussion on the charter concept will not lead to the Consultation missing an opportunity to canvass the broader question of how we can improve our institutions to better respect rights of all our citizens.

In my own submission to the consultation I outlined the effective mechanisms at the state level to protect human rights., many of which could be replicated by the Commonwealth.

These include the Legislation Review Committee, the anti-corruption commissions of the ICAC and Police Integrity Commission and agencies and tribunals which oversee the protection of human rights:

NSW Ombudsman, NSW Anti-Discrimination Board, Office of the NSW Privacy Commissioner, Community Relations Commission and Administrative Decisions Tribunal.

NSW also has targeted legislation which addresses particular human rights concerns.

By aiming at specific and delimited policy objectives, rather than the general principles of a charter, these legislative instruments have greater capacity to achieve real human rights protection than a charter.

This legislation has practical and predictable effect and is supported by the public authorities mentioned above.¹⁵

State legislatures are in touch with local needs and concerns, and so are in a prime position to formulate human rights policy.

State powers to govern as they see fit must not be unduly fettered by Commonwealth interference, yet more cooperative models can yield very positive results.

The Standing Committee of Attorneys-General ('SCAG') is a forum in which individual State differences can be advocated and negotiated in a democratic fashion.

¹⁵ Legislation includes:

- the Privacy and Personal Information Protection Act 1998,
- Health Records and Information Privacy Act 2002,
- Administrative Decisions Tribunal Act 1997,
- Anti-Discrimination Act 1977,
- Freedom of Information Act 1989,
- State Records Act 1998, Criminal Records Act 1991 (spent convictions),
- Listening Devices Act 1984,
- Workplace Surveillance Act 2005,
- Telecommunications (Interception and Access) Act 1987,
- Access to Neighbouring Land Act 2000 and
- Crimes (Forensic Procedures) Act 2000 (DNA testing).

The States are moving towards uniform model legislation in a number of areas, which, through extensive consultation and discussion, we hope will result in best practice across the country.

In particular, in March 2008, SCAG placed the question of harmonisation of discrimination laws in Australia on its agenda.

Ministers established an officers' working group and agreed to focus on non-legislative ways to enhance access to complaint handling procedures, needs analysis for reform, and institutional and cooperative arrangements.

Spent convictions are also under discussion by SCAG.

The Federal *Privacy Act 1988* and its NSW counterparts have recently been or are currently under review by the respective law reform commissions, and it is anticipated that SCAG will be asked to consider implementing some uniform privacy standards across all Australian jurisdictions.

The NSW human rights bodies above are all scaleable to a federal level, and some already have federal counterparts.

Through increased cooperation and expertise sharing across jurisdictions, best practice can be achieved through dedicated government bodies, support of the non-governmental sector, and a culture of protecting human rights as a matter of course through the political system.

In making these suggestions for improvements I do not concede that democratic government in this country has failed. It can however be improved.

The Prime Minister has already signalled that fixing the federation is a priority of his government.

The 2020 summit has identified some tangible ways of doing so.

It would be unfortunate if this was an opportunity that was lost.