



# Australian Community Futures Planning

## The People’s Constitution – Extract from Chapter 6

### The National Agreement on Human Rights and Obligations Starting draft for community engagement

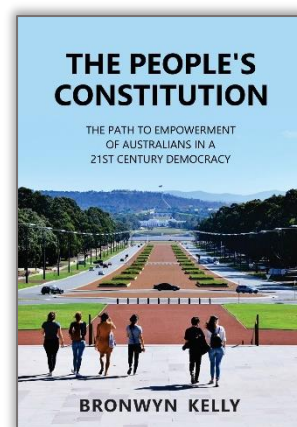
The following is an extract from Chapter 6 of

*The People’s Constitution: the path to empowerment of Australians in a 21<sup>st</sup> century democracy.*

by ACFP’s Founder, Bronwyn Kelly.

The extract provides the full wording of the National Agreement on Human Rights and Obligations proposed as a starting draft in the book. This draft is offered to assist in community engagement and is therefore fully detailed. This makes it quite a complex amendment that may be difficult to follow unless a full transcript is provided. It is provided to assist any Australians who may listen to the audio version of *The People’s Constitution*.

[Listen to the audio version of \*The People’s Constitution\* on Apple Podcast](#) or on Substack at [bronwynkelly.substack.com](http://bronwynkelly.substack.com)



Visit <https://www.austcfp.com.au/publications> for the full publication of *The People’s Constitution*.

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Everyone is welcome to participate.**

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# The People's Constitution: the path to empowerment of Australians in a 21<sup>st</sup> century democracy

Extract from Chapter 6 – Starting draft of a National Agreement on Human Rights and Obligations and a democratic process for its constitutional enshrinement

## **Part 1: Australian People's Constitution – Inception of a National Agreement on Human Rights and Obligations (draft for use in community engagement)**

- 1) Pursuant to our approval in an Inception Referendum, it is the Sovereign Will of We the People of Australia that We shall make an inaugural agreement to be known as *The National Agreement on Human Rights and Obligations* and that this *Agreement* shall:
  - a) be enshrined and upheld in this Constitution in accordance with the principles and democratic processes described here and elsewhere in this Constitution and shall thereby be taken to stand as the freely expressed will and agreement of the People of Australia to:
    - confer human rights that are acknowledged to be universal and indivisible in full and equally on all natural persons; and
    - impose on each other and on elected parliaments and governments full obligations to:
      - uphold and observe these rights as the just and equal entitlement of all, and
      - build a society and democratic governance system capable of progressively realising these rights for all on an equal basis, up to the fullest extent possible, and in a manner that is demonstrably in the public interest;
  - b) pursuant to and consistent with 1(a) above, have the effect of incorporating into Australian law the full set of human rights and obligations that are established in international instruments to which Australia is (or becomes) a signatory, or of which it is (or becomes) a supporter, as the equal entitlements and obligations of all natural persons, such international instruments to include those listed in Part 2, clause 2(b) below as the Minimum Instruments necessary for fulfilment of the People's intention in regard to the rights they shall enjoy under *The Agreement*; and
  - c) be binding in law on all persons, parliaments and executive governments of the Commonwealth, States and Territories of Australia as well as their agents and subsidiaries and be maintained as Australian law unless and until such time as Australian enfranchised electors seek in a duly constituted referendum to vary *The Agreement*.

**[Note:** It is assumed here that a referendum will be called in the first instance to establish that this is in fact the People’s Sovereign Will. This referendum may be known as the Inception Referendum for the inaugural *National Agreement on Human Rights and Obligations*. An option for a straightforward question for the Inception Referendum may be as follows:

Do you support an alteration to the Constitution that will allow the people of Australia to make a *National Agreement on Human Rights and Obligations* wherein the full set of human rights and obligations that are established in international instruments to which Australia is a signatory, or of which it is a supporter, will form the basis of *The Agreement* and will be maintained as the minimum of human rights and obligations under Australian law until such time as Australian enfranchised electors seek in a duly constituted referendum to vary *The Agreement*?

It is further assumed that because this is an agreement that the people of Australia freely make among themselves, the referendum for inception of the inaugural *Agreement* shall not be obstructed by the parliament or executive government in the manner permitted under the current wording of section 128 of the current Constitution but shall be called (in this instance, and only in this instance) by the governor-general (or other nominal head of state, should such an office be created), with or without the agreement of parliament.

In the current Constitution it is unlikely that the governor-general has the power to call a referendum in this way – that is, without a parliamentary vote in favour of calling a referendum. As such, if the parliament behaves obstructively (including by seeking to reduce the rights and obligations that may be enshrined in this process) and no lawful way around the obstruction can be found, community pressure will need to be brought to bear to ensure that human rights can at last be assumed as the property of Australians consistent with the international human rights instruments to which Australia is a signatory.]

## **Part 2: Democratic process for enshrining and upholding *The National Agreement on Human Rights and Obligations* (draft for use in community engagement)**

- 2) Pursuant to the passage of the Inception Referendum in Part 1, and consistent with the declaration in clause 1 above that it is the sovereign will of the People of Australia to enter into *The National Agreement on Human Rights and Obligations*, the parliament shall within one month take all steps necessary to:
  - a) ensure that the inaugural *National Agreement on Human Rights and Obligations* is incorporated into this Constitution in a form and wording that is consistent with the Sovereign Will of the People as expressed in the Inception Referendum; and
  - b) ensure in particular, in accordance with Part 1, clause 1(b) above, that the following international instruments shall be incorporated in full into the inaugural *Agreement* and be acknowledged therein as the Minimum Instruments necessary for fulfilment of the People’s intention in regard to the human rights they shall enjoy and the obligations that shall be accepted under *The Agreement*:
    - i. the International Covenant on Civil and Political Rights (ICCPR),

- ii. the International Covenant on Economic, Social and Cultural Rights (ICESCR),
  - iii. the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),
  - iv. the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
  - v. the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),
  - vi. the Convention on the Rights of the Child (CRC),
  - vii. the Convention on the Rights of Persons with Disabilities (CRPD),
  - viii. the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),
  - ix. the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1),
  - x. the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2),
  - xi. the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC-AC),
  - xii. the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC),
  - xiii. the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (OP-CEDAW),
  - xiv. the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD),
  - xv. the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT);
- c) ensure that all other steps that may be required in order to fulfil the purposes of this Part, as set out in clauses 3 and 4 below, are taken in full and in a manner faithful to those purposes; and
- d) make any and all laws necessary to establish and maintain a fully democratic process by which We the People of Australia may, in accordance with our Sovereign Will as expressed here and elsewhere in our Constitution, and by means of duly constituted referendums, seek to vary the duly enshrined *National Agreement on Human Rights and Obligations*, if such variation has been deemed necessary in, or due to, processes for community engagement and review of *The Agreement* as provided for here or elsewhere in this Constitution.
- 3) The primary purposes of this section (including Parts 1, 2, and 3), and of any laws that may be made under this Constitution in relation *The National Agreement on Human Rights and Obligations*, must be to ensure that:
- a) human rights that are established in international instruments to which Australia is a signatory, or of which it is a supporter, will be established automatically, and in any case without unreasonable delay or obstruction, in Australian law as the minimum of human rights available in Australia; and that

- b) unless and until We the People of Australia in a duly constituted referendum deem otherwise:
    - i. the rights so established shall not be reduced or withheld from any natural person; and
    - ii. no obligation that is specified or implied in the instruments cited in clause 2(b) above as an obligation which “shall” be observed by a State Party to or supporter of these instruments, may be obviated, evaded, escaped or derogated from by the parliament in lawmaking or by the executive government in policy, action or administrative practice, except as provided for by these instruments and except as may be demonstrably consistent with the national interest and the values of the nation as expressed in the *Statement of Australian Values* in this Constitution.
- 4) Other essential purposes of this section are to ensure that:
- a) no parliament or executive government may unreasonably deny or delay extending any human right to a natural person if that right is deemed to be lawful under international law and is demonstrably consistent with the values of the nation as expressed in the *Statement of Australian Values* in this Constitution;
  - b) parliament may make laws which confer human rights on natural persons which are additional to the human rights conferred under the above instruments, but no parliament or executive government may take any action in law, policy, administration or executive statement to reduce or restrict these duly conferred human rights, except insofar as the instruments themselves allow and only to the extent allowed under international law;
  - c) no parliament or executive government may refuse to comply with a State Party obligation set down in the above instruments except to the extent that may be permitted by international law;
  - d) no parliament or executive government may take action to dismiss, deny or derogate from a State Party obligation set down in the above instruments except to the extent that may be permitted by international law;
  - e) parliaments shall ensure the full protection of all natural persons from abuse of their human rights by ensuring that any provisions in this and all other laws and subordinate legislation made by the parliaments of the Commonwealth, the States and the Territories, which are in part or in whole demonstrably inconsistent with the terms of *The National Agreement on Human Rights and Obligations*, are deleted or amended in a manner that ensures this Constitution and laws made under it are brought into accord with the public interest as expressed in *The Agreement*;
  - f) no human rights may be accorded to corporations or to any entity that is not a natural person;
  - g) parliaments will take action to ensure that referendums for the purpose of amending or altering *The Agreement* are duly constituted in accordance with referendum processes permitted for amendment or alteration of this Constitution;



- h) community engagement preparatory to any referendum is fully open to and accessible by all Australians and is not constrained or delayed by inadequate funding, or funding which is distributed on a discriminatory basis or in a manner likely to result in discrimination against a particular group; and
- i) parliaments and executive governments will take any and all other necessary action to ensure that all Australian peoples, including First Nations, have the right of self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Part 3: *The National Agreement on Human Rights and Obligations* (draft for use in community engagement)**

[**Note:** The following is an indicative draft of a *National Agreement of Human Rights and Obligations*. It is provided to illustrate the sort of *Agreement* that is likely to arise from Prospect 2 if it is invoked and enshrined in a manner that accords with the processes described in the draft of Parts 1 and 2 above. This is a starting draft of a possible *Agreement* to assist in community engagement for the making of an Australian People’s Constitution.]

We the People of Australia, being satisfied that the processes as specified in Parts 1 and 2 of this section for inception and enshrinement of *The National Agreement on Human Rights and Obligations* has been conducted lawfully, in full consideration of the public interest as expressed in the *Statement of Australian Values* in this Constitution, and in complete accordance with our Sovereign Will as expressed here and elsewhere in this Constitution, do hereby affirm and declare that we freely agree to:

- 1) confer all universal human rights in full and equally on all natural persons in accordance with and to the extent specified in the following international human rights instruments:
  - i. the International Covenant on Civil and Political Rights (ICCPR),
  - ii. the International Covenant on Economic, Social and Cultural Rights (ICESCR),
  - iii. the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),
  - iv. the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
  - v. the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),
  - vi. the Convention on the Rights of the Child (CRC),
  - vii. the Convention on the Rights of Persons with Disabilities (CRPD),
  - viii. the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),
  - ix. the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1),
  - x. the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2),

- xi. the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC-AC),
  - xii. the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC),
  - xiii. the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (OP-CEDAW),
  - xiv. the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD),
  - xv. the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT); and
- 2) impose on each other as responsible persons and communities, and on all parliaments and executive governments of the Commonwealth, as well as all State and Territory governments, lawfully elected from time to time under this Constitution or State Constitutions, full obligations to:
- a) uphold and observe the rights conferred in (1) on all natural persons as their just and equal entitlement, and
  - b) build a society and democratic governance system capable of realising these rights for all on an equal basis and in a manner that is demonstrably in the public interest and is consistent with the underlying principles and legal requirements of the instruments listed in (1).

We further affirm and declare that:

- a) No obligation that is specified or implied in the instruments listed in (1) as an obligation which “shall” be observed by a State Party to or supporter of these instruments may be obviated, evaded, escaped or derogated from by a parliament in lawmaking or by an executive government in policy, action, administrative practice or executive statement, except as provided for by the listed instruments and except as may be demonstrably consistent with the national interest and the values of the nation as expressed in the *Statement of Australian Values* in this Constitution.
- b) The rights conferred and the obligations imposed consistent with the instruments listed in (1) are law in Australia unless and until We the People say otherwise in a referendum held in accordance with the referendum processes permitted in this Constitution for its amendment or alteration.
- c) Parliaments may make laws which confer human rights on natural persons which are additional to the human rights conferred under the above instruments, but no parliament or executive government, either of the Commonwealth or a State or Territory, may take any action in law, policy, administration or executive statement to reduce or restrict these duly conferred human rights, except insofar as the instruments themselves allow.

- d) No parliament or executive government may take action to dismiss, deny or derogate from a State Party obligation set down in the above instruments except to the extent that may be permitted by international law or to the extent permitted by any processes that are or may be established for this purpose elsewhere in the Constitution in accordance with our Sovereign Will.
- e) No parliament or executive government may frustrate, delay or reduce access to the benefits of any right or obligation in the listed instruments by unreasonably applying a reservation to or withholding support for any aspect of the listed instruments.
- f) No parliament or executive government may seek to frustrate, delay or deny the inclusion of human rights and obligations in Australian law by unreasonably refusing to become a State Party to or supporter of human rights declarations or treaties in international law and no barrier shall be imposed by parliaments or executive governments to referendum processes for inclusion of new human rights in Australian law when rights conferred in instruments of international law or declarations are demonstrably consistent with the values of Australians as expressed in the *Statement of Australian Values*.
- g) Parliaments shall ensure the full protection of all natural persons from abuse of their human rights by ensuring that any provisions in this and all other laws and subordinate legislation made by the parliaments of the Commonwealth, the States and the Territories, which are in part or in whole demonstrably inconsistent with the terms of *The National Agreement on Human Rights and Obligations*, are deleted or amended in a manner that ensures this Constitution and all other laws are brought into accord with the public interest as expressed in *The Agreement*.
- h) No human rights may be accorded to corporations or to any entity that is not a natural person.
- i) Parliaments and executive governments shall take any and all other necessary action to ensure that all Australian peoples, including First Nations, have the right of self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

We also declare and affirm that the human rights and obligations encompassed in the instruments listed in (1) in this *Agreement* stand as the rights and obligations that are indicative of the public interest and are necessary for its protection, and that it will be contrary to the public interest to make laws which withhold these rights, either in whole or in part, from any or all natural persons. Therefore we also affirm that unless and until We the People agree otherwise in a duly constituted referendum conducted pursuant to and in accordance with Part 2 of this section:



- *The Agreement* here made shall stand as guidance to law and policy makers and to authorised justices of the courts as to whether laws and policies are in accordance with our Sovereign Will; and that
- laws and policies which are demonstrably inconsistent with *The Agreement* are inconsistent with the Australian People’s Sovereign Will and shall not stand.

[**Note:** The human rights instruments listed in 1 above are not the only international instruments in which human rights have been proclaimed. But they are the ones that have been supported by Australia either by signature or ratification and as such they offer a good starting list of instruments that should reasonably be included in *The National Agreement on Human Rights and Obligations*. It would, after all, be fully unreasonable for any government to refuse inclusion of these instruments, given that Australia has already supported them in international agreement processes and has therefore agreed that these rights should be the universal and indivisible entitlement of all peoples. This is not to say that governments will not behave perversely, especially if they think their power is being limited. But at the very least they will have a tougher time justifying such perversity and mounting arguments as to why the instruments listed in (1) should not form the core of the first *National Agreement on Human Rights and Obligations*.

Having established this core of human rights instruments, Australians may nevertheless deem it necessary at some time in the future to include other international human rights instruments that exist in the 2020s but have not been signed by Australia. At the time of writing these included:

- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW),
- the International Convention for the Protection of All Persons from Enforced Disappearance (CPED),
- the Optional Protocol to the Covenant on Economic, Social and Cultural Rights (ICESCR-OP), and
- the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP-CRC-IC).<sup>1</sup>

There is nothing in Prospect 2 or in the above starting draft of *The Agreement* and the process for enshrining it that would prevent Australians from adding these to the list of core human rights instruments at some time in the future, should that be affirmed by them as their Sovereign Will.]

**Further questions may be forwarded to ACFP at [info@austcfp.com.au](mailto:info@austcfp.com.au)**

<sup>1</sup> A full list of the Core International Human Rights Instruments can be found at <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>