



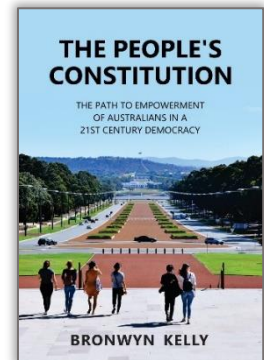
Australian Community Futures Planning

The People's Constitution – Alternative prospects for enshrining a National Agreement on Human Rights and Obligations in the Constitution

Replacing “Prospect 1” with “Prospect 2”.

Chapter 6 of *The People's Constitution* by Bronwyn Kelly contains a proposal for a democratic process that will allow Australians to enshrine human rights and obligations in Australia's Constitution by making a free Agreement as equals.

The proposed democratic process for establishing a [National Agreement on Human Rights and Obligations](#) in the Constitution is called “**Prospect 2**”. It is premised on the principle that human rights are the inherent property of all humans from birth and therefore cannot be bestowed by governments. Instead, if we are to have them at all they must be what we freely give to each other as equals.



Australian governments have unjustifiably withheld human rights from Australians in law for more than fifty years. However, it is possible to safely enshrine the full array of human rights available already in international treaties to which Australia is a signatory. This can be done in a single stroke if we simply reverse the way the current permission system works in our society and political/legal arrangements to grant freedoms and take them away when it is demonstrably in the public interest to do so. The reversal would work simply as follows. We would replace one prospect with another:

Prospect 1:

This is the current prospect for attaining human rights in which Australians must wait for the permission of parliaments to enshrine their rights either in the Constitution or just in legislation, probably in a piecemeal approach where we are likely at best to be granted rights selectively and the government is likely to be exonerated from its obligations to Australians.

This would be replaced with Prospect 2:

This reverses the current prospect. In the reversal, the human rights conferred in any treaty or instrument signed by Australia are automatically incorporated into the Constitution (even before ratification by the parliament) and the government must argue for permission from the people to remove a human right in law and/or be exonerated from obligations under the treaties. Such permission must be sought by a referendum.

Why select Prospect 2? – Nothing else can safeguard our rights.

If Prospect 1 is retained, the Australian government will be able (as it is now) to withhold and even delete rights and obligations at *its* will, possibly even to the point of denying and abusing all rights and obligations in international law. It will be able to enlarge on all the denials of rights that have been legislated since 2001. But in Prospect 2 it is the people and only the people who will be able to delete or add rights and obligations in law at *their* will.

Prospect 1 starts with a blank slate and lets the elected decide what might be allowed into law. Prospect 2 starts with the full menu of possible rights and obligations, taking them as a given (because they are inherent), and then lets the electors delete what they truly don't want or need – on the proviso that if they delete a right they must delete it for everyone and if they delete an obligation, the deletion will not adversely impact any particular group compared to others. In effect, invocation of Prospect 2 would transfer ratification powers on human rights away from parliaments and to the people. It would give the people the first and last word on their rights.

How safe and sensible is Prospect 2?

Prospect 2 is a process that is entirely consistent with the concept that rights are universal and indivisible – the natural entitlement of all humans from birth – and it has the added advantage of allowing Australians to sign off on which rights and obligations may be deleted (if any) in the public interest and in line with whatever national values they may have adopted. By this reversal of process, we can far more efficiently assure ourselves that rights will at last be conferred on all Australians in line with their cultural preferences and values.

With Prospect 2 it can be seen that, after the passage of more than 70 years since Australia signed the Universal Declaration of Human Rights, Australians might actually get the rights that successive federal governments have thus far refused to allow them. And they might get to keep them, because in Prospect 2 they can also efficiently safeguard themselves from the denial of or assaults on their liberty that Australian governments have so successfully prosecuted since 2001 – through:

- their amendments of legislation that have enabled human rights abuses;
- their refusal to legislate human rights per se;
- their refusal to withdraw reservations on human rights treaties; and
- their refusal to enter agreements on terms consistent with their obligations to Australians in these treaties.



Prospect 2 is a practicable solution to the problem of human rights abuses that have arisen from political manipulation and denial of the need for human rights in Australia. It is the option for constitutional enshrinement of human rights that should fall naturally into the hands of any nation in which the sovereign will is located in the people themselves (not in the government or parliament or a monarch) and which has also resolved, in accordance with that will, to stipulate its values. It is the option fitted for any nation ready and willing to exercise the fundamental right that underpins all the human rights treaties and declarations – the right to self-determination.



Chapter 6 – [The People's Constitution](#)

Listen to more about **the substantial benefits of Prospect 2** in [Episode 22 of The Australia Together Podcast: The People's Constitution Chapter 6 Parts 10 & 11](#). Further questions may be forwarded to ACFP at info@austcfp.com.au.