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Australian Community Futures Planning

Connecting Australians with a network of expertise to build  
Australia's first National Community Futures Plan

*Australia Together*

**Parliamentary Joint Committee on Human Rights  
Inquiry into Australia's Human Rights Framework**

**Committee hearing – 28 September 2023**

**Address by Dr Bronwyn Kelly  
Founder Australian Community Futures Planning**

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## Parliamentary Joint Committee on Human Rights Inquiry into Australia's Human Rights Framework

Committee hearing – 28 September 2023

**Address by Dr Bronwyn Kelly  
Founder Australian Community Futures Planning**

Thank you for the opportunity of appearing before this very important committee. My name is Bronwyn Kelly and I appear today on behalf of Australian Community Futures Planning. I'll begin by acknowledging the Gadigal people of the Eora nation, traditional custodians of the land on which we meet today, and I pay my respects to elders past and present.

I founded Australian Community Futures Planning or ACFP in early 2020. It is a community-based planning and research entity that is actively helping Australians work together as a nation to plan a better future for themselves and their kids. We give them tools to help them do this.

I'm also an author of two books plus numerous essays and published articles in the media on democracy and human rights in Australia. These are part of a wide array of resources that ACFP provides freely to Australians and the purpose is to help them transition from the merely representative democracy we have now to a fully participatory one where everyone has political equality.

My latest book on this is [\*The People's Constitution\*](#) – copies of which I am providing for you today because it will give you substantial reasons as to why Australians need **secure** human rights in domestic law. And it will give you a practical path to achieve that by engagement with Australians.

The terms of reference for this inquiry are reasonably wide but if I may I'll boil them down to what I see as the most essential and say that the main reason we're here is to discuss whether people in Australia should have human rights recognised in law and if so, which ones. In our submission I've mentioned that human rights are acknowledged in official Australian government policy to be universal, inherent, indivisible, interdependent, interrelated, and inalienable. In short, your own policies acknowledge that we're *all* entitled to *all* human rights from birth, and they can't be given up by us or taken away by any government, let alone one purporting to be democratic.

And yet here we are in 2023 with a committee posing questions, the basic assumptions of which are at odds with this official policy. The terms of reference pose questions which contemplate the idea that we're not entitled to human rights unless it suits the government of the day. This implies that the best Australians might hope for from this Inquiry is that maybe some human rights will at last come our way if it suits the Committee, today.



I'm here to call on this Committee to aspire to achieve more than that kind of meagre offering to Australians because they're entitled to more. They should not be denied their rights.

For more than five decades Australians have been **entitled** to civil, political, economic, social and cultural rights under international law but they are still not entitled to them under domestic Commonwealth law, even though the federal parliament has ratified all seven core human rights treaties. So I would hope this Committee would ask itself: Why are we still sitting here in 2023 discussing whether we should have human rights given to us in law? Why must we be made to wait for something that according to government policy is inherently ours?

Some people who comment in this space are accustomed to asserting that Australians do have rights because they're protected by common law. Official government policy states – quote – that there is “a common law presumption that, in the absence of clear legislation to the contrary, parliaments don't intend to interfere with our fundamental rights and freedoms”.<sup>1</sup> But this is not a protection. It is nothing more than a statement that our rights will only be tolerated by a government for as long as it doesn't make a law against them. And since in the last 20 years Australian governments have frequently made laws particularly against civil and political rights, that doesn't give Australians any comfort that governments will respect their rights in future – unless they are bound to by the Constitution.

Other commentators in this space have posed different reasons for asserting that human rights are not necessary in the Constitution. Bob Carr is among those who have in his words “long opposed a charter of rights because it might steer policy-making away from parliament to the courts”. But this too is baseless. The reality is that the *lack* of human rights in the Constitution has functioned to bring about the very thing Bob Carr feared. That constitutional silence on our rights has very effectively functioned to steer policy-making away from parliament – although not to the courts. It has steered it away to executive governments enabling them to act arbitrarily and without accountability to the parliament. It's actually killed parliamentary supremacy. Both parliaments and the courts have been fooled here – fooled into a substantial reduction of the power of the parliament and a near complete reduction of the power of the courts to protect us when a government wants to abuse or take away our rights. Nobody's winning here, except undemocratic governments.

In response to this situation the Human Rights Commission has suggested that we need a Human Rights Act which might include some but not all of the rights that we're entitled to under international law. Good. *But* as electors, *our* bottom line is **security** of our rights.

A Human Rights Act will be an improvement but because governments have displayed a tendency to suspend those Acts it is obvious that mere legislation will not secure our rights. We will be as exposed as we are now to entirely unjust abuse of our rights by executive governments and the courts will not be able to *justly* restrain them from that abuse. The fact that this is so has already been documented in High Court decisions and I refer you for one example to the findings of Justice Michael McHugh in the case of Al-Kateb versus Godwin. You can see an examination of that judgement and what it means for our human rights in Chapter 6 of [The People's Constitution](#) in the section headed 'The Constitution as a barrier to human rights'. What that section shows is that you can put all the human rights you like in an Act of Parliament, but the Constitution will still be a barrier to our safety from abuse or destruction of our rights by governments when such destruction is not warranted or just.

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<sup>1</sup> Australian Government, Attorney-General's Department, “[National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Australia](#)”, Submission to the Universal Periodic Review 2020, paragraph 18. <https://www.ag.gov.au/rights-and-protections/publications/universal-periodic-review-national-report-australia-2020>

As elected parliamentarians you may assume you have a legitimate role by permission of the electors to confer rights when you think it is reasonable and take them away again when you feel it is best. But I would hope you might think beyond that and ask yourself whether it is just to deny rights to Australians that the people of other nations enjoy and that past parliaments have ratified – and whether it is reasonable to deny them without demonstrating that it is in the public interest to do so.

If you happen to be a member of the executive government, I would like to respectfully suggest that this is an opportunity to ask yourself if you agree that what parliament has already ratified in full should be sliced up and sifted through by your government so that you can choose which rights Australians may enjoy for the moment and which rights they shouldn't. And then ask yourself if you would enjoy another executive government slicing them a different way when you no longer have power.

If that scenario gives you pause, then I hope that in addition to resolving to ask parliament to pass a Human Rights Act you will look to the option of working with Australians to ensure that their human rights can at last be enshrined in full for all in the Constitution as the indivisible whole that they are. I hope you will consider the possibility of starting a journey with them to re-build the Constitution so that human rights are **secured**. In [The People's Constitution](#) I've suggested an orderly means by which this might be achieved. It might take up to a decade but the Committee can make a start.

I'd like to finish by putting forward just one reason why parliaments and executive governments might find such journey beneficial. It will restore trust in you. It will restore confidence that governments will respect Australians. If you'd like to understand more about how it can do this, I'm very happy to answer questions on that.

I have a small handout here in which I list some practical reasons why Australians must have human rights in the Constitution and how that will benefit parliamentarians. Thank you.

### Disclosure

Dr Bronwyn Kelly does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this submission. She has no relevant affiliations beyond her office as the Founder of Australian Community Futures Planning.

### About Australian Community Futures Planning

ACFP was founded in March 2020 for the purpose of encouraging greater participation by Australians in planning their own future as a nation within a 21<sup>st</sup> century democracy. It is an independent centre of excellence in national community futures planning, providing an organising framework that can enable any and all Australians to increase the chances of improving our entire quality of life – our society, our environment, our economy and our governance.

Australian Community Futures Planning has no affiliation with any political party inside or outside Australia. It receives neither political party nor other funding. All output from ACFP is produced by in-kind contributions of volunteers.



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## Five reasons why Australians must all have human rights in the Constitution.

**Here, in no particular order, are just a few reasons why human rights in the Constitution will be to the advantage of both everyday Australians and the parliamentarians they elect.**

1. A stable treaty with First Nations will not be possible unless human rights are first assured for all Australians equally.

A stable treaty between First Nations, non-Indigenous Australians and the Australian State can only be achieved in a democracy if it has been made freely by a nation where all people are first confident of their status as political equals. The people of a nation can only be confident that they are both free and equal by declaring in law that rights are the equal property of all and that this cannot be negated by governments without the express permission of the people. Until they declare that, non-Indigenous Australians will not be confident that a treaty with First Nations people will not disadvantage them, relative to Indigenous. Nor will Indigenous be confident that the treaty is fair and that they have been acknowledged as equal.

Enshrinement of all human rights in the Constitution as the property of all people equally is therefore a condition precedent to any treaty with First Nations that all will agree is just and fair and will not result in disadvantage to any of the parties.

Development of a treaty without first enshrining all human rights in the Constitution will ensure no treaty is ever really viable. Human rights are the primordial treaty we must make with each other before we can make other treaties and laws that can be regarded as just and fair.

For more information in support of this see Chapter 6 of [The People's Constitution](#) in the section headed "Enabling orderly coexistence of sovereignties by agreement on human rights and obligations."

2. Referendums for constitutional amendment are unlikely to succeed unless Australians are first assured that human rights are the property of all as equals.

Constitutional change requires trust in the parliament proposing the change. The fact that Australians have rejected every constitutional change put to them since 1977 is core testimony that the majority of Australians have lost trust in those they elect to parliament.

Therefore if parliaments of the future wish to facilitate constitutional change that Australians as a majority will agree is good, they must first establish transparent terms of trust with the Australian electors. These terms must be capable of assuring the electors that the power they are handing over in each election and referendum will not be abused by parliaments or executive governments and that those they elect will always act in the public interest.

Human rights and obligations in the international human rights treaties to which Australia is a party come closer than any other statement in law to describing what the public interest actually is. They do not define the whole of the national interest but they are fundamental to the interests of any and all individuals who seek to be members of a democracy – since a state is not a democracy if its citizens have no rights.

Security of human rights must therefore be established before any population in a democracy will have the necessary confidence in a parliament to give assent to proposals for change to the Constitution. In effect, confidence in proposals for constitutional change can only be built if the Constitution itself stipulates the rights that shall not be lost by the proposed change.

It is very likely that Australians will hesitate in referendums about an Indigenous Voice and a republic if they are asked to give assent to changes in the absence of these terms of trust. They are very likely to keep saying No if parliamentarians do not offer to respect their rights. This respect must be paid by enshrining rights in the Constitution.

For more information on how establishing a [National Agreement on Human Rights and Obligations](#) in the Constitution can create confidence in Australians to build a Constitution fit for a 21<sup>st</sup> century democracy, see Chapters 6 and 7 of [The People's Constitution](#).

### 3. Australians would trust both parliaments and legislation more if they knew that laws were being made consistent with their stated interests.

Australians are increasingly sceptical that laws are being made in their interest. This is especially the case in relation to legislation on national security, war powers, defence, natural resource use, environmental protection and Indigenous wellbeing.

However, if we could be assured that laws were being framed consistent with a set of stated values and rights (including a right to express a voice about our preferred future), confidence could be restored that laws (a) are being made in the public interest, (b) do not undermine political equality, and (c) are consistent with what Australians consider to be good for their society. In short, it would create confidence in the rule of good laws, rather than the rule of bad laws.

### 4. Unless Australians have rights in the Constitution, we cannot have responsible government.

Australia's Constitution establishes a system of representative government and we are told that this system also creates a basis for *responsible* government because it is structured so that "the Crown (represented by the Governor-General) acts on the advice of its Ministers who are in turn members of, and responsible to, the Parliament."<sup>2</sup> However, "responsible government" is merely a concept imputed to the Constitution by decades of interpretations and, in the absence of a specification of what the elected are responsible *for*, it is not likely to result in a system in which Australians can be confident that those they elect can be held accountable for being *irresponsible*.

Human rights are one of two key statements that should be included in any list of vital things that governments have a responsibility for. The other is values. Unless values and rights are specified in the one law that cannot be changed by anyone other than the people themselves (i.e., the Constitution), we will not have responsible government for the simple reason that none of the elected can know what they are responsible for.



Values and human rights must be enshrined in the Constitution as the bottom line of the people's tolerance of their consenting to be governed. Values and human rights provide the list of the powers of Australians that may not be abused by those they elect.

Chapter 7 – [The People's Constitution](#)

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<sup>2</sup> Australian Government Solicitor, *Australia's Constitution with Overview and Notes by the Australian Government Solicitor*, page v. [foi-2021-017.pdf \(pmc.gov.au\)](#)

5. Unless Australians have rights in the Constitution, we cannot restore a proper balance of power between the parliament, the executive government, and the courts.

High court rulings in various cases have culminated in a reluctance by federal judges to determine “whether the course taken by Parliament is unjust or contrary to basic human rights”.<sup>3</sup> This reluctance has grown into outright refusal because there is no specific rendering of any human rights treaties in the Constitution itself.

Australians might expect that we have a system of governance based on a well-balanced separation of powers that will allow each of the three main parties empowered under the Constitution (the parliament, the executive government, and the judiciary) to moderate potential abuses of power by one or more of those parties. However, because fundamental human rights are not accorded to the people in the Constitution, one of those parties – the judiciary – has lost all capacity to moderate abuses of power by the other two. The federal courts cannot now protect Australians from complete loss of their rights.

Until human rights are specified in the Constitution, the courts will be unable to exercise their rightful, well-balanced share of power to protect Australians and citizens will be vulnerable to loss of rights, even those they might currently assume they have – such as freedom of religion.

“ Over the decades since 1901 the Constitution has been easily undermined by a series of laws and court cases that have left it seriously weakened in terms of the protections it should provide against abuse of power. I have recorded in earlier chapters no less than five major High Court rulings where it has become apparent that the judiciary – which is supposed to be able to ensure that the parliaments and executive governments operate in accordance with the Constitution and do not abuse their powers – has found itself unable to protect Australians from racism, human rights abuses, breaches of international law, and political exclusion, particularly by federal governments that have been able to force through laws that legitimise their power to behave in a manner most 21st century Australians would consider to be abhorrent. In short, the Constitution allows the making of laws which undermine political equality in our democracy. As such Australia does not have a structure in its polity capable of controlling the abuse of power. Nor does it have a democracy capable of supporting Australians as they attempt to chart a safe course to a better future.

Chapter 10 – [The People’s Constitution](#)

“ [The Al-Kateb judgement] is a plea from the judiciary to the people to take the chains off the courts that prevent them from protecting people against abuses of power and rights by governments. It is also a clear statement to the effect that mere legislation is not sufficient to protect human rights. It must be done in the Constitution. Otherwise there is no balance of power that can be achieved. No balance of power is possible if one of the powers (in this case the High Court) has no power at all under the only instrument that can give it power – the Constitution. The Court’s lesson is that only the people can solve this problem, via a long overdue referendum to insert human rights into the Constitution.

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

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<sup>3</sup> Al-Kateb v Godwin [2004] HCA 37, (2004) 219 CLR 562, [High Court](#) (Australia).



## A seven-step program to safely enshrine the rights of Australians in a Constitution fit for a 21<sup>st</sup> century democracy.

Chapter 9 of [The People's Constitution](#) outlines a program of community engagement and collaboration with Australians to establish a Constitution fit for 21<sup>st</sup> century Australia. This is a Constitution which gives all citizens a rightful but not overweening share of power in their own democracy without diminishing the rightful powers of the parliament, the executive government and the judicature.

The program envisages an orderly and well-informed collaboration that will allow Australians to freely express their sovereign will for the Commonwealth they wish to form and to build a Constitution containing all the things they need to realise their preferred future as a nation.

This new type of Constitution may be viewed not as a replacement or radical overthrow of the powers of the parliament, the executive government or the judicature, but rather as an augmentation of the sphere of power, achieving order by inclusion rather than exclusion, and transforming the current representative democracy to a participatory democracy in which all Australians have agency as political equals. This new type of Constitution also legitimises – for the first time – the current powers of the parliament, the executive government, and the courts, because it makes it clear that they are consistent with the sovereign will of the people.

For more about the principles of a constitution which makes a place for the people in their own governance and clarifies the rights and powers of all parties in that system, read [The People's Constitution: the path to empowerment of Australians in a 21<sup>st</sup> century democracy](#) by Bronwyn Kelly at [www.austcfp.com.au/publications](http://www.austcfp.com.au/publications)

<b>Seven steps to build a Constitution fit for a democracy with equal rights for all its members.</b>	
<b>Step 1:</b>	<ul style="list-style-type: none"> <li>• Establish a Joint Parliamentary or a Senate Committee (with representation from the government, the opposition, independents and all other parties on the cross-bench) to commission development of a <b>National Collaborative Process for Development of a New Australian Constitution.</b></li> <li>• Issue instructions to ensure the Process is designed to achieve the maximum inclusion of (and therefore the confidence of) the Australian people – recognising that:               <ul style="list-style-type: none"> <li>○ the Constitution is for their nation and is therefore theirs to design collaboratively; and that</li> <li>○ Australians value fairness and equality and must be given sufficient agency to collaborate on a Constitution that will ensure fairness for all.</li> </ul> </li> <li>• Issue a charter to a group of suitably independent facilitators of the National Collaborative Process and appoint an independent person responsible for chairing the Process and providing reports on the progress of deliberations to parliament.</li> <li>• Ensure that the charter protects the complete independence of the facilitators to prevent the politicisation and corporate or interest group capture of the Collaborative Process.</li> <li>• Ensure fully adequate funding, based on an expectation that this Process of nation-wide engagement and collaborative design may take up to five years.</li> </ul>
<b>Step 2:</b>	<ul style="list-style-type: none"> <li>• Charge the appointed independent facilitators of the Process with development of a White Paper informing Australians about:</li> </ul>

## Seven steps to build a Constitution fit for a democracy with equal rights for all its members.

	<ul style="list-style-type: none"> <li>○ issues for consideration in a holistic review of the Constitution;</li> <li>○ the need for open-ended objectives of a program of reform to ensure the Constitution is fit for a 21<sup>st</sup> century democracy and will be something all Australians wish to own; and</li> <li>○ initial details of a proposed program of nation-wide community engagement for collaborative development of the new Constitution.</li> <li>● Ensure this paper plus suitable summaries (in both written and video format) are distributed to every household in Australia.</li> </ul>
<b>Step 3:</b>	<ul style="list-style-type: none"> <li>● Allow for feedback of the White Paper, taking care to ensure that overarching objectives can be designed for a new Constitution that will as a minimum: <ul style="list-style-type: none"> <li>○ not cause exclusion of or discrimination against any particular group from a place in the Commonwealth of Australia; and</li> <li>○ will ensure capacity for formation of a strong democracy whose members are political equals.</li> </ul> </li> </ul>
<b>Step 4:</b>	<ul style="list-style-type: none"> <li>● Depending on feedback from Step 3, charge the independent facilitation group with development of the essential components (chapter headings or sub-headings) of a new constitution that would accord with the essential objectives.</li> <li>● If necessary, modify the originally proposed nation-wide community engagement program to schedule successive rounds of collaboration on the components – one at a time in a logical order.</li> </ul>
<b>Step 5:</b>	<ul style="list-style-type: none"> <li>● Commence the sequence of the nation-wide community engagement and collaboration program.</li> <li>● Report to the joint parliamentary (or senate) committee at the end of each phase of collaboration on the results for that component.</li> </ul>
<b>Step 6:</b>	<ul style="list-style-type: none"> <li>● As the optimal content of any proposed component of the new Constitution becomes more obvious, ensure that the option remains open for the conduct of non-binding plebiscites and/or opinion polling to canvass the support of the Australian people for the component. For example: <ul style="list-style-type: none"> <li>○ if Australians have signalled that they want human rights in the Constitution, conduct a non-binding plebiscite to assess the level of support; or</li> <li>○ if they have collaborated in a sub-group to design a new preamble to the Constitution which includes, say, a statement of Australian values, conduct any necessary community engagement, surveys or polling to assess the probable level of support; or</li> <li>○ if the collaboration has resulted in the design of a Constitution which would imply that Australia should become a republic of some sort, scope out any necessary surveys and polling (perhaps with options) to assess preferences; or</li> <li>○ if there is evident support for a Constitution capable of establishing a peaceful coexistence of sovereignties or treaty with First Nations, consider the most appropriate method of canvassing the views of Australians on feasible forms of fair and stable treaty capable of benefitting all parties.</li> </ul> </li> </ul>
<b>Step 7:</b>	<ul style="list-style-type: none"> <li>● Based on the results of the collaborative process and any plebiscites, surveys or polling, charge the joint parliamentary (or senate) committee with design of an agenda for referendums for amendment of the Constitution.</li> </ul>

**Note:** The above program assumes that it will not be necessary to revoke the entirety of the current Constitution and that many parts of it will be unaffected. This assumption may prove incorrect, although that is unlikely. Nevertheless, a program for bringing a new constitution into law by means of:

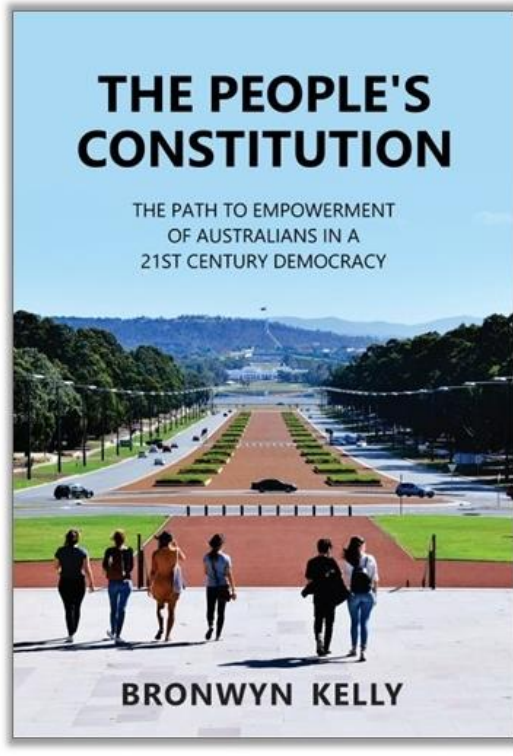
- a collaborative design process,
- a series of surveys of public opinion and plebiscites, and
- a logical sequence of referendums for individual amendments that will make sense to Australians (because they can see how they are part of a holistic reform that fits their objectives)

is more likely than any other engagement process to lead to development of a Constitution fit for 21<sup>st</sup> century Australia.

## Access *The People's Constitution*

**What human rights do Australians need?**

**Find out in Chapter 6 of *The People's Constitution*.**



*The People's Constitution* is available at <https://www.austcfp.com.au/publications>

An audio version of *The People's Constitution* can be heard in [The Australia Together Podcast](#), accessible on Apple podcast at <https://podcasts.apple.com/au/podcast/the-australia-together-podcast/id1691025007>



An extract of the abovementioned [National Agreement on Human Rights and Obligations](#) (draft for community engagement) is accessible at:

[https://www.austcfp.com.au/files/ugd/2b062e\\_5229705bdd3a46b6a25660c859462648.pdf](https://www.austcfp.com.au/files/ugd/2b062e_5229705bdd3a46b6a25660c859462648.pdf)

[Extracts of other suggested constitutional amendments](#), including:

1. a new preamble featuring a Statement of Australian Values,
2. a National Agreement on Human Rights and Obligations, and
3. an enshrined constitutional process for expression of the National People's Voice

are accessible as starting drafts for community engagement purposes at:

[https://www.austcfp.com.au/files/ugd/2b062e\\_38d4d5db852240f693a27621e6cbb613.pdf](https://www.austcfp.com.au/files/ugd/2b062e_38d4d5db852240f693a27621e6cbb613.pdf)



# Australian Community Futures Planning

## The People’s Constitution – Three proposed amendments to the Constitution: Values, Rights and Voices

### Starting drafts for community engagement

This extract contains the starting draft wording of the three major amendments proposed for Australia’s Constitution in Chapters 5, 6 & 7 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 starting drafts of:

1. a new preamble featuring a Statement of Australian Values;
2. a National Agreement on Human Rights and Obligations; and
3. an enshrined constitutional process for expression of the National People’s Voice

These drafts are offered to assist in community engagement.

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

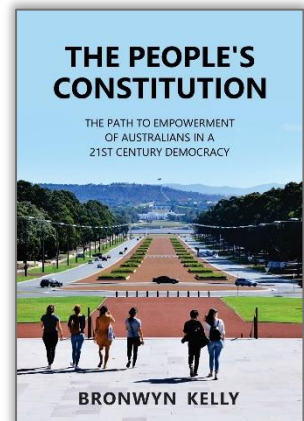
Visit <https://www.austcfp.com.au/publications> for the full publication of [\*The People’s Constitution\*](#).

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

Extract from Chapter 5 – Starting Draft Preamble to the Australian Constitution containing a Statement of Australian Values

## **Australian People's Constitution – Preamble (draft for use in community engagement)**

We the People of Australia,

- in enacting this Constitution as Sovereign in our own land, and
- in affirming that self-determination and self-governance are our inalienable rights as citizens of the democratic, independent sovereign nation hereby constituted with a federal system of government and henceforth to be known as the Commonwealth of Australia,

place our trust in the parliaments and governments we elect on the following terms:

That laws may only be enacted and upheld which:

- demonstrably support the public interest as a whole, the interests of future generations and the sustainability of the lands, seas, species and natural resources of Australia as determined from time to time in accordance with processes and requirements of law set out here and elsewhere in this Constitution; and which
- ensure the maintenance of the human rights of current and future generations as established here and elsewhere in this Constitution; and which
- are consistent with our values as a nation, these values for the present being specified in the following Statement of Australian Values:

### ***Statement of Australian Values***

We the people of Australia are at one in this our Sovereign Will to chart a course to a future where peace prevails and the common wellbeing is secured for all in a manner consistent with the preeminent value we place on:

- the safety of all members of the nation and the stability, security and cohesion of society as a whole;
- honesty, integrity and ethics in all relationships, in governance and in corporate responsibility;
- creation and maintenance of a fully inclusive, participatory democracy which exhibits openness, transparency and respect for the voices of all Australians in matters of policy and governance;
- universal human rights;

- social harmony and appreciation of diversity;
- Australia’s First Nations particularly in relation to:
  - our recognition of their rightful and essential place at the Heart of the nation’s past, present and future,
  - truth-telling on the history of colonisation and the violence and injustice of their dispossession,
  - Makarrata, reconciliation with and just treaty between First Nations and non-Indigenous Australians,
  - celebration of the culture and heritage of Aboriginal and Torres Strait Islander peoples,
  - our acknowledgement of their ancestral tie to the land and the sovereignty that arises from that as coexistent with the sovereignty of all Australians, and, consequent on that acknowledgement,
  - the equal right of First Nations alongside all Australians to their own Voice in the Constitution;
- equality and egalitarianism – in ensuring wellbeing and in respect for all regardless of gender, sexual orientation, age, disability, race, national or ethnic origin, cultural heritage, religious persuasion or secularity, or wealth;
- benevolence and compassion for those close to us, for distant communities and for refugees;
- equal opportunity for all;
- social justice – meaning fair outcomes for all, fair sharing of national wealth, fair sharing of the burden and benefit of taxation, fair access to services, and equality before the law;
- life-long health, including physical, mental and societal health and happiness;
- life-long accessibility of education;
- life-long opportunity for expansion of the mind and human creative capacity;
- scientific intelligence and research capacity;
- unobstructed access to public information and protection of privacy and personal information;
- information markets that are properly regulated for the purpose of promotion of truth;
- national resilience, preparedness for crises and capacity to avert preventable crises;
- protection of the natural environment and conservation of natural resources;
- the planet, its ecosystems and species diversity;
- future generations and intergenerational equity;
- freedom of speech, expression, information, peaceful assembly and association, protest, choice in life path and partner, travel, belief, religion, secularity and atheism, political communication, freedom of the press, and freedom from discrimination, unlawful or arbitrary detention, political persecution, fear and want;

- the contributions and dignity of everyone, regardless of employment status, disability and working life stage;
- the formation and ongoing support of a human-centred economy capable of providing continuous full employment and opportunities for meaningful work and life satisfaction;
- the formation and ongoing support of an environmentally sustainable economy capable of ensuring proper conservation of scarce natural resources;
- fairness and ethics in foreign and domestic trade and finance;
- decency, humanity, cooperation and integrity in our international citizenry;
- independence in national sovereignty; and
- self-determination through a voice in our own governance.

We affirm that these values stand as the shared values of the People and are indicative of the purpose of the nation and national character We seek to build. Therefore We also affirm that:

- these values 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 these values are inconsistent with the Australian People’s Sovereign Will and shall not stand.

These values shall be reviewed every ten years from the date of this enactment by establishment of fully open constitutional conventions whose considerations shall not be constrained by the parliaments or laws of the Commonwealth or the states or other entities, which from time to time may comprise the Federation or may be otherwise empowered by this Constitution in accordance with our Sovereign Will.

## Extract from Chapter 6 – Starting draft of a National Agreement on Human Rights and Obligations

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

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.

## Extract from Chapter 7 – Starting draft of an enshrined constitutional process for expression of the National People's Voice

### **Australian People's Constitution – The National People's Voice (draft for use in community engagement)**

As the source of sovereignty, the People of Australia shall be enabled to exercise their right to express their Sovereign Will for the future of their society, environment, economy and democracy. Expression of this Sovereign Will for the future shall take the form of a collaboratively assembled and regularly monitored and reviewed, integrated plan for the wellbeing and security of all Australians over the longer term (up to 30 years). The process for expression of the Sovereign Will for the future and any emergent statements and plans from that process shall be known as The National People's Voice.

For purposes of assisting the People in the orderly composition of their National Voice, there shall be an Independent Commission for National Engagement and Integrated Planning. The Commission shall have a charter of independence from the Parliament and Executive Government, shall be accountable by annual reports to the People of Australia, and shall be charged as a minimum with responsibility to the People of Australia for development and maintenance of fully open forums and accessible processes by which all Australians may be enabled to:

- accurately assess the state of their health, wellbeing and security as a nation;

- participate at will in planning processes to articulate a vision for their preferred future and their preferred safe paths to that future; and
- receive independent reports on the progress of the nation towards or away from that future.

The Commission shall be established and maintained with sufficient funding and resources to support Australians in the orderly composition, review and revision of their National Voice, including as a minimum:

- all research resources necessary to ensure that The National People’s Voice can be formulated and monitored on the basis of credible and comprehensive data and information on all aspects of the performance of the Australian society, environment, economy and democracy; and
- all communications and facilitation resources necessary to enable best practice in inclusive community engagement and active citizen participation in building a cohesive nation.

The Commission shall also be entitled to access and rely on the financial and economic planning capacities of the Treasury and the Parliamentary Budget Office for any information necessary to conduct dialogues with Australians on options for sustainably financing their preferred future.

Statements and plans arising from the operation of the National People’s Voice shall be understood to be non-binding on the Executive Government and shall not constrain the Parliament in its power to make laws in accordance with this Constitution but shall constitute guidance to the Parliament as to the People’s Sovereign Will for the future and shall therefore be accorded the status of a primary consideration in all parliamentary deliberations. In making laws (including laws pertaining to budgets and appropriations) and in reviewing the appropriateness of administrative decisions on and adherence to policy, Executive Governments shall accordingly be obligated to prepare and Parliaments shall be required to consider comprehensive Statements of Compatibility with the National People’s Voice and to provide reasons for any incompatibility with its expression of the People’s Sovereign Will.

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

**If you would like to become involved in building a plan for a better Australia, visit the Australian Community Futures Planning website at [www.austcfp.com.au](http://www.austcfp.com.au)  
Everyone is welcome to participate.**