Australian Community Futures Planning

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20 June 2023

SUBMISSION

Inquiry into Australia's Human Rights Framework

Australian Community Futures Planning (ACFP) is pleased to make this submission on an appropriate legal framework for human rights.

ACFP was established in March 2020. It is a community-based planning and research entity that is organising to involve Australians in planning a better future for themselves as a nation and for future generations. At ACFP we are using a new community engagement and planning process called: **National Integrated Planning & Reporting** to create **Australia's first national community futures plan, *Australia Together***. Find out more about ***Australia Together*.**

This submission is made by the Founder of ACFP, Dr Bronwyn Kelly. Dr Kelly is a highly experienced former senior public servant in state and local government. She is an expert in the field of national integrated planning and reporting and the author of:

- *By 2050: Planning a better future for our children in 21st century democratic Australia* (2020); and
- *The People's Constitution: The path to empowerment of Australians in a 21st century democracy* (2023).

She is also:

- the creator and presenter of these videocast series: *The State of Australia in 2020*, *The State of Australia 2022*, *Snapshots from Australia Together*, the *Better Futures Commitment Index*, and *What is National Integrated Planning & Reporting?*;
- an essayist on issues for Australian governance;
- an Honorary Professional Fellow at the University of Technology Sydney's Institute for Public Policy and Governance (2014 to 2021);
- principal author and co-ordinator of *Australia Together*, Australia's first long term, integrated community futures plan;
- co-author of Australia's first comprehensive report on the performance of an elected federal parliament – *The State of Australia 2022 – End of Term Report on the 46th Parliament of Australia*; and
- creator of the *Australia Together* National Wellbeing Index and the National Integrated Planning & Reporting process.

For detailed information about ACFP, visit our website at **https://www.austcfp.com.au/**
Australian Community Futures Planning has no affiliation with any political party inside or outside Australia. It receives no funding from political parties or other sources. All output from ACFP is supported entirely by voluntarily supplied non-monetary in-kind contributions.

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Executive Summary

ACFP submits that:

- The government should establish a legal framework for human rights in Australia but that **the 2010 Human Rights Framework will not suffice to protect the human rights of people in Australia**.
- **A federal Human Rights Act should be added into the 2010 framework as a minimum.** There will be no advantage to Australians if the government chooses to re-establish the 2010 framework without a Human Rights Act.
- Regardless of whether the government chooses to include a Human Rights Act in a new legal and policy framework, it should be acknowledged that **human rights cannot be secured for Australians if they are not also enshrined in the Constitution.**
- Constitutional enshrinement of:
    - all rights already granted to Australians in international law; and
    - all obligations already accepted by the Australian government as a State Party to these international laws

  is the only way to ensure that governments:
    - have in fact granted Australians and others the full measure of their rights under international law (treaties and other agreements made relating to human rights as a member of the United Nations); and
    - will refrain from abuse of those rights by committing to fulfil their obligations to Australians and others under both international and domestic law.
- **Australians have been waiting for more than five decades for access to rights that have been granted under international law but have nevertheless been withheld by Australian governments in domestic law.** Australian parliaments have ratified most of the international treaties on human rights but executive governments have a history of either refusing to confer human rights on Australians and others and/or enacting legislation that enables the government to withhold or rescind basic rights (even when legislation has been enacted to protect them, such as the Racial Discrimination Act). This runs counter to official government policy which states that human rights are considered to be

> inherent, inalienable and universal: *inherent* as the birthright of all human beings, enjoyed by all simply by reason of their humanity rather than granted or bestowed; *inalienable* in the sense that they cannot be given up or taken away; and *universal* as they apply to all regardless of race, colour, gender, sexual orientation, gender identity, language, political or other opinion, national or social origin, property, birth, age or disability. … Australia also considers human rights to be interrelated, interdependent and indivisible.

ACFP further submits that:

- Australian governments have built up a disgraceful track record of abuse of human rights. **Commencement of a program of community engagement to enshrine human rights and obligations in the Constitution would signal that the government is at last intent on showing respect for those who elect them to positions of power and a genuine commitment to their wellbeing and security.**

- Arguments by some that human rights are protected by common law are false as are arguments that human rights will be sufficiently protected by legislation which reinforces "parliamentary sovereignty", albeit within a "dialogue model" as recommended by the Australian Human Rights Commission in its Position Paper. **Improved protection for the rights of Australians may be achieved on an interim basis if the government adopts the AHRC's recommended "parliamentary model based on dialogue" but the rights of all persons in Australia will still be at risk to an unacceptable degree.** To the extent that the concept of parliamentary sovereignty gives parliaments the right to "make or unmake any law", it embeds the possibility of unjust laws and arbitrary suspension of just laws. It is fundamental that if human rights are inalienable and if we are to be protected from the potential for injustice by an arbitrary sovereign (parliamentary or monarchical) then we need a system of law and law-making which will prevent parliaments and governments from overriding the rights it otherwise declares to be universal and inalienable.

ACFP therefore submits that:

- **The government should consider working towards a human rights framework in which it is a key principle that the people of Australia (not the parliaments or the executive governments or the judicature) are to be accorded sovereignty in this particular area of law and that this sovereignty can only be protected by constitutional enshrinement of all rights and obligations in the human rights treaties and declarations to which Australia is already a State Party.** This offers a safe course for both the people of Australia and elected parliaments inasmuch as instruments of international human rights law to which Australia is a signatory (and that in most cases the parliament has long since ratified) already set out the conditions on which the human rights in the treaties may be legitimately limited or temporarily suspended.

- **There is no risk to Australians or to the parliament if human rights and obligations in the international treaties are enshrined in Australia's Constitution. There is considerable residual risk if the government confines itself to simply enacting a Human Rights Act,** especially if rights are selectively limited by the Act and if the executive government retains the power it currently exercises to disregard human rights in administrative decisions. The dialogue model should reduce this risk somewhat, but it will not eliminate it.

- Reputational risk for Australia arising from the fact that Australia is the only democratic country in the world without a charter of human rights (and acts in substantial disregard of those rights) is significantly impacting Australia's ability in global negotiations to influence the development of a sustainable world economy, fair trade relationships, security arrangements that are favourable to Australia, peace, and the wellbeing of all. We could do ourselves a huge economic favour by constitutionally enshrining human rights.

- **A model for safe enshrinement – safe for people and parliaments – is set out in Chapter 6 of *The People's Constitution: the path to empowerment of Australians in a 21st century democracy* by ACFP's Founder, Bronwyn Kelly. This model has the added advantage of creating the only possible basis for a peaceful coexistence of sovereignties for Australia's First Nations and non-Indigenous Australians.**

Introduction

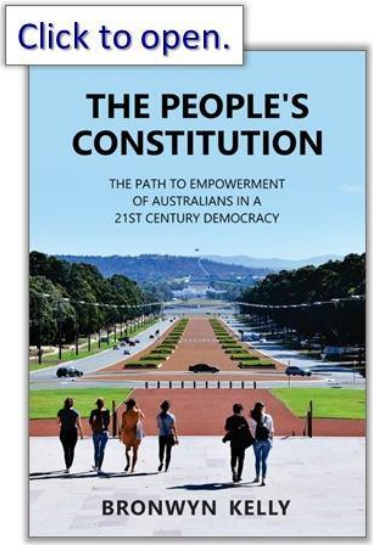
The Parliamentary Joint Committee on Human Rights has requested submissions on a range of matters relating to re-establishing Australia's 2010 Human Rights Framework. ACFP submits that the preeminent issue that must be resolved if we are to determine how best to establish an effective and inclusive legal and policy framework to protect human rights relates to the Committee's first request, namely for submissions on:

> whether the Australian Parliament should enact a federal Human Rights Act, and if so, what elements it should include (including by reference to the Australian Human Rights Commission's recent Position Paper).[1]

Decisions on this will have a significant bearing on all the other issues on which the Committee has sought submissions.

While nothing in this submission from ACFP should be taken to suggest that a human rights framework should not include a federal Human Rights Act, ACFP nevertheless contends that legislation is, of itself, inadequate for the purpose of protecting human rights and preventing abuse of the rights of Australians by parliaments and executive governments. The only adequate mechanism for this purpose is constitutional enshrinement of the full array of human rights and obligations in (as a minimum):

- the seven core human rights treaties,[2] and
- the United Nations Declaration on the Rights of Indigenous Peoples.[3]



For the full reasoning behind this assertion the Committee is directed to Chapter 6 of *The People's Constitution: the path to empowerment of Australians in a 21st century democracy* by ACFP's Founder, Bronwyn Kelly.

Section 1: Why is legislation inadequate for protection of the rights of Australians?

The succinct answer to this question is that when it comes to extending human rights to Australians, parliaments and executive governments have proven themselves to be at best obstructive and at

[1] Parliament of Australia, Inquiry into Australia's Human Rights Framework.
[2] The Universal Declaration of Human Rights, accessible at https://www.un.org/en/about-us/universal-declaration-of-human-rights
International Covenant on Civil and Political Rights- external site
International Covenant on Economic, Social and Cultural Rights- external site
International Convention on the Elimination of All Forms of Racial Discrimination- external site
Convention on the Elimination of All Forms of Discrimination against Women- external site
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment- external site
Convention on the Rights of the Child- external site
Convention on the Rights of Persons with Disabilities- external site
[3] United Nations Declaration on the Rights of Indigenous Peoples, 2007. DRIPS_en.pdf (un.org)

worst entirely untrustworthy. On the rare occasions when parliaments have established human rights in Commonwealth law, they have nevertheless displayed a history of:

- allowing for suspension of these laws so that they can override human rights; and/or
- making more laws to limit or negate those rights.

In short, Australia's legislative programs have not resulted in the protection of the human rights of Australians and others.

Human rights in the seven core international treaties have been available to Australians under international law for several decades but they have nevertheless been denied to Australians due to the refusal by successive governments to enact comprehensive incorporating legislation enshrining civil, political, economic, social and cultural rights in domestic law. This refusal persists despite adverse findings on Australia's human rights record by the United Nations Human Rights Committee and Council in Universal Periodic Reviews (UPRs).

Australian governments have been stubbornly recalcitrant in implementing critical recommendations of the UPRs. Instead, as Professor George Williams has already pointed out in his submission to the Committee dated 25 March 2023, Australian parliaments have not stinted at legislating to infringe fundamental democratic (civil and political) rights in the last few years. Professor Williams has identified:

> 350 laws that infringe on freedom of speech, freedom of the press, freedom of association, freedom of movement, the right to protest, basic legal rights and the rule of law, all of which are essential to a healthy democracy. Many of these laws were enacted after the new human rights framework came into effect, thereby demonstrating the ineffectiveness of that regime to prevent even severe human rights contraventions.[4]

In addition to this legislative attack on the rights of Australians, the government has arrogated to itself the power to subvert the rights of Australians and others by means of "executive statements", such as that issued on 25 February 1997 by the Attorney-General and the Minister for Foreign Affairs (and not yet rescinded) to the effect that

> the act of entering into a treaty does not give rise to legitimate expectations that could form the basis for challenging an administrative decision.[5]

In other words, the parliament's ratification of any treaty on human rights may be (and is being) disregarded by executive governments (and this has occurred despite acceptance of the convention that executive governments are accountable to parliaments).

Executive government disregard of both the parliament and our human rights has been made possible by the fact that the Constitution does not prohibit it. And this is why constitutional enshrinement of human rights is essential (more so than simple reliance on legislation) – see Section 2 below. If powerless Australians are to be protected from abuse by governments of rights accorded to them under international law, the Constitution must recognise those rights. Unless it does so, the High Court can offer no protection to Australians, which of course means that Australians are defenceless against any elected body that may seek to abuse or remove their rights.

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[4] Professor George Williams AO, Submission 4, Inquiry Into Australia's Human Rights Framework, 25 March 2023, Submissions – Parliament of Australia (aph.gov.au)

[5] Department of Foreign Affairs and Trade, "Australian and Human Rights: An Overview, 4th edition", December 2017, page 26.

This is not just the opinion of a concerned citizen. It is a valid conclusion formed on the basis of High Court judgements in which it has been admitted (more than once) that Australia's Constitution – being without a charter or bill of human rights and obligations – is structured to give parliaments and executive governments free rein to be discriminatory in relation to:

- which human rights we may enjoy,
- who may enjoy them, and
- when they may be revoked or extinguished.

Because of this inherent failing in the Constitution, successive Australian governments have since 2002 made at least 80 new laws which have limited human rights and reduced the obligations of the government to protect those rights – obligations clearly set out in treaties to which Australia is a signatory. The combination of:

1. this legislative program attacking the rights of Australians and
2. a Constitution which does not enshrine human rights,

has been disastrous for Australians. We now live in a country that has become internationally renowned as a serial abuser of human rights.[6] The impact of this reputational decline is not confined to the loss of rights for Australians and others. It extends to loss of Australia's bargaining power globally in building:

- free and fair trade agreements;
- a sustainable world and domestic economy;
- fair participation in and cost-sharing for mitigation of climate change; and
- a credible reputation for leadership in responsible international citizenry, particularly for
    - prevention of climate change,
    - prevention of war, and
    - national security arrangements that encourage respect by other countries for our sovereignty.

The fact that Australia lacks constitutionally enshrined human rights signals to other countries that Australia is not a party that can be trusted in any type of international negotiation. It simply says to other nations that if Australia does not respect the rights of its own citizens, how can we be relied upon to respect theirs in any agreement we might seek with them.

At the domestic level the lack of constitutionally enshrined rights has allowed federal governments to override human rights at will, most noticeably in relation to;

- asylum seekers;
- detention of children;
- mixing of adult and juvenile offenders as well as accused persons and convicted persons in detention centres;
- compensation of wrongly convicted persons;
- whistleblowers making genuine public interest disclosures;
- compensation of Indigenous peoples for theft of their lands and children;
- protection of Australians and others from climate change; and

[6] For detail on Australia's record of abuse of human rights see *The People's Constitution: the path to empowerment of Australians in a 21st century democracy*, Chapter 6 – Subsection: Australia's record of abuse of human rights.

- protection of Australians from propaganda for war.

They have also been able to encroach on the rights of Indigenous Australians in episodes like the Northern Territory Intervention.

These and many other offences are occurring because the Constitution is silent on the vast majority of rights to which Australians are entitled under international law. As such, it tacitly permits parliaments to pass laws which suspend human rights whenever a government may arbitrarily or politically choose. Official federal government policy states that rights are universal and inviolable but Australian parliaments are constitutionally able to – and *do* – make laws which violate rights the government otherwise considers to be inherent and inalienable. Until this constitutional permission is specifically revoked Australians cannot expect to feel secure in their human rights. And if access to rights is confined to those that may be selectively permitted under mere legislation, experience has proven that this will offer little protection to powerless groups when political considerations clash with the rights of those groups.

Summary: Why is legislation inadequate for the protection of the rights of Australians?

In short, it is because in the absence of constitutional imperatives on human rights, Australian parliaments and executive governments have displayed a regrettable history of:

- **evading international law on human rights;**
- **suspending their obligations in domestic law; and**
- **generally using legislation to limit and deny human rights.**

Australian parliaments and executive governments have proven that in the absence of constitutional constraints they cannot on the whole be trusted to honour their obligations to protect and uphold human rights.

Section 2: Why is constitutional enshrinement of human rights essential?

Should the government require further proof that a federal Human Rights Act, although desirable, is nevertheless going to be ineffective in protecting human rights for Australians, they need look no further than the judgements of the High Court.

In *The People's Constitution*, I have recorded no less than five major High Court rulings where it has become apparent that the judicature has found itself unable to protect Australians and others from human rights abuses by Australian executive governments. Instead, federal governments have been able to force through legislation which defeats human rights – such as:

- legislation which now permits indefinite detention of legitimate asylum seekers including children, or
- legislation which extinguishes the cultural rights and heritage of First Nations people[7] –

and the High Court has found itself in the invidious position of being able to do nothing about it. This proves that while a Human Rights Act is highly desirable it needs to be made inside a constitutional

[7] Kartinyeri v Commonwealth (1998) 195 CLR 337, summarised in the Agreements, Treaties and Negotiated Settlements Project, ATNS. https://database.atns.net.au/agreement.asp?EntityID=8423

framework – otherwise the courts will have little if any ability to protect Australians when a government decides to act contrary to the intention of the legislation (by rescinding or suspending it as the Howard government did in the Northern Territory intervention).

Indeed, for as long as the Australian Constitution makes no mention of human rights parliaments and executive governments will have free rein to be entirely unjust because the High Court has admitted that it has no basis in the Constitution that it can use to determine whether a law of the parliament which affects human rights is within the powers conferred on it by the Constitution. This is most evident in the following comments of Justice Michael McHugh in the case of Al-Kateb v Godwin:

> Eminent lawyers who have studied the question firmly believe that the Australian Constitution should contain a Bill of Rights which substantially adopts the rules found in the most important of the international human rights instruments. It is an enduring – and many would say a just – criticism of Australia that it is now one of the few countries in the Western world that does not have a Bill of Rights. But, desirable as a Bill of Rights may be, it is not to be inserted into our Constitution by judicial decisions drawing on international instruments that are not even part of the law of this country. It would be absurd to suggest that the meaning of a grant of power in s 51 of the Constitution can be elucidated by the enactments of the Parliament. Yet those who propose that the Constitution should be read so as to conform with the rules of international law are forced to argue that rules contained in treaties made by the executive government are relevant in interpreting the Constitution. It is hard to accept, for example, that the meaning of the trade and commerce power can be affected by the Australian government entering into multilateral trade agreements. It is even more difficult to accept that the Constitution's meaning is affected by rules created by the agreements and practices of other countries. If that were the case, judges would have to have a "loose-leaf" copy of the Constitution. If Australia is to have a Bill of Rights, ***it must be done in the constitutional way*** – hard though its achievement may be – by persuading the people to amend the Constitution by inserting such a Bill.[8] [Emphasis added.]

This is a clear statement to the effect that mere legislation is not sufficient to protect human rights. It must be done in the Constitution. Otherwise the High Court has no power at all under the only instrument that can give it power – the Constitution – to prevent abuse of rights by a parliament or executive federal government.

Summary: Why is constitutional enshrinement of rights essential?

In short, it is because the judicature cannot protect us without it.

Section 3: How effective would a Human Rights Act be in protecting the rights of Australians?

Australians have been living for decades without protection of their human rights in law. A federal human rights act would improve the situation quite significantly in that it would enhance the ability to take legal action and seek remedies when any rights conferred in the Act have been abused. But it would not improve the situation to the extent necessary to ***secure*** all human rights which official government policy has otherwise acknowledged to be

[8] Al-Kateb v Godwin [2004] HCA 37, (2004) 219 CLR 562, High Court (Australia).

> inherent, inalienable and universal: *inherent* as the birthright of all human beings, enjoyed by all simply by reason of their humanity rather than granted or bestowed; *inalienable* in the sense that they cannot be given up or taken away; and *universal* as they apply to all regardless of race, colour, gender, sexual orientation, gender identity, language, political or other opinion, national or social origin, property, birth, age or disability. … Australia also considers human rights to be interrelated, interdependent and indivisible. That is, there is no hierarchy or priority of the rights enshrined in the UDHR, nor are there preconditions imposed on the enjoyment of some of these rights.[9]

For ***secure*** human rights Australians need constitutional enshrinement of the full array of rights available under international law and the full array of government obligations under those same laws. Anything less than that will result in continual exposure of Australians to denial of their rights to protection from climate change, homelessness, poverty, ill-health, pollution, injustice, an unethical state apparatus, corporate exploitation and war.

For the same reason that First Nations peoples have concluded in the Uluru Statement from the Heart that nothing less than *constitutional* enshrinement of their Voice will ensure their rights (particularly to self-determination) cannot be lawfully abused, nothing less than constitutional enshrinement for *all* Australians (Indigenous and non-Indigenous) of the full array of human rights under international law and the full array of the obligations of governments under those same laws will ensure that the rights of all Australians (Indigenous and non-Indigenous) cannot be lawfully abused.

This is not to suggest that Australia should not enact a Human Rights Act. It is simply an assertion that we should not expect to gain all that we need in terms of *security* of rights. This suboptimal and, in reality, unsafe outcome will be likely if the government chooses to rely on the model legislation proposed by the Australian Human Rights Commission (AHRC) in its Free and Equal Position Paper: a Human Rights Act for Australia ***and stops there***. **The AHRC Position Paper may be a good start, but it is not a safe finish.**

Pros and cons of the AHRC model for human rights legislation

The AHRC has submitted that a model Human Rights Act would among other things observe the principles of:

- "parliamentary sovereignty", albeit based on "dialogue between the executive, legislature and the judiciary"; and
- "accountability" by "enhancing the rule of law and providing a check on executive power" (presumably to the extent necessary to proactively "prevent" human rights abuses of the sort we have seen by Australian governments).

The AHRC has implied that observance of these and some other principles would constitute a Human Rights Act that is "democratic" and would

> provide accountability for executive decision-making through judicial pathways, without infringing on parliamentary sovereignty.[10]

[9] Department of Foreign Affairs and Trade, "Australian and Human Rights: An Overview, 4th edition", December 2017, pages 10 and 15.
[10] Australian Human Rights Commission, Free and Equal Position Paper: A human rights act for Australia, https://humanrights.gov.au/human-rights-act-for-australia, page 15.

ACFP disputes the AHRC's contention that their proffered framework, based on legislation rather than constitutional enshrinement of human rights, would actually strengthen Australia's democracy. **The AHRC model has advantages, but not that particular advantage.** To be clear, the AHRC model would support a form of democracy that is limited to representative government which confers on an elected parliament a type of sovereignty that unfortunately does not prohibit the arbitrary exertion of power in relation to fundamental rights. This is not sufficient to support a genuine democracy where the people are acknowledged as the source of sovereignty and are constitutionally empowered to specify their sovereign will – a will to which the elected parliament should then swear allegiance and promise to serve.

We also submit that the proposed AHRC model would not provide accountability for executive decision making and this would apply regardless of whether the Act provided judicial or "dialogue" pathways to achieve accountability. In the absence of constitutional constraints, executive statements can still be made that will enable the government to continue escaping its obligations. As such, legislation can be – and based on past performance, *will* be – too easily ignored or negated.

Nor would parliamentary sovereignty itself be all that well secured by the AHRC model – although ACFP does not suggest that, when it comes to human rights, parliamentary sovereignty over other entities empowered under the current Constitution is necessarily a desirable thing to maintain anyway. Parliamentary sovereignty is not desirable if it can be exercised arbitrarily. It is certainly not desirable in a democracy, especially if – as is the case now in Australia – the judicature cannot exercise appropriate checks on the arbitrary use of power by the parliament or executive government. As far as human rights are concerned the current Constitution leaves the courts powerless to exert appropriate checks on the use of power by other entities empowered under the Constitution. In this unfairly balanced distribution of powers, parliamentary supremacy is not all it's cracked up to be. It leaves far too much room for abuse of power.

For a detailed explanation of how the silence of the Australian Constitution on human rights denies the benefits of a democracy to Australians, see Attachment 2 – Extract from Chapter 6 of *The People's Constitution*.

ACFP has observed that much of the debate in the last twenty years about which arm of power – be it the parliament, the executive government or the courts – should have the last word on the validity of legislation has tended to reinforce the notion that parliament should have the last word and the legal profession has clearly been cowed into submission on this view. Leading lights in the area such as George Williams and Daniel Reynolds have opted to fly the white flag and forsake the idea of enshrining human rights in the Constitution in favour of something that is "sound and achievable". The capitulation is understandable since it is clear that human rights lawyers have been getting nowhere in terms of codifying human rights in domestic law at the federal level. But it still leaves Australians in the lurch.

In these dispiriting circumstances, groups of lawyers and policy leaders campaigning in favour of a Human Rights Act have gone to great lengths to disarm the government's resistance by designing draft bills of rights that they hope will reassure elected parliaments that their power on human rights will not be limited by the courts. Unfortunately this is a compromise that has left the way open for governments to feel that they need not be – and in fact are not – bound by any international laws that the parliament may, in its wisdom (or political folly), have ratified. Their sense that they should and can act arbitrarily has been reinforced – unduly. For more detail on why it is a mistake to assume that capitulation to parliamentary sovereignty (rather than to a sovereignty that should be constitutionally vested in the people) will ensure "democracy", see Attachment 2.

The AHRC dialogue model would have merit if made under a better constitution – one which:

- declares who has what type of power in human rights decisions; and
- shares those powers rightfully between the parliament, the executive government, the judicature, the states and territories, the governor-general or head of state (if there is one) and, most importantly, the people.

But framed without that context, the AHRC model seems naïve. It appears to have been imbued with an assumption that dialogue between the executive, legislature and the judicature on human rights will be conducted in good faith as though they are partners of reasonably equal power, or at least that the legislature will not arbitrarily exercise its power to deny human rights and dismiss the valid objections of the judiciary and any claimants taking action against an alleged abuse by the government. This assumption is misplaced in the case of a constitution like Australia's where the empowered parties are not equal and the people are not empowered at all.

In a democracy that is limited to merely representative government the idea that the parliament is supreme makes some (limited) sense. It is consistent with the idea that the highest authority should be the one elected to speak for and decide for the people (rather than the one appointed or anointed by birth). And by extension it implies that it is safe to assume that elected parliaments and governments can be trusted to behave responsibly. But the sense of this breaks down when the system of representative government does not deliver responsible government or even specify what responsibilities each party is required to observe. It breaks down entirely when a government and parliamentary system does not require the elected to acknowledge that their primary responsibility is to those who elect them. Australia's Constitution – by failing to specify a chain of accountability in which the people (not their elected parliaments) are sovereign – inherently excludes the electors from any say on which executive actions may be legitimate and in the public interest and thus it lays the way wide open for the sort of abuse of human rights that we have experienced. Australia's deplorable record of abuse of human rights is proof that successive governments have taken full advantage of that gap in the chain of accountability.

In summary, ACFP contends that a Human Rights Act would be likely (depending on how it is framed) to slightly improve the security of rights for Australians, compared to the current situation where there is no security at all. But we also contend that until the full array of human rights available under international law and all concomitant government obligations are enshrined in the Australian Constitution, Australians cannot be secure in their rights and freedoms and they will continue to suffer abuse, particularly by executive governments.

If the government is of a mind to consider a Human Rights Act, we might – at our most optimistic – be able to expect that it will be enacted in a form that selectively grants (and therefore limits) rights and at the same time does not impose the obligations on executive governments that are required to protect and promote full access to human rights. It is likely, for instance, that the current executive government would obstruct access by Australians to the protection of their rights under Article 20.1 of the International Covenant on Civil and Political Rights – the right to be free from propaganda for war. This is just one example of a regrettable consequence of relying solely on legislation (even with a dialogue model) to protect human rights.

Summary: How effective would a Human Rights Act be in protecting the rights of Australians?

In short, it may give some partial and temporary protection (which is better than nothing) but it will not result in security of all rights and equality as to those rights. It will not provide sufficient protection to Australians from executive government abuse of their rights.

Section 4: How should the government proceed to secure the human rights of all Australians and others who come here?

It is highly encouraging to see an Australian government and parliamentary committee seeking the views of Australians as to whether we should have a Human Rights Act. If the current enquiry results in the establishment of such an Act it is to be hoped that the Act will offer comprehensive protection for Australians and others on all the civil, political, economic, social and cultural rights already available to them under international law.

If the parliament and government are, however, genuinely committed to the security of human rights for all Australians and other natural persons in Australia they will take further steps to establish a comprehensive community engagement program for constitutional reform. This program should place human rights at the centre of the Constitution alongside new sections on the values of Australians and the voices of both Indigenous Australians and all Australians.

The People's Constitution contains detailed information on the extraordinary benefits for both the people of Australia and all those they elect to government that will arise from such a program of constitutional reform. In particular it shows how these reforms can enable an orderly and stable coexistence of sovereignties between First Nations, the parliament and all the people of Australia. Chapter 9 sets out a practical program by which the necessary engagement may occur. This should be regarded as a fantastic opportunity for Australia. Australia can lead the world in showing how genuine, inclusive democracy can be built with the participation of all and how a much better relationship of trust and partnership can be established between parliaments and the people to at last put behind us the injustices of the past and design our preferred safe future.

Australian Community Futures Planning strongly encourages the Parliamentary Joint Committee on Human Rights to consider the option of establishing the community engagement program suggested in Chapter 9 of *The People's Constitution*.

Conclusion

It is apparent from the terms of reference for this inquiry and the Committee's particular requests for submissions that the government and (probably) the parliament are not seeking to venture into discussions about constitutional reform in relation to human rights. **But *they should be***, because it is obvious that any new legal framework for human rights which excludes consideration of the impact of an ageing Constitution that:

- contains permissions for racial discrimination,
- makes little if any mention of human rights, and
- places no appropriate limits on the extent to which parliaments in law-making and governments in administrative decisions may abuse the rights of persons in Australia,

cannot be considered adequate as a legal framework for protection of human rights. Accordingly ACFP submits that the government should widen its whole frame of reference on the matter of a legal framework for human rights so that it recognises and at least attempts to deal with the obvious limitations placed by the Constitution on the ability of Australians to access and share human rights equally.

The government may seek to avoid discussion of the extent to which the Constitution is a central cause of the now deeply embedded cultural and governmental disposition towards discrimination and abuse of human rights, perhaps fearing that Australians cannot or do not wish to cope with a

first principles discussion about their rights, and/or that we would be better off as a nation if we just focus on a program of discrete constitutional amendments, such as an Indigenous Voice and a republic. ACFP submits that the government would have a greater chance of securing these amendments if they were framed in the context of a wider conversation with Australians about their rights and the government's obligations. We further suggest that there is obvious interest among Australians for free, open and democratic conversations on how they should at last have security of human rights.

ACFP's central recommendation is therefore that **the government should consider working towards a human rights framework in which it is a key principle that the people of Australia (not the parliaments or the executive governments or the judicature) are to be accorded sovereignty in this particular area of law and that this sovereignty can only be protected by constitutional enshrinement of all rights and obligations in the human rights treaties and declarations to which Australia is already a State Party.** This offers a safe course for both the people of Australia and elected parliaments inasmuch as instruments of international human rights law to which Australia is a signatory (and that in most cases the parliament has long since ratified) already set out the conditions on which the human rights in the treaties may be legitimately limited or temporarily suspended. **We suggest wide-ranging community engagement for this purpose is essential. Models for such engagement are offered in Chapter 9 of *The People's Constitution*.**

Attachment 1 – Terms of Reference for the Inquiry into Australia's Human Rights Framework

Inquiry into Australia's Human Rights Framework – Parliament of Australia (aph.gov.au)

Parliament of Australia – Inquiry into Australia's Human Rights Framework

On 15 March 2023, pursuant to section 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the Attorney-General referred to the Parliamentary Joint Committee on Human Rights the following matters for inquiry and report by 31 March 2024:

- to review the scope and effectiveness of Australia's 2010 Human Rights Framework and the National Human Rights Action Plan;
- to consider whether the Framework should be re-established, as well as the components of the Framework, and any improvements that should be made;
- to consider developments since 2010 in Australian human rights laws (both at the Commonwealth and State and Territory levels) and relevant case law; and
- to consider any other relevant matters.

The committee invites submissions by **1 July 2023** in relation to these matters, and in particular:

- whether the Australian Parliament should enact a federal Human Rights Act, and if so, what elements it should include (including by reference to the Australian Human Rights Commission's recent Position Paper);
- whether existing mechanisms to protect human rights in the federal context are adequate and if improvements should be made, including:
    - to the remit of the Parliamentary Joint Committee on Human Rights;
    - the role of the Australian Human Rights Commission;
    - the process of how federal institutions engage with human rights, including requirements for statements of compatibility; and
- the effectiveness of existing human rights Acts/Charters in protecting human rights in the Australian Capital Territory, Victoria and Queensland, including relevant caselaw, and relevant work done in other states and territories.

Attachment 2 – Extract from Chapter 6 of *The People's Constitution*

The Constitution as a barrier to human rights

Australia's Constitution almost entirely undermines the possibility of its citizens' access to political, civil, economic, social and cultural rights. This is a serious failure that often gets lost in lawyerly debate on constitutional details. But if we step back and look at the Constitution from the point of view of equitable access to rights, it is apparent that it locks Australians into a position where human rights are the fiat of their governments and may be arbitrarily withheld at any time either for the whole population or subsets of it. This arrangement runs absolutely counter to the assertion that rights are universal and inalienable – the self-evidently inherent property of humans (collectively and individually) which cannot be denied by governments. Nevertheless, Australian governments have purported to hold these two utterly contradictory ideas at the one time. Australia's policy documents on human rights start with an acknowledgement that:

> These rights are considered to be inherent, inalienable and universal: *inherent* as the birthright of all human beings, enjoyed by all simply by reason of their humanity rather than granted or bestowed; *inalienable* in the sense that they cannot be given up or taken away; and *universal* as they apply to all regardless of race, colour, gender, sexual orientation, gender identity, language, political or other opinion, national or social origin, property, birth, age or disability.[11]

But Australia's Constitution comprehends no such thing. On the contrary, every mechanism within it, even the referendum mechanism, is geared towards denial of rights, not confirmation of them and certainly not remedy for abuses by federal governments. Insofar as the Constitution is either silent on human rights or may contain built-in mechanisms to deny them, Australians are living entirely without protection of their rights in law. They are told that their rights are protected by convention dating back to Magna Carta, or by the operation of the principle of "responsible government", or by common law, or by the now much vaunted but never defined (and frequently not adhered to) "rule of law". But the reality is that in relation to their rights the "rule of law" is non-existent in several states in Australia (because only two states and the Australian Capital Territory have some human rights legislation) and unstable on a nation-wide basis (because a federal law can override state law). Rights can be and are being extinguished and abused everywhere in Australia because there is nothing in the Constitution that says they can't be extinguished and abused. The human rights treaties our governments have signed and ratified are not enforceable here.

This is a situation that is now dire. In the space of about 40 years Australia has moved from being a society that could reasonably take rights for granted – because it was assumed leaders would act in good faith in the public's best interests in accordance with convention and the common law – to one where it must be acknowledged that the law can no longer protect Australians from human rights abuses by the government. As John von Doussa observed in 2005:

> When I went through the Law School, more than forty years ago, human rights law was not a subject on the curriculum. Lectures we received about the English common law system and the unwritten British constitution, led us to believe that the protection of fundamental rights and freedoms would always be the cornerstone of our legal system, and that there was no need to reduce those rights to a statutory form. … However, things have changed. I well remember an occasion in 1992 when one of my colleagues was about to hear an application by asylum-seekers who had arrived in Darwin by boat. At that time, judges of the Federal Court were granting bail to asylum-seekers who arrived unlawfully whilst their claims were

[11] Department of Foreign Affairs and Trade, "Australian and Human Rights: An Overview, 4th edition", December 2017, page 10, Op. Cit.

> processed. On the night before the case was to be heard, the mandatory detention provisions were rushed through Parliament. The protection against detention without trial was removed in one strike. Many other amendments followed to limit the power of the court to do justice according to common law principles.[12]

So in 1992, the capacity of parliaments to override human rights – by introducing laws that facilitate the exercise of arbitrary power – was already being exhibited by Australia's parliaments. From this point the human rights record of Australia began to plummet, as shown in some of the examples of abuses provided above. This trend of increasing abuse then grew unabated because of our entirely inadequate Constitution and in parallel with an argument run by politicians that it should stay that way – that is, silent on our rights. This argument speciously posited that if a charter of rights were to be enshrined in the Constitution (rather than in a mere act of parliament) it would transfer sovereignty from the elected parliaments to the unelected courts. With sophistry rather than evidence, it implied that enshrining rights in the Constitution would transfer key decision-making powers to the judiciary and that it was therefore safer to run with a system which gave the last word on legislation to the elected parliaments, who after all were responsible to the people. The troubles with this are manifold. For a start, parliaments have hardly behaved responsibly on human rights issues. But more than that, the whole argument that it is right for either the parliament or the courts to have "the last word" on human rights is a nonsense in a democracy. In a democracy it is the *people* and only the people who should have *both* the *first and last* word on human rights and therefore:

- unless they have a constitution which states what their first and last words are (until they say otherwise); and
- unless the people can say what line shall not be crossed – particularly in relation to their rights – by the elected when they exercise power; and
- unless the people can say what would constitute abuse and what would constitute dereliction of duty by the elected,

then they are at risk of full exposure to arbitrary power and abuse. They do not have the benefits of a democracy at all.

Notwithstanding the completely illogical thinking behind the idea that the abusive potential of parliaments should not be restrained by the Constitution, the Australian judicial establishment was beaten into submission by this tactic over an extended period. Common law protected nothing, and by 2004 the courts signalled complete capitulation when Justice McHugh of the High Court in the case of Al-Kateb v Godwin resignedly stated that

> the justice or wisdom of the course taken by the Parliament is not examinable in this or any other domestic court. It is not for courts, exercising federal jurisdiction, to determine whether the course taken by Parliament is unjust or contrary to basic human rights. The function of the courts in this context is simply to determine whether the law of the Parliament is within the powers conferred on it by the Constitution. The doctrine of separation of powers does more than prohibit the Parliament and the Executive from exercising the judicial power of the Commonwealth. It prohibits the Ch III courts from amending the Constitution under the guise of interpretation.[13]

This is one of those landmark moments in the judicial history of Australia. It is a moment that should have taken the breath of Australians away, insofar as it implies that they will be left defenceless against abuses of power by unscrupulous and unaccountable parliaments or executive governments (the type that make executive statements to the effect that "entering into a treaty does not give rise to

[12] John von Doussa QC, President, Human Rights and Equal Opportunity Commission, "Why We Need An Australian Bill of Rights – a joint forum", University of South Australia, 7 December 2005, or Why we need an Australian Bill of Rights - a Joint Forum | Australian Human Rights Commission

[13] Al-Kateb v Godwin [2004] HCA 37, (2004) 219 CLR 562, High Court (Australia).

legitimate expectations that could form the basis for challenging an administrative decision"[14]) and that both the Constitution and the judges who are responsible for interpreting it can offer them no protection. In effect, Justice McHugh exposed the truth that Australia has a Constitution that gives parliaments and governments free rein to be unjust.

Of course, the judgment did not create much of a ripple outside the small sections of the community that were championing human rights in 2004 but in the 2020s it stands as a salutary lesson from which it is not too late to learn. As Justice McHugh states, the High Court may be prohibited under Chapter III of the Constitution from amending it "under the guise of interpretation", but this is an argument *in favour* of enshrining a charter of rights in the Constitution. It is not an argument for listing human rights in legislation rather than in the Constitution.

Since the Al-Kateb judgement, Australians have effectively lost the help and protections that the judiciary could provide them if the doctrine of the separation of powers were properly invoked so that the separation allows *both* the parliament and the judiciary to exercise their properly balanced share of power in the public interest. This can't happen if the Constitution is silent on the obligations of parliaments and governments to uphold and adhere to the treaties they sign and ratify. It can't happen while the power sharing between the parliament and the judiciary is so out of balance as to make the separation of powers useless for its fundamental purpose – protection of the electors from parliamentary or government abuse. Certainly the courts should not be able to amend the Constitution under the guise of interpretation; but if they can be given a Constitution that actually says what must be upheld in law, then they should be fully able to interpret whether laws made by parliaments are consistent with the Constitution that the parliamentarians should (but currently don't) swear to uphold.

The current Constitution of Australia states that

> In all matters: (i) arising under any treaty; … the High Court shall have original jurisdiction.[15]

In a sensible, human-centred world this ought to imply that because the parliament has already ratified human rights treaties, the High Court should at least be able to assume it has jurisdiction not merely to "determine whether the law of the Parliament is within the powers conferred on it by the Constitution" (a function Justice McHugh asserted was valid for federal courts) but also to "determine whether the course taken by Parliament is unjust or contrary to basic human rights" (a function Justice McHugh did not think was valid for a federal court under the current Constitution, at least in the context of the Al-Kateb case). After all, the human rights treaties to which Australia is a signatory are used as the basis of some of the laws Australia has made to protect rights. For instance:

- the International Convention on the Elimination of All Forms of Racial Discrimination underpins and is a schedule to the Racial Discrimination Act 1975;[16] and
- the Convention on the Elimination of all Forms of Discrimination Against Women underpins and is a schedule to the Sex Discrimination Act 1984.[17]

As such, lawmakers and judges alike are well used to interpreting whether parliaments are behaving justly in relation to human rights treaties. And yet judges have felt the need for specific incorporation of treaties into domestic law – or rather, into the actual Constitution – before they will exercise the full measure of their judicial power in relation to rights under these treaties. In the Al-Kateb case, Justice McHugh shed some light on why:

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[14] Department of Foreign Affairs and Trade, "Australian and Human Rights: An Overview, 4th edition", December 2017, Op. Cit., page 26.

[15] *Australia's Constitution with Overview and Notes by the Australian Government Solicitor*, Chapter III< The Judicature, section 75, page 21. foi-2021-017.pdf (pmc.gov.au).

[16] Racial Discrimination Act 1975. RACIAL DISCRIMINATION ACT 1975 (austlii.edu.au)

[17] Sex Discrimination Act 1984. SEX DISCRIMINATION ACT 1984 (austlii.edu.au)

> Eminent lawyers who have studied the question firmly believe that the Australian Constitution should contain a Bill of Rights which substantially adopts the rules found in the most important of the international human rights instruments. It is an enduring – and many would say a just – criticism of Australia that it is now one of the few countries in the Western world that does not have a Bill of Rights. But, desirable as a Bill of Rights may be, it is not to be inserted into our Constitution by judicial decisions drawing on international instruments that are not even part of the law of this country. It would be absurd to suggest that the meaning of a grant of power in s 51 of the Constitution can be elucidated by the enactments of the Parliament. Yet those who propose that the Constitution should be read so as to conform with the rules of international law are forced to argue that rules contained in treaties made by the executive government are relevant in interpreting the Constitution. It is hard to accept, for example, that the meaning of the trade and commerce power can be affected by the Australian government entering into multilateral trade agreements. It is even more difficult to accept that the Constitution's meaning is affected by rules created by the agreements and practices of other countries. If that were the case, judges would have to have a "loose-leaf" copy of the Constitution. If Australia is to have a Bill of Rights, it must be done in the constitutional way – hard though its achievement may be – by persuading the people to amend the Constitution by inserting such a Bill.[18]

This is a logical or at least understandable reason for the reluctance of judges to determine "whether the course taken by Parliament is unjust or contrary to basic human rights" when there is no specific rendering of any human rights treaties in the Constitution itself. And it 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.

Over the 40 years to the 2020s, every referendum put to Australians to amend the Constitution failed. This record of defeat acted to dispirit human rights advocates from doing what Justice McHugh suggested is essential. Leading lights in the area such as George Williams and Daniel Reynolds have opted to fly the white flag and forsake the idea of enshrining rights in the Constitution in favour of something that is "sound and achievable". In 2017 they stated that:

> We should jettison the US model and any idea of a constitutional bill of rights. If that is ever to occur it is at least a generation away. The more modest and flexible legislative approach takes into account the strong concern held by many Australians that a US-style bill of rights would give judges the final say in too many areas, and would entrench rights in the Constitution that the community might not support in the future.[19]

But this pragmatic capitulation is likely to leave the Australian public without the rights and constitutional protections it needs. For instance:

1. As Justice McHugh has shown, the lack of a charter or bill of rights means that Australian judges have *no* say at all. They cannot protect us from injustice by a government that might be intent on abusing rights, even if legislation like the Racial Discrimination Act is enacted that grants pieces of those rights.

[18] Al-Kateb v Godwin [2004] HCA 37, (2004) 219 CLR 562, High Court (Australia).
[19] George Williams and Daniel Reynolds, *A Charter of Rights in Australia,* UNSW Press, NewSouth Publishing, Sydney, 2017, Chapter 7 – An Australian charter of human rights and responsibilities, page 140.

2. Nor is it the case that enshrining rights in the Constitution that are already supported in treaties would give judges "the final say in too many areas". There is no inherent need to enshrine treaty rights in a way that would inordinately increase the power of judges over the parliament. If that is an issue (which is unlikely) then it is simply the job of constitutional lawyers and parliamentary counsel to devise amendments that will eliminate the risk of an imbalance between the necessarily separated powers of the parliament and the judicature. In devising such amendments though, counsel should consider abandoning all presumptions that parliament should have the last word on human rights legislation. As I have already suggested, it is the people who should have the first and last word on what rights they want and what obligations they will insist their governments observe. That requires nothing more and nothing less than an enshrinement of human rights in a people's constitution.

3. Finally – since this whole debate about human rights has been dragging on for over thirty years with the result that rights have been eroded down to near zero – it is also time to abandon the prejudice that enshrining rights in the Constitution will lock Australians into rights "the community might not support in future". This seems to imply that Australians are somehow flaky about rights that governments have otherwise stated are universal, indivisible, interrelated, interdependent, inalienable, inherent, inviolable and the common entitlement of all humans.[20] Since Australia adopted the Universal Declaration of Human Rights and progressively signed onto treaties made under the Declaration, neither the people of Australia nor their governments have suggested that the treaties need be abandoned and the rights in them are not universal and indivisible. Of course governments have resisted enshrining them in law, but that is merely a measure of the desire of successive governments not to give up power. It is not an indication that Australians think these rights should not be available to them. If anything, the evidence is that Australians want surety about their rights – a guarantee that they will be permanent. 83% want "a document that sets out in clear language the rights and responsibilities that everyone has here in Australia" and 74% agree that "a charter of human rights would help people and communities to make sure the government does the right thing."[21]

In summary it is clear that Australians would be better off than they are now if human rights were legislated but they would not be as secure from abuse of power as they would be if the rights were enshrined in the Constitution. As John von Doussa observed in 2005:

> What happened with the Migration laws is being mirrored across the executive branch of government. More and more discretionary power is given to the executive, and less and less detail of conditions governing the rights and duties of individuals is stated in legally enforceable statutory provisions. It is all very well for government to say we are all protected by the rule of law and the respect that Australia accords to that core principle. However, if the regulation of our lives is not stated expressly in the law, but is a matter of discretion, what protection does the rule of non-existent law give? To give real substance to the principle, enforceable and certain rights need to be express – and this could be achieved in a charter of rights.[22]

The insightful von Doussa also made one other very important observation which is highly relevant in the 2020s to the issue of a treaty with First Nations:

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[20] Department of Foreign Affairs and Trade, "Australian and Human Rights: An Overview, 4th edition", December 2017, pages 10 and 15, Op. Cit.
[21] Human Rights Law Centre, "COVID-19 sees huge increase in support for a Charter of Human Rights: poll", Media Release, 9 September 2021, Op. Cit.
[22] John von Doussa QC, President, Human Rights and Equal Opportunity Commission, "Why We Need An Australian Bill of Rights – a joint forum", University of South Australia, 7 December 2005, Op. Cit.

> One important purpose of a human rights charter will be to protect the rights of people in minority groups. One minority group in Australia that is particularly in need of enforceable fundamental rights is the Indigenous community. Aboriginal people have advocated for a treaty, but their advocacy has fallen on deaf ears. … Without debating the merits of that proposition, if there were a universal charter to protect the rights of everyone, the basic rights recognised in it would go a long way to giving protection to one community which plainly needs it.[23]

What this indicates is that as Australia moves towards Makarrata and a treaty with Indigenous nations, it is likely that the treaty itself will need to be enshrined in the Constitution alongside enshrined human rights, otherwise the treaty itself is likely to be unstable. And because of the specific circumstance of the need for a treaty with First Nations, those rights will need to include not just the rights in human rights treaties that parliament has already ratified but the rights in another treaty it has signed but not ratified – the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[24] Unless *all* these rights are incorporated into the Constitution, any treaty with First Nations is likely to be as unenforceable as all the other treaties on human rights that we have signed but not enshrined in the Constitution. First Nations treaty rights will be as unprotected as all our other human rights and the obligations of government to Australians in compliance with those treaties will be too easily escapable.

To ensure that all the rights that have been withheld from Australians since World War II and all the rights that have been so cruelly and unjustly withheld from Indigenous Australians are finally enforceable by the courts, Australians need a well-made people's constitution which codifies those rights. They also need a well-made constitution which codifies the obligations of governments to all Australians in the benefit and protection of those rights. This may seem like an insurmountably complex challenge, especially to those who have been understandably dispirited about the possibility of success in a referendum. As more than one constitutional expert has observed,

> Not only is the Australian constitutional system old in world terms, but it has resisted change. As far back as 1967 Australia was described by Geoffrey Sawer as 'constitutionally speaking … the frozen continent'. It is an understatement to say that changing the Constitution is difficult. Former prime minister Robert Menzies went so far as to say in 1951, after his own proposal to ban communism had been narrowly rejected by the people: 'The truth of the matter is that to get an affirmative vote from the Australian people on a referendum proposal is one of the labours of Hercules.'[25]

Menzies, however, was a patrician from a time gone by. And while it was certainly true that Australians in the 1950s were not easily persuaded of the wisdom of proposals (like banning communism) which were effectively designed to deny civil and political rights and increase centralised political power, it does not follow that Australians in the 2020s would react in the negative to proposals designed to *affirm* their rights. On the contrary, as long as the proposal is simply designed such that Australians can perceive a benefit to them, and that the affirmation is their free choice, there is no reason to assume at the outset that Australians would reject it. And the benefit of such an affirmation would be enormous. It would consist in:

- confirmation of their rights at last in Australian law,
- protection from abuse of their rights by an unjust or arbitrary power, and
- enunciation of the parliament's and the executive government's obligations to them.

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[23] John von Doussa QC, President, Human Rights and Equal Opportunity Commission, "Why We Need An Australian Bill of Rights – a joint forum", University of South Australia, 7 December 2005, Ibid.
[24] United Nations Declaration on the Rights of Indigenous Peoples, 2007. DRIPS_en.pdf (un.org)
[25] George Williams and Daniel Reynolds, *A Charter of Rights in Australia,* UNSW Press, NewSouth Publishing, Sydney, 2017, Chapter 4 – Why doesn't Australia have a charter of rights?, page 73.

The real barrier to acceptance of human rights in the Constitution would not come from the people. It would come from politicians who under the current Constitution have their foot firmly stamped on the neck of the people's rights and freedoms inasmuch as they can stop a referendum from ever getting started. I will discuss ways around this in Chapter 9. For the moment I would like to concentrate on how the success of a referendum on human rights might be achieved. As I said above, the chances of success in such a reform will be increased if we can isolate a simple process for enshrining our rights. In the next section I will pose an option for the simplest way to overcome the problem.

Extract ends.

A full copy of *The People's Constitution*, published 26 January 2023 is obtainable here and here.