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**Submission to the National Human Rights
Consultation Committee**

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***Protecting Human Rights and Guaranteeing Better Societal
Outcomes by Codifying Government and Citizen Responsibilities***

The Need for Codified Rights

This submission strongly supports the Australian Government's agenda of reinvigorating the human rights debate and I welcome the opportunity to comment on which human rights and responsibilities are important, as well as how they can best be protected now and in the future.

While the scope of the National Human Rights Consultation Committee is to investigate public response to a legislated human rights bill, I believe there is a public groundswell that is supportive of a constitutional human rights bill. At the moment, none of us have any safeguards on our standard of living, and accessing basic services is a gamble for everyone. Therefore the need for human rights protections is self-evident:

- People need a clear standard they can use to identify any breaches across all levels of government, not just federal;
- The Courts need a mandate to act on human rights breaches where the common law is clearly inadequate;
- Governments now and in the future can abandon legislated human rights commitments on a political whim, or because they find it convenient to do so;
- Currently the laws, policies, treaties and rulemaking the Government undertakes aren't required to be considered within a human rights framework and a legislative bill will not necessarily change that.

The Limitations of a Set of Codified Rights

Having demonstrated the need, it is important to acknowledge that a Bill or Charter of Rights, Statute of Liberty or any other declaration of human rights, does not guarantee the welfare of ordinary Australians. Such declarations regardless of whether they are legislative or constitutional in nature, are usually only statements of intent, setting the lowest denominator a society expects for the treatment of its people. They inevitably fail to identify whose responsibility it is to protect rights and what remedial process people will have access to, if their rights are breached.

Imagine an Australian Standard for light switches that states that all switches must be safe to operate. The minimum standard guarantees you a safe light switch, but whether it is cheap and ugly or is of high quality and elegant, will depend on factors outside the scope of the standard. Likewise, a human rights bill might state that every person has the right to health care, but whether people get sound or inadequate health care, who has responsibility for providing it, and what will happen if it doesn't occur, are questions left unanswered. Compounding this problem, rights charters everywhere suffer from a lack of international agreement on the legal definition and application of certain rights, hampering cross-border and cross-jurisdictional investigation.

Assumptions Underpinning a Rights Bill

Those advocating for human rights protection assume that the machinery of government will lumber along in its usual faceless, heavy-handed and inefficient way. In the minds of some, a bill of rights is like a series of dog-spikes scattered across the road to bring a speeding and reckless political process up short after it has run down innocent citizens. At its core, a rights bill is a legalistic check on the anticipated misuse of political power. Not a very good one to be sure, because it kicks in after the crime has been committed, after the damage is done. Rights charters are inevitably reactive, and possess less than adequate deterrent value against heavy handed or malicious government. Sadly, around the world, many brutal and repressive political regimes have flourished under well defined and well publicised rights bills.

Moving From Reactive to Proactive

Therefore the question must be asked, how do we move from a society where the public expects government to misuse its power, to one where the government aspires to and fulfils the higher expectations of its citizens?

A bill of rights is certainly a first step, but it is hardly the whole solution. We need to go much further and fundamentally change our thinking. We need to move from a reactive and legalistic mindset as embodied in a bill of rights, to a proactive democratic ideal, where government embraces socio-economic and environmental obligations. After all, why should Australian citizens not set the highest standards for their government instead of living in anticipation of the lowest?

One idea worth exploring is a Charter of Government and Citizen Responsibilities. Consider for a moment, an industrial award that sets out the conditions of employment, wage rates and allowances for workers in a particular industry. The award is not only clear about the duties that workers have to their employer, but more importantly, the award stipulates the conditions that employers must extend to their workers and the penalties they will be subjected to if they fail in their duty.

A Charter of Government and Citizen Responsibilities is like an industrial award or workplace agreement. It would be hammered out by two parties, in this case, citizens and government, establishing clear roles and responsibilities for a progressive relationship.

The public would set high standards of service and commitment for government, combined with the minimum standards offered by a bill of rights. This would present government with a range within which to operate. At one end the government would have plans and accountability for achieving higher goals. At the other end, there would be a set of punishments and consequences if it failed to meet minimum standards set by a bill of rights. Ultimately, people would know exactly who was taking public responsibility, how they were doing it, and they would have the means to measure progress.

Such a Charter of Responsibilities would be proactive in operation and effect.

Lack of Responsibility Leads to Bad Outcomes

Opponents of codified rights and responsibilities argue that our political system itself is the best protector of rights, and that any rights bill would frustrate normal government business. These opponents also proclaim that many rights are not actually rights at all, but merely aspirations, and that responsibilities can be vague and ideological.

These seemingly plausible arguments lack logical rigour whilst ignoring cold, hard reality. Simplistic rebuttals such as these, try to gloss over the very real injustices that are occurring in our society. Australia's education system is a case in point.

To quote directly from the International Covenant on Economic, Social and Cultural Rights that Australia is a signatory to, not only is everyone entitled to an education, but that primary education shall be compulsory and available free to all, secondary education shall be made generally available and accessible to all, and higher education shall be made equally accessible to all. In addition, the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

But guess what? While we have an education system that complies with this international human rights covenant, every year, one in three teenagers leaves school without completing Year 12,¹ and young Australians without an upper secondary qualification are twice as likely to be unemployed as secondary school completers.² 681,145 Australian children under the age of 18 live in families where neither parent is employed.³ That means that one in seven children cannot fully participate in school, because their parents struggle to provide basic education resources such as school books, uniforms and stationery. In reading literacy tests 29% of Year 5 students did not meet the Year 5 standard and in writing, 33% of Year 5 students did not meet the Year 5 standard.⁴ The situation doesn't get better with older students. In the basic skills of literacy and numeracy, up to 10 per cent of students achieve only minimal levels by Year 7

¹ K Muir, Youth Unemployment in Australia 2003

² Dusseldorp Skills Forum, 2004, *How Young People are Fairing: Key indicators 2004, An Update about the learning and work situations of young Australians*

³ Australian Bureau of Statistics, *Survey of Income and Housing 2005-06*

⁴ Australian department of Science, Education and Training, *Literacy Standards In Australia*

(MCEETYA, 2007). A further 20 per cent have levels below those required for effective functioning in adult society (Rothman, 2002).

Clearly our Government is upholding our human rights commitments around education, because everyone is getting a mandatory primary and secondary school education. Unfortunately for our children and our future as a nation, we have not placed a responsibility on Government to provide the best education system available. Because we have not articulated what we want our education system to achieve, we end up with unacceptable education failures that will have negative ramifications for generations to come.

Furthermore, we allow our politicians to fail us across a whole range of social, economic and cultural issues year after year. We tolerate their protests against codified responsibilities. We accept their excuses about a lack of resources or lack of bi-partisan support for policies to fix problems.

At the end of the day, education is much more than merely an aspiration, and the responsibility attached to achieving it is not vague and ideological. If government is not about improving our prosperity as citizens and protecting our welfare, what is it about?

General Recommendation

This submission is basically supportive of a legislative charter of rights, but it is against the baby-steps approach being taken to improve our social and political processes. Incremental change proposed by those considering a legislated Bill of Rights, in my opinion is inadequate to meet the needs of a modern Australia. It is certainly inadequate to begin correcting the accumulated failures of generations of free-wheeling and self-interested governments.

At a recent Community Roundtable in Sydney convened as part of the National Human Rights Consultation Committee's public consultation process, there was overwhelming support (indicated by a show of hands) for a constitutional bill of rights instead of a legislated bill of rights. Attendees (approximately 150 members of the public) discussed and deliberated the issue of protecting human rights and most came to the conclusion that a legislated charter would have no enforceability and create little political change.

Despite the clear and significant public support for a constitutional charter, the Rudd Government has set narrow terms of reference for the Committee, by only allowing it to investigate public comment on a legislated charter of rights.

While acknowledging these constraints, this submission urges the committee to consider the merits of a comprehensive Charter of Government and Citizen Responsibilities incorporated into the Australia's Constitution, covering:

- A human rights charter, tailored to meet the needs and aspirations of the Australian people.
- Responsibilities the government has to the public including:
 - High standards and guarantees on food, water, energy, housing, education, health, transport and communication security;

- High standards and guarantees on social, economic and political justice.
- Responsibilities people have to themselves, their companion citizens and their government, including but not limited to obeying laws, accepting the authority of elected representatives, accepting diversity and allowing others to enjoy their own rights and freedoms.

Example of a Charter of Government and Citizen Responsibilities

To demonstrate what such a Charter of Government and Citizen Responsibilities could look like, I have modified an extract from my book, *The Consensus Artifact* (ISBN 978064647296), and included it in the following pages.

Charter of Government and Citizen Responsibilities

RESPONSIBILITIES OF THE GOVERNMENT

1 Responsibilities to the people of Australia

The Government has responsibilities to the people of Australia directly resulting from this Constitution and the law and all citizens shall receive equal attention from the Government. The Government shall be accountable for all the things it does that should not have been done, all the things it could have done but didn't and it shall do all things as well as they are able to be done. It is the specific responsibility of the Government to undertake:

2 Protection of human rights

Protect the human rights of its citizens without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. These rights include, but are not limited to and may be reduced or added to by referendum:

- (i) Civil and Political Rights such as the right to: life; protection from torture, cruel, inhuman or degrading treatment or punishment or non-consenting medical or scientific experimentation, protection from slavery, servitude or forced or compulsory labour; liberty, peaceful assembly and association; petition; freedom of expression; security of person; equality before the law; presumption of innocence; privacy; correspondence; protection from unlawful attacks on their honour and reputation; thought, conscience and religion; hold opinions without interference; marriage and divorce; take part in public and political affairs; vote and access public services.
- (ii) Economic, Social and Cultural Rights such as the right to: self-determination; accumulation, enjoyment and disposal of personal wealth and resources; just and favourable conditions of work; form or join trade unions and to strike; social security and social insurance; create a family; adequate standard of living; freedom from hunger; highest attainable standard of physical, emotional and mental health; education; take part in cultural life; enjoy the benefits of scientific progress and its applications; protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are an author.
- (iii) Solidarity Rights such as the right to: peace, prosperity and a good environment.

Should any citizen experience a breach of these rights, they shall have their grievance determined by the Courts of Australia. Should a situation occur where the judicature is complicit in any breach, becomes powerless to rectify any breach, or legislation is enacted to overturn a Court decision relating to a breach, a citizen may take their grievance to the European Court of Human Rights and the Federal, State, Territory and Local Governments of Australia will be bound to immediately act on any determination it makes.

3 Guarantee of dignified life

Guarantee that once born, each person is able to live with dignity and decide their quality of life without prejudice, pressure or interference from family, companion citizens, medical, religious or legal practitioners, or the Government.

4 Guarantee of dignified death

Guarantee that once a person's life is reaching its end, they are able to die with dignity by their own consent without prejudice, pressure or interference from family, companion citizens, medical, religious or legal practitioners, or the Government.

5 Protection of fair employment

Ensure equal and open employment conditions so that employees have: workplace freedom of speech; job satisfaction; safe and healthy working conditions; annual, sick and long-service leave; fair pay; social security; social insurance; superannuation; workers compensation; fair and equal labour practices; freedom to join a union and strike. The Government shall ban all discriminatory or exploitive employment practices.

6 Protection of citizens during times of hardship

During times of social and economic hardship, war, or states of emergency affecting greater than twenty percent of the population, the Government shall:

- (i) Allow worker cooperatives or publicly funded employment programs to expropriate - without compensation - commercial property, industrial facilities, patented processes and technologies that have been abandoned, closed or under-used. This shall be done to allow the members of such groups to regain their livelihood.
- (ii) Restrict access to all private and public deposits and invested funds to protect the national wealth, but not to the extent that citizens cannot withdraw enough money to provide for themselves and their dependants and pay their debts.
- (iii) Freeze the flow of foreign capital, investment, production equipment and technology out of the country until the time of hardship has passed.
- (iv) Suspend all interest payments on foreign debt until twelve months after the time of hardship has passed.

7 Provision of education

Provide the highest level of free secular education and promote lifelong learning and adaptability to changing circumstances. The education system shall:

- i) Teach children at least one marketable skill - not entailing drudgery or subservience - allowing them to gain full employment in adult life.
- ii) Teach citizens below the age of twenty one - or immigrants wishing to gain citizenship - full literacy in language, math, science, civic, finance and legal disciplines as well as the basic skills of consolidating, coordinating and conceptualising.

- iii) Instil an understanding of the scientific methods of inquiry and critical thinking.
- iv) Instil an understanding of the principles of: good health; hygiene; responsible sexual behaviour; the workings of the human body; processes of disease, illness and disablement; community welfare.
- v) Instil an understanding of non-religious ethics and develop a capacity for ethical reasoning along with the ability to create new ethical and compassionate solutions in light of current reality and future need.
- vi) Instil an understanding of the democratic process, active citizenship and a thorough knowledge of this Constitution and its international contemporaries and the law through study, community-oriented activities and service to the community.
- vii) Make a clear distinction between age and academic ability and allow retaking of all subjects offered to students up to three times.
- viii) Require students to collect certificates of competency or achievement in the subjects they have studied.

8 Provision of health care

Provide the highest level of free secular public health care and promote disease prevention, proper nutrition and lifelong well-being.

9 Provision of essential services

Provide the most advanced, safe, efficient, sustainable and cost-effective publicly accessible transport, communication, water, wastewater, food and energy infrastructures.

10 Provision of long-term social welfare

Provide the highest level of long-term social welfare systems for those citizens unable through age, permanent disability and incapacity to support themselves or their dependants.

11 Provision of short-term social welfare

Provide the highest level of short-term social welfare to citizens in crisis but ensure they do not develop a dependency on it.

12 Care for the young, aged and infirm

Ensure that children, the aged, infirm, injured, disabled and all peoples in distress are: properly cared for; protected from exploitation; treated with dignity and respect; given safe environments to live; allowed easy access to all supporting amenities and services.

13 Provision of fitness and recreation infrastructure

Provide the highest level of free recreational and fitness infrastructure which is accessible to all people and environmentally sustainable.

14 No manipulation of public opinion

Not create or spread propaganda, fix the frames of reference and agenda for the media, restrict the media's access to public information, exclude inconvenient or

damaging facts from public inspection, divert public attention from any matter, engage in political censorship nor damage, destroy, hide or withhold administrative and public records.

15 Protection of privacy

Ensure that people have access to a standard of privacy allowing them to feel comfortable and secure but does not prevent social interaction, restrict services or infringe on human rights.

16 Protection from unreasonable searches

Guarantee that people are secure against unreasonable searches or seizures and that warrants are only granted by Justices after proof of probable cause and confined to the place and time to be searched or persons or things to be seized.

17 Equality before the law

Ensure that all people are equal before the law, that people of power and privilege do not subvert the processes of law and that people of poor means receive full and fair access to justice.

18 No detention without charge and fair trial

Ensure that no person may be detained on suspicion of committing an offence for more than twenty four hours without charge and that a relative or acquaintance of the person detained shall be told immediately of any detention.

Ensure that only Justices may decide on the admissibility or continuation of a person's detention under this Constitution or the law. Ensure that all people accused of committing, aiding, encouraging or hiding a crime against this Constitution or the law are:

- i) Not detained without formal charge and told of the true nature and cause of the accusation.
- ii) Presumed innocent until proven guilty in a court or tribunal.
- iii) Given a speedy and public trial, by an unbiased jury.
- iv) Confronted by the witnesses against them.
- v) Not made to be a witness against themselves.
- vi) Given a compulsory process for gaining credible witnesses in their favour.
- vii) Defended by a competent, unbiased and committed Assisting Counsel.
- viii) Not absent from their own trial.
- ix) Not allowed more than a twenty five percent decrease in the severity of the punitive measures applicable to their crime if they plead guilty.
- x) Not punished for the same act more than once.
- xi) Able to invoke the process of habeas corpus.
- xii) Fully compensated for their loss of freedom and livelihood by the agency accusing them if they are falsely imprisoned or detained for extended periods of time.

19 Deliberative Advisor to juries

Ensure that as well as a prosecution, defence and bench, all trials are attended by an independent Deliberative Advisor/s. The Deliberative Advisor/s shall act for the jury and provide: expert advice on the evidence presented; the merits of each opposing argument; points of law; prior history of a defendant if they are a repeat offender; any relevant information that will help the jury come to a fair decision. In deciding the reliability of scientific or technical evidence, the Deliberative Advisor assessor shall use the Daubert Test:

- i) The theory, technique or technology is testable.
- ii) It has been subject to peer review or published in reputable media.
- iii) There are maintainable standards controlling the use of the theory, technique or technology.
- iv) Scientists and recognized experts accept that it works.
- v) There is a known error rate.

20 Criminal justice and victim remediation

Ensure that a convicted person fully accepts that the punishment they are given is the outcome of actions they are responsible for. This shall be achieved by making them pay compensation direct to their victims, or the victim's close family. They shall also be required to work in areas dealing with the outcomes of the type of crime they have committed so they cannot ignore or deny the consequences of their actions. They shall be given the opportunity to repay their debt to society by helping other victims of crime, helping to prevent crimes or through other notable services to the community.

21 Protection of victims of crime

Ensure the rights of an offender never override the rights of their victims. Serial offenders perpetrating heinous crimes shall be removed from society until their motivations, belief system, behaviour and actions show beyond reasonable doubt they will not re-offend.

22 Binding of the Government and its suppliers to the Constitution and the Law

Ensure that all departments, agencies, contractors and suppliers of the Government and Public Service are bound to this Constitution and the law. The natural persons, who commit, aid, encourage, or hide a crime by an agency shall be personally liable for all criminal and regulatory breaches of the agency and shall be tried under the law for such offences. Where significant social, economic or environmental infringements have been made and conviction gained, agencies shall bear the full cost of all correcting and remediation both in Australia and in foreign territory.

23 Protection of property

Guarantee that no person's physical or intellectual property be used without their consent and in-kind or current-replacement-value compensation, except where they have defaulted on taxes owed or committed fraud, in which case the Government may confiscate money or property equal to the value due and

subject the person to punishment in proportion to the extent of the fraud or non-payment.

24 Compel citizen participation on juries

Select citizens at random to serve on juries and consensus committees and compel citizens to serve as witnesses.

25 Issuing of licences

Regularly test the holders of licenses and registrations under law to verify their continuing ability and fitness to hold such authorizations. People shall be allowed no more than three attempts to pass the competency needs for a licence. The granting of a licence is a freedom and not a right and any person not fit to hold a license shall not be granted one.

26 Privatisation

Privatise any public services to provide an improved community benefit. Any privatised service shall be sold to no less than five private operators each with less than forty percent market share. The Government shall set standards so consumers will receive uninterrupted service provision if moving from one provider to another. The Government shall also control the licenses of operators and not preclude citizens from creating their own operation to service their own needs.

27 Provision of secure land tenure

Provide the highest level of fair and secure land tenure and property rights.

28 Provision of housing

Provide the most advanced affordable housing which is also durable, accessible, energy efficient, sustainable, environmentally sensitive, suitable and aesthetically appropriate.

29 Security of essential services

Ensure the nation's supply of essential goods and services in times of conflict, emergency or severe shortages, where the normal economy cannot meet the demand.

30 Security of food

Ensure food security for the Nation by keeping a seed bank and adequate numbers of animal breeding stocks.

31 Protection of productive environment

Ensure that agriculture uses self-sufficient, sustainable and market-oriented production processes that conserve the ecology and natural landscape while providing food that is wholesome and nutritious.

32 Protection of natural environment

Ensure the dignity of all living things is guaranteed and shall legislate to protect life and preserve the natural environment. Where a natural environment is being permanently changed or destroyed by an introduced species, the introduced species shall be eliminated so the natural balance can return. It shall protect

endangered species from extinction except where those extinctions are clearly due to natural causes or lack of adaptability to natural changes in the environment.

33 No degradation of food nutrition

Regulate or ban organisations that substitute, damage or reduce the natural nutrition in foodstuffs and meals available to the public.

34 Protection of innovation

Provide the highest levels of scientific and technological endeavour, fostering excellence in research, development, commercialisation and industrial competitiveness.

35 Protection of consumers

Create equitable and effective trade practices and competition laws that guarantee the health, safety and economic interests of consumers.

Provide consumers with free access to detailed, verifiable and independent product, service and provider information. Ensure people receive adequate consumer education and allow consumers to organise themselves to safeguard their interests.

36 Technology

Ensure that new technology:

- i) Is available to all citizens in the format they need, when and where they need it.
- ii) Works better, provides a greater benefit and is more efficient than existing technologies.
- iii) Does not require excessive time and effort to maintain or support.
- iv) Is developed within open, reliable and scalable standards that protect consumers and to allow the widest access to worthwhile new technologies. Manufacturers and providers of new technologies shall not set the standards or sit on any decision-making bodies intended to set standards.

37 Scientific endeavour

Provide funding and support for international scientific collaboration, peaceful exploration and theoretical scientific investigation of the mysteries of existence and the universe. Ensure the incidence of scientific error is lessened by requiring scientists, technologists, researchers, academics and other experts to publish the full results of their findings whether they are positive, negative, neutral or inconclusive along with the amount and sources of funding used to perform the research.

38 Non-commercial research and inquiry

Fund research and publicly announce findings into prophylactics, cures and treatments where there is circumstantial evidence to show the efficacy of a regime but for which no granting of intellectual property rights would be applicable. All tests and trials shall be conducted on a large enough base to prove decisive. All results, positive, negative and indeterminate shall be published.

39 Inform and educate the public

Tell the public about benefits, requirements, issues or warnings associated with actual laws, regulations or court orders passed by the Government.

40 Protection of heritage

Protect natural and cultural heritage, landscapes, localities, historical sites, monuments and buy or secure objects of National importance. Ensure the continuing maintenance, full repair and refurbishment of all publicly owned and publicly funded assets. The Government shall require the guaranteed continuing maintenance, repair and refurbishment of all privatised public assets.

RESPONSIBILITIES OF CITIZENS

1 Responsibilities to the Nation, community, family and companion citizens

All citizens have responsibilities to the Nation, their community, family and their companion citizens directly resulting from their rights and freedoms under this Constitution and the law. Not knowing the Constitution or the law does not release a citizen from these responsibilities. It is the responsibility of all citizens to:

2 Live with dignity

Live with dignity, purpose and a desire to better oneself through education, service to others and life's experiences.

3 Uphold the Law

Uphold and honour all valid laws. Seek to change laws with which they disagree. Take part in political life and in the public affairs of the country. Be informed and enrol on the Electoral Roll and vote at elections and referendums. Disobey and resist illegal orders or orders that decrease their human rights.

4 Reject nobility and monarchy

Reject or renounce any titles, positions, appearance or symbols of nobility and monarchy.

5 Acceptance of Government authority

Accept the authority of the Government and pay all taxes and levies that are made under this Constitution and the law.

6 Defend the nation

Defend themselves according to the Constitution and the law and protect the Nation.

7 Respect the symbols of Australia

Respect the symbols of Australia; its flag, emblem and anthem. Protect items of National history, art and culture and develop a thorough understanding of this Constitution and the law.

8 Respect cultural diversity

Accept that diversity is a normal human condition and respect the rights of those with differing points of view. Practice reciprocal tolerance and live together in peace with other citizens as good neighbours.

9 Honour contracts

Honour their contracts and take responsibility for all of their actions, so they do not hold others liable for their own omission, errors, lack of timeliness, accident or misadventure.

10 Cause no harm

Allow other citizens to enjoy their rights and freedoms and cause no harm to others. Cause no harm to the environment, nor waste any resources. Avoid disturbances of public life and engaging in violent or anti-social behaviour.

11 Civil duties

Act as a witness and serve on a jury or other consensus committees, if directed.

12 Provide for personal wellbeing

Provide for the means of their existence during working life and retirement and live in such a way they do not burden either the Government or their companion citizens. Bear the long-term costs of their own lifestyle choices that result in preventable conditions, illnesses and diseases.

13 Care of family, friends and community

Be responsible to family and friends and take an active part in cultural and social life.

14 Whistle blowing

Present complaints to the relevant authorities about acts, omissions or lack of timeliness by public and private bodies. Make public interest disclosures about issues that have adversely affected themselves and other citizens.

15 Respect for providers of public services

Show respect, courtesy and appreciation to other citizens who provide public services.