

SUBMISSION ON A CHARTER OF RIGHTS

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1. **What Do We Mean?** What are human rights? No one seems to agree on what we are talking about. This happens when words fail. Words fail when we ask them to do work they were never designed to do. People refuse to understand words that strain credibility. "Rights" people understand, even if they don't always agree on what they should be. "Human" -- not so much! "Human" is a useful adjective only for a species, not for rights.

The Australian Human Rights Commission doesn't help. It asks on its website, what are human rights? But it doesn't answer the question. Seems it has something to do with our "inherent dignity and value." But where does this notion of "inherent" dignity and value come from? From scripture, based on our god-given souls?! "Inherent" like a black man's rhythm or a woman's nurturing nature?! Are we born dignified and worthy? How dignified and worthy is a baby's constant pooping and puking and total dependence? More importantly, do we remain dignified and worthy, despite our behaviour and our deeds? Human rights advocates say, "Yes, we do!" Most sensible, pragmatic Aussies would say, "No, we don't!"

The idealistic notion of "human rights" based on some mystically inherent qualities of our species and endowed by god-only-knows who is meaningful only to human rights zealots (who are often quite misanthropic toward anyone who disagrees with them). To some of us, our dogs have more dignity and value than the drug addict who begs us for spare change! I don't want my legal system resting on his dignity and value!

The Commission says human rights "help us respect that fundamental worth in ourselves and in each other." I don't think so. I think human rights force us to acknowledge the "worth" of people we do not find worthy at all and give a false sense of worth to people who do not contribute to society and even disrupt it.

Commissioner Innes, in a media release on the national consultation on human rights, says, "The Commission will use this opportunity to establish people's fears and desires in relation to human rights." Why would people have fears about something so gloriously human affirming as human rights? Because decent people see neither the need nor the justice in "human" rights idealistically predicated on the "inherent" dignity and value of criminals, terrorists and pedophiles.

"Human rights" seems to be little more than an over-generalised catch-all term for more practical civil, political, economic, social and cultural rights. More precise words produce more precise understanding, take us out of the mystical realm of inherent qualities, and return us to the pragmatic legal realm of entitlements and protections. This is why I have called my submission an Australian Charter of Civil and Political Rights and Obligations. I would define such rights as "entitlements and protections endowed and guaranteed by the people of Australia to foster freedom, democracy, harmony, security, diversity, tolerance and compassion among all inhabitants of Australia and to underpin a justice system based on the rule of law, equality and fairness."

2. **Other Charters:** Having looked at many statements of rights, including the UN Universal Declaration of Human Rights, the US Bill of Rights and the Victorian Charter of Human Rights and Responsibilities, it is clear to me that rights devised too politically and expressed too generally and too vaguely create more problems than they solve.

- a. *The UN Declaration* is far from universal in its scope and practicality because it ignores cultural and political differences across nations, to the extent that citizens of nations most in need of rights get few or none because the declared rights are at odds with the values and cultural and political traditions of these countries and so do not enjoy government or public support.

While it can be argued that allowing for cultural differences provides an excuse for oppressive regimes to avoid their human rights obligations, in practical terms we now understand that meaning and values flow from culture. To imagine “universal” rights can be made meaningful without connecting them to culture (or even setting them at odds with culture) is not convincing. Likewise, the widespread abuse of human rights among many of the signatories to the diplomat-drafted Declaration shows that it was never seen as binding on governments and was ratified in bad faith by many of them. Now it is only silly Western democracies that embrace them, even against their citizens’ best interests.

It is doubtful that “human” rights even exist. All human beings are part of different societies and cultures that, to varying degrees, determine their identity, define their world and values, and create their possibilities. We cannot conceive of any person who has not been so shaped and influenced, and the diversity of peoples in the world is beyond generalising in a single word. To suggest that the world’s diverse peoples can be generalised into a class of beings by their entitlement to some context-free rights is nonsense. It is strange that the United Nations would seem to deny that diversity on one hand but insist that it be respected on the other.

There are whole populations (not just tyrants) in the world who are not keen for democracy, who prefer autocratic or oligarchic rule to personal responsibility, or who are prepared to sacrifice personal freedoms to maintain social order. These people do not desire or value civil and political rights in the same way that individualistic Western democrats do. They neither ask for nor respect many of the so-called human rights the UN aspires to make universal because such rights can’t guarantee equality, peace and social harmony in their societies.

There are societies that are mired in internal conflict and violence, and that thrive on vengeance and grudges, on extremism and hysteria, right down to the man, woman or child in the street. We’ve seen this in Afghanistan, Iraq, Iran, Lebanon, Northern Ireland, Bosnia, Cyprus, Israel, southern Italy, most of Africa, and Gaza and the West Bank. We can’t deny that these self-defeating cultures exist and that many are as old as time. Human rights cannot fix the enduring problems inherent in these cultures and often make matters worse.

The Western democratic view is that rights protect people, help settle differences and reduce conflict. But rights for lawless, confrontational and irrational societies are just one more battleground, one more excuse to kill each other, one more source of slights and offences. Sometimes only tyranny and ruthlessness can keep order, as is apparent in Iraq and Afghanistan and, more for population reasons, in China.

The values and practices of quarrelsome, chaotic cultures are alien, mystifying and distasteful to Western and some Eastern democratic cultures that value order, the rule of law, rationality, pragmatism and enterprise. But that does not justify creating idealistic human rights out of some imperial righteousness, especially when we are powerless (and generally unwilling) to impose such rights on cultures that need them most. Where are the UN and the world community actually making a difference for any oppressed and imperiled people?

I think we should mind our own business; that is, endow rights to our Australian community that are relevant to our culture and traditions and leave “human” rights to culture-free idealists. This is why I suggest that any charter we create be called the Australian Charter of Civil and Political Rights rather than a charter of human rights. Our charter should reflect our unique Australian civil and political values, expectations, aspirations and realities. If our charter will not be distinctly ours, then why do we need our own? Why not say the UN charter is also ours, especially if our charter just parrots the UN version, as does the Victorian Charter?

Because our civil and political rights are not universal but are local and endowed by the citizens of Australia, they need not be extended to everyone equally. There is precedent for selective or limited rights and exceptions to rights: everyone doesn’t have the right to vote or stand for office in Australia, the right to work, the right to marry, the right to practice any profession, the right to enter Australia or board a plane, the right to refuse hospitalisation, or the right to live with one’s children. Civil and political rights must serve and protect the community, not endanger or disrupt it by universal application without rational, pragmatic limitations or sense.

Proponents of human rights worry that the people will not get behind a charter like the UN Declaration that seems to privilege foreigners, minorities and troublemakers over law-abiding citizens and majorities. Well, why should they? Rights are often a zero sum game. Some rights are granted only at the expense of others. Citizens of a nation are entitled to expect that their institutions will protect their rights before extending protection to the rights of others at their expense. This self-interest is fundamental to diplomacy; why not to rights? Just because somebody decided to call them “human” rights? The UN Declaration warns that people not protected by legislated rights may resort to “rebellion against tyranny and oppression.” People can be disempowered and oppressed by unfair rights as well as by the lack of rights. Australians have a distinguished history of resisting imposed authority, so we need to endow rights that the people can embrace rather than that must be imposed upon them against their will and interests.

Rights are not universal, ideal or mystically endowed; they are local, practical and negotiated. Rights that the people will not support are elitist impositions that infringe the democratic rights of the people to be heard and obeyed in their governance. Who elected the UN? To whom are they accountable? For whom do they speak? Embracing the UN’s notion of human rights is a throwback to colonial obeisance to the wisdom of the privileged powerful at the expense of the ignored common folk.

If you read its opening passage, the UN Declaration does not hold itself out as a template for laws but rather as a teaching aid, an aspirational statement of faith and a promotional tool. As such, it doesn’t need to be realistic, workable or even coherent. Governments that would adopt such a document as a fundamental underpinning of their legal justice systems are, at best, lazy and, at worst, abdicate their responsibility to create fair and effective laws.

Human rights as the UN conceives them, and as most of the world sheepishly follows, seem more like wishful thinking than a well thought out basis for a legal system. But in this postmodern world, where even the lowliest citizen in the street understands irony and cynicism, human rights are not blithely accepted as necessary or desirable. If we need rights protection (and I think we do), these protections must be seen to be fair, realistic, practical and locally relevant.

- b. *US Bill of Rights*: In contrast to the UN Declaration, the US Bill of Rights has endured and been vigorously applied and defended for centuries now, primarily because it was developed and continues to protect US citizens from excesses of governance rather than protecting anti-social citizens and criminals from the law. The rights are local in focus, a product of their time and, apart from the 2nd amendment, quite timeless in their relevance and application precisely because of how clearly and unequivocally they are expressed. They have functioned well for centuries without having dozens of clauses and sub-clauses and sub-sub-clauses and without the ten pages of definitions in the Victorian Charter!
- c. *The Victorian Charter of Human Rights and Responsibilities*: The Victorian Charter provides an excellent example of how not to frame a charter of rights.

- (1) *Exceptions*: The Victorian Charter allows for a Parliamentary override of the charter, but it does not delineate reasons for an override, offering only “exceptional circumstances.” Such circumstances are always invoked to suspend rights; e.g., the US Patriot Act. But such a charter should, only in the rarest of instances and with full acknowledgment, be selectively suspendable by laws. A rights charter is to protect citizens from the excesses of unjust laws and tyrannical lawmakers.

If rights can regularly be suspended at the political whim of Parliament, then they are hardly rights. And if rights must regularly be suspended for the safe, secure or practical functioning of society or government, then those rights should not exist because they are idealistic rather than practical.

My charter prohibits governments from suspending or limiting any rights unless the right itself specifies that this is permissible. Rights that can be suspended or limited are rights that can interfere with effective governance under certain circumstances or that have the potential to foster unfairness if invoked without limit. When a right is meant to be absolute, no suspension or limitation is permitted, even by Parliament.

- (2) *Act of Parliament*: The Victorian rights are enshrined in an Act of Parliament, which makes them subject to amendment or repeal in whole or in part by any politically motivated Parliament. This makes them too political and too insecure. It also suggests that rights are granted by politicians rather than being endowed by the people for their very protection from politicians and the bureaucrats who carry out their laws and policies. My charter is meant to be a stand-alone, hands-off document like a Constitution or the Magna Carta. I realise this is at odds with the wishes of the Rudd Government with regard to an Australian charter, but I think the case to argue against their brief is strong.
- (3) *Vague and Context-Free*: The Victorian rights are expressed too vaguely and generally and show no trace of the time or circumstance of their creation. (The same weakness afflicts the UN Declaration.) This means the rights are unrealistic because they are detached socially and culturally from the people and their circumstances and ignore the lessons of their time.

For example, in offering an unqualified right to demonstrate a religious belief, a right and a defense to violent jihad are created (Victorian Charter 14b). And in discussing families, no rights are specified for parents or children, and no protections are offered to families from dysfunctional partners or institutions, despite cases of child abduction and murder by relatives, failures of the social service system, and the complexities of surrogacy, IVF and donor genetic material.

As a result, the charter creates unclear rights wide open to interpretation, and the law has to include 5 pages of instructions to deal with this. Such vagueness also leaves the door wide open to lawyers to play silly buggers with the court and run up big bills for all concerned.

Careful, thoughtful language can avoid foreseeable problems rather than create them. For example, in my charter, to secure the right to life without going into the question of abortion, I have endowed this right explicitly to any person born in Australia or elsewhere, so it cannot be extended to the unborn. In that same right I have outlawed suicide, euthanasia and capital punishment by inserting three words: “Has an unwaivable right to life and freedom from arbitrary, intentional or legislated deprivation of life.”

Realistic language can also overcome resistance to some rights that seem unjust, e.g., the presumption of innocence. This is a legal cliché that is neither respected nor understood widely because it offends common sense and experience. In practice it means that the onus of proof of guilt is on the prosecution and that a person is not guilty under the law until the prosecution has presented enough evidence to prove guilt.

But the public and the media are not bound by this legalistic technicality and often presume guilt instead. And the police are hardly presuming innocence as they investigate a suspect. Further, because we refer to a “presumption of innocence,” instead of what we really mean, victims and the community often have to listen to people who escape conviction on technicalities claim that the court has found them innocent when, in fact, it has only found them not technically guilty.

The principle is worth protecting, but it can be expressed more realistically and explicitly: “a right to be treated as not guilty during their criminal trial until the prosecution satisfies a judge or jury of their guilt beyond reasonable doubt by presentation of evidence and argument.” Who wouldn’t value that kind of protection? Who would want to begrudge that to anyone? Who could misrepresent its clear, procedural meaning?

Outside a trial, suspects and the accused can be protected from any unjust presumption of guilt by recourse to defamation law and by lawful regulation of the media. Any more protection than that may result in a serious infringement of rights to free speech and free media and the public’s right to know what is going on in their community, for their own protection.

As with so many parts of the Victorian Charter, all the politically correct boxes are ticked and every cliché is incorporated, but the charter demonstrates no insight into Australian values or wishes and clarifies no contentious social and political issues. As Professor Brennan has wisely wondered, how could you measure its effectiveness? The Victorian Charter could be the UN Charter for all its relevance to Australians or Victorians. What is the point of such an empty charter? It invites legal and judicial expansion (which might be what lawyers like about it), which makes people doubt the need for or value of a charter of human rights.

It is a mistake to see a charter of rights as a mere mission statement full of flowery aspirations, like the UN Declaration. That might be all a committee-negotiated UN declaration could ever hope to be, but when a charter becomes fundamental to and enforceable in a nation’s justice system, it must be a clear and explicit statement of a democracy’s achievable objectives that instructs, motivates, reassures and protects practically.

- (4) *Incomprehensible & Uninspiring*: The Victorian rights are expressed in Parliamentary legalese so they are neither readable nor comprehensible to the poorly educated public. Nor are they inspirational so that people value them and want to safeguard them. They are just another incomprehensible law. Many ordinary Americans can quote verbatim from the Bill of Rights because the rights are expressed clearly and succinctly and because the rights connect with the people they are designed to protect and their protective quality shines through.

I have tried in my charter to address these limitations of other charters by making explicit what locally relevant rights are protected, under what circumstances and why. I have also made clear that the rights are endowed by the people, not by their political representatives. Consequently, these rights are not amendable by politicians without a popular initiative for change. I have also tried to demonstrate that, like the US Bill of Rights, this charter flows from its time but seeks to be timeless.

3. **Villains' Charter**: A serious impediment to getting a charter of rights accepted by the populace is the quite understandable perception that rights mostly protect anti-social and disruptive members of society, minorities and foreigners to the detriment and disappointment of victims, law-abiding citizens and the wider population. I have tried to address this in my charter by specifying a number of rights that are guaranteed to all without exception while highlighting the special rights needed by people who get in trouble with the law. I have also made explicit the limited rights of foreigners in trouble with Immigration.

But the most significant safeguard against a charter being used by villains against the public is the new right of people, organisations and government agencies to petition a court to have a convicted person's rights selectively abrogated if that is in the best interests of the community. There is precedent for this in widespread international laws that deprive incarcerated persons and felons of their right to vote. (I can't even imagine why that petty limitation is in the best interests of the community!)

The idea is not to permanently rescind all the rights of a convicted person but rather to use the court to selectively abrogate rights that are against the best interests of the wider community in specific circumstances, to avoid exploitation of the law by convicted criminals who might endanger or enrage the community; e.g., pedophiles trying to escape monitoring on their release, or killers like Julian Knight and Martin Bryant demanding rights in prison that minimise the effects of their punishment.

Once a person demonstrates a disregard for the rights of others, it is reasonable that a similar disregard should extend to their rights as they have failed to meet their obligation to respect the dignity and rights of others. What is the point of an obligation if people are not held to it? Why should a villain's rights be more worthy of protection than a law-abiding citizen's rights in the zero sum game of rights?

4. **Parliament vs Courts**: Another serious impediment to getting a charter of rights accepted by more conservative politicians, commentators and citizens is the idea that such a charter shifts lawmaking from Parliament to unelected, unaccountable and untouchable judges and wily lawyers. I suspect this argument might be badly framed, and as a result fights the wrong "enemy."

Internationalism: I suspect that what people object to (but perhaps are afraid to express) is actually resentment that courts sometimes import precedents, values and aspirations from outside Australia that are alien to the wishes and values of the Australian people. It is not the power of Parliament that is being denied but the democratic will of Australian society.

Professor Brennan has expressed support for judges being responsive to international developments in human rights law, thereby extending rights beyond those locally endowed by the Constitution, common law and Parliament. But the need to look elsewhere for rights should be eliminated once the people of Australia express their will through their own charter of rights. Once Australians endow themselves with rights that reflect their values, aspirations and expectations, there should be no need to look outside Australia for “developments.”

Besides, looking outside Australia for such “developments” is problematic. It assumes that such developments are always benign. But once the precedent is set to allow laws and decisions from non-Australian jurisdictions and institutions to influence Australian judges and lawyers, on what basis does one reject “developments” from Pakistani, Zimbabwean or Saudi courts that conflict with Australian traditions and values? Will Professor Brennan be joining with the Archbishop of Canterbury, Dr Rowan Williams, to advocate incorporation of sharia law?

Having our own chartered rights may still not be enough for Professor Brennan though. He seems to express, in his reference to the democratic oxymoron of “majoritarian tyranny,” some doubts about the wisdom and qualifications of the Australian people as arbiters of justice and fairness. Without a doubt, majorities do get it wrong sometimes and sometimes this creates unfairness or injustice. But so do lawyers and judges get it wrong sometimes. They do not have papal infallibility.

So long as we operate on the rule of law and the law is made by a popularly elected representative Parliament, we cannot call on elite unelected autocrats to put the brake on even the unreasonable will of the people. French history tells us that leads straight to the guillotine!

Instead of looking overseas for human rights developments to overcome majoritarian tyranny, we should do what Professor Brennan has advocated: raise public consciousness of the importance of rights. But this shouldn't be done by lawyers and judges second-guessing elected representatives through court arguments and decisions. Rather, this should be done through dialogue with the people.

Now, as we explore creating our own charter of rights, judges and lawyers need to get out of their illustrious chambers (and their robes and wigs) and talk to ordinary people about how rights can protect them from politicians, bureaucrats and the power elite and about why rights must also protect villains and foreigners who violate the rights of law-abiding citizens and decent people. That is how we can get a charter of rights that surpasses any international developments in human rights law while reflecting our values, aspirations and the tradition of the fair go.

Judicial Limits: Still, to meet reasonable objections about courts making laws and granting rights, I have prescribed in my document that courts and lawyers cannot go beyond the black letter of the charter or beyond interpretations of the charter made explicit by Parliament in subsequent legislation (like constitutional amendments do in the US). The charter is not elastic and cannot be stretched to fit unforeseen and unintended situations unless Parliament passes interpretive laws to accommodate those situations.

I have also said courts cannot endow people who come before them with rights not enshrined in the charter, even if they have been recognised in other jurisdictions. Of course, this means that the charter must be comprehensive and explicit, not some warm and fuzzy collection of vague and impractical generalities.

Likewise, the rights expressed in the charter must supersede any rights emerging from common law, but only if they come into conflict. And any common law rights to be safeguarded should be incorporated into the charter rather than allowing a blanket inclusion, regardless of compatibility, as does the Victorian Charter. Again, more business for the lawyers!

I have also specified that any Court decision on competing rights must be made in the best interests of Australian citizens and legal residents over foreigners or institutions. This justly privileges the people who endow themselves and others with rights in this country and sets one more criterion for settling disputes between competing interests while still leaving it to the courts' discretion to determine what constitutes those best interests. Judges regularly make such a call in cases involving children. Hence, there is a legal precedent to privilege one class of citizens (children) over another class (parents or adults) without violating the right to equal treatment before the law.

Expanded Judicial Evaluation: While my suggestions do keep the courts on a short leash when it comes to creating rights or laws, any charter of rights also increases the scope for judicial evaluation of legislation, courts' proper role under the separation of powers. In Australia courts have generally confined themselves to ensuring that laws are applied fairly and consistently and occasionally to determining if laws are consistent with the Constitution. With a charter of rights in the mix, courts have extra tools to use to determine fairness and consistency and they have another template (besides the Constitution) against which to judge the lawfulness of legislation.

With rights to protect and enforce, courts will be better equipped to check and balance the power and actions of Parliament without having to usurp their authority under the separation of powers. Hence, I would give courts the power to render laws unenforceable when they violate the charter of rights.

If politicians object to this, then we need to ask: Are they objecting because they want to safeguard democracy and the will of the people, or because they resent the courts invading their turf. My charter will separate the true democrats from the self-interested politicians.

My charter says the people endow themselves with rights to protect themselves from autocratic lawmakers and unjust laws. The charter says we want laws that conform to this template of values, beliefs and aspirations that identify us as Australians. Parliamentarians do not make laws by divine right. They make laws by the democratic will of the people. The charter is the democratic will of the people.

Parliament, by virtue of being elected, does not have an absolute right to make any old laws it wishes. By virtue of being elected by the people, Parliament is obligated to make *good* laws in the best interests of Australia and Australians. The onus is on parliamentarians to draft legislation that is compatible with the charter of rights endowed by the people, so courts don't have to intervene to protect those rights and the people from the errors or bad intentions of their elected representatives.

If Parliament fails to make good laws or if parliamentarians overstep their authority and deny or abridge the rights of the people, then the people expect the courts to check and balance Parliament's power. The Victorian Charter says to the Court, "Tell Parliament if you think we made a mistake but we'll make up our own mind about it." Where is the check on Parliamentary authority? What balances Parliamentary power? My charter empowers courts to void laws that violate the charter. How else does one protect the will of the people from parliamentary overstepping?

Drafting: If the court does actually “interfere” with Parliament’s law making, it most likely happens because lawmakers are careless and imprecise in drafting their laws.

I don’t think anyone really objects to this “interference.” It is fundamental to the checks and balances provided by the separation of powers. Parliament is not the supreme power within the executive, legislative and judicial triumvirate. Given our merging of legislative and executive powers, it is even more important that courts exercise their power to check and balance the power of Parliament.

If Parliament wants to avoid “interference,” lawmakers must draft more explicit, precise laws that don’t invite interpretation. The same applies to the language of the Charter of Rights.

What lawyer or court wouldn’t relish driving a truckload of interpretation through this Victorian right: *“Every child has the right, without discrimination, to such protection as is in his or her best interest and is needed by him or her by reason of being a child.”*

I have tried to be very explicit in how I have worded my charter, avoiding motherhood statements and apple pie generalities and specifying inclusions, limits and exceptions where necessary. My rights of the child specify 11 things to which all children have a right, plus a right to an education that produces 8 specific outcomes, plus rights to know and access parents, siblings and grandparents in all manner of circumstances, and a slew of special rights for children who are carers of invalid relatives, children in trouble with the law, children in detention, children with disabilities and children in care of the state. There is a lot less wiggle room in the way those rights are expressed.

Further, the specificity of such plain-English rights tells parents, carers and governments what is expected of them, thus performing an educative function. It also leaves open the possibility of penalising people, organisations and governments who infringe those rights or fail to safeguard them. Without those explicit entitlements and enforcement, “protection” is not worth the paper it is printed on! If my rights of the child had existed, there would not have been a stolen generation and if there had been stolen children, they would have had the right to sue the government or church for not safeguarding those rights.

5. **Education and Inspiration:** As a transplanted American who grew up learning about my rights from primary school onwards and being inspired by the grandeur of the founding fathers’ vision and their love for and faith in the people, I am always amazed how little Australians know or care about the origins and fragility of their political and civil rights. They cynically leave it to their parliamentarians and then grizzle in the pub about what a crap job politicians do! I have tried to write my charter in plain English so that it can educate and inspire Australians to care about, debate, safeguard and exercise their rights actively.
6. **New Rights:** I have introduced or made explicit a number of rights not commonly talked about in Australia and not expressed clearly in vague charters. These include
 - a. *The right to freedom from a painful death.* This is not a right to euthanasia or mercy killing. In fact, my charter explicitly prohibits killing and suicide by prohibiting intentionally causing death (Rights 6 and 7). But I have created a right (8a) to be free of extreme physical pain at the end of one’s life, even if medically making a person free of pain is likely to result in their death.

Currently, to protect doctors or family from legal or ethical charges of killing a patient, adequate pain medication may be withheld, leaving a patient to suffer needlessly. In some cases, this likelihood motivates people to take their own lives prematurely to avoid such suffering.

To me, forcing people to endure extreme pain at the end of their lives violates their right to humane treatment, a right we proudly extend to our enemies and to convicted criminals.

I am not advocating rights to be free of psychological or emotional pain, to not lose one's dignity, or to not be a burden. These kinds of suffering cannot be reliably measured and are rarely naturally terminal. Further, sufferers may not be thinking clearly and are subject to manipulation by others. These are common and worthy objections to euthanasia and mercy killing.

But it is possible to medically determine if a person is in extreme physical pain, even if they are uncommunicative. It is also medically possible to determine that one is close to death. It is also medically understood how much pain medication is likely to cause death. Therefore, empirical conditions for the medical alleviation of extreme physical pain at the end of a life can be established, measured and enforced without the intrusion of sympathy, pity or self-righteousness. Failure to satisfy any of these empirical conditions can result in criminal charges for intentional killing.

Requiring satisfaction of all three conditions precludes patients who may be in extreme pain but not near death, like burn victims or sufferers from spinal or nerve injuries; or patients who are lingering near death but are not suffering extreme pain. It also precludes doctors administering doses of pain medication in excess of what is required to relieve the pain, or administering a fatal dose of medication when empirical indications of extreme pain and impending death are not present. These are all safeguards against euthanasia and mercy killing.

Further, the prohibition on intentional killing means that no one (patients, doctors, families, friends) can even discuss the possibility of administering pain relief to hasten death. Doing so constitutes intention and will lead to a violation of the patient's right to life. Pain medication is not to be administered to hasten death; it must be administered only in a quantity sufficient to relieve extreme pain. If death results, it must be only because relieving the extremity of pain called for a dosage incompatible with life.

In the interests of preserving a patient's rights to life and informed consent, dying patients can be asked routinely on admission if they want relief from extreme pain even if it results in death or if they prefer to endure some pain to die naturally or extend their lives. No one else can answer this question for a patient, even if the patient is unconscious or incompetent. In the absence of patient consent, the right will be invoked unless prior written and witnessed instructions by the patient say otherwise.

These safeguards should reassure even the most ardent opponents of euthanasia and mercy killing that a right to humane treatment can safely and mercifully include a right to die pain free. With such safeguards, how could anyone deny a person the same relief they give without question to a suffering pet?

Objections to this right can only be based on religious notions like only God's will can end a life (even though drunk drivers and drug addicts end lives every day), or that life is somehow sacred because we are infused with souls. To inflict these religious views on the entire population is contrary to the right to be free from imposed religious belief.

- b. *The rights of victims of crime* to influence prosecution and sentencing and to confront convicted criminals with their pain and anger.

I have suggested that victims have a right to veto reductions of charges, but only after advice by both their own legal advocates and the prosecution. The idea is not to increase the vindictive power of victims or to make the administration of justice less efficient, more expensive or less fair to the accused. The idea is to ensure that victims understand why the justice system cannot satisfy them.

It will be the responsibility of the prosecution to explain why it cannot get, for example, a murder conviction, why it cannot devote more police resources to finding evidence, why it does not have reliable witnesses or a sympathetic victim. This should make the police and prosecutors more accountable to victims for how they approach investigation and prosecution.

It will be the responsibility of lawyers for victims or their families (1) to ensure that victims understand the value of compromising on charges to get a conviction and (2) to ensure that prosecution and police reasons for advocating reduced charges are related to the limits of the law rather than to expediency and efficiency. Expedient, efficient justice at the expense of victims' rights is justice denied. Victims must be counseled and consulted until they are satisfied or understand why they can't be satisfied.

I have also suggested that victims have the right to expect punishment to take priority over rehabilitation for adult crimes and that criminals do not avoid punishment because prisons are overcrowded or because they have had a difficult or unfair life or because they reach age 18 or 21. Therefore, I have enshrined a compulsory priority framework for sentencing as a victim's right. It does not specify mandatory sentences but rather what should and shouldn't be factored into sentencing.

- With adult criminals on property offences, the first priority is punishment, the second restitution and the third rehabilitation, with some incarceration required for third and subsequent property offences.
- For juveniles on property offences, the first priority is always mandatory rehabilitation but on third and subsequent convictions, that rehabilitation must be obtained in a juvenile facility. This is to stop the revolving door that releases serious recidivist vandals into the community after a scolding and without any demonstrable rehabilitation.
- For adult and juvenile crimes against persons, first offences that actually injure a person, even only slightly, always involve a minimal period of mandatory incarceration: at least one week for adults, one day and one night for juveniles. This is to send the message that any crime that injures a person is very serious. This would include fighting and driving offences with injury.
- For subsequent adult and juvenile crimes against persons, indeterminate incarceration is required, until offenders demonstrate fitness to return to society. It is not an excuse to throw away the key, but rather places the onus on offenders to reform to set themselves free. They should receive a minimum sentence to be served as punishment and to provide opportunities for rehabilitation, but no maximum term. If they persist in violent behaviour and cannot learn self-control while incarcerated, they stay inside. The government cannot knowingly release a danger to the public just because a sentence has expired. This indeterminate incarceration need not be in a prison cell. It could be in a secure half-way house with more amenities and communal living experiences but within prison grounds and subject to all prison rules so the offenders still feel imprisoned and have an incentive to improve themselves and regain their liberty.

The sentencing framework allows adult and juvenile criminals to ask for leniency based on their miserable lives only for their first two crimes against property and only for their first offence against a person if the person suffered no injury. Judges do not have to grant leniency based on background just because it is asked for. Their backgrounds cannot affect sentencing when they hurt a person.

Any rehabilitation mandated as part of a sentence must be relevant to the offences and the offender to satisfy victims. If an offender lacks a moral compass, then their rehabilitation must involve intensive, purposeful development of one, even if that means 8 hours a day locked up with a moral philosopher until they get it! If an offender is anti-social, then their rehabilitation must involve civilising them out of their anti-social behaviour, teaching them to respect authority and know their place in relation to other citizens, teaching them conflict resolution, civic responsibility, self-control, discipline and rationality. And rehabilitation should be a full-time job for an offender in or out of jail, not just an hour a week!

If the core personality and social inadequacies of the offender are not corrected first, joining a sporting team or getting to work on a car's engine or caring for a seeing-eye puppy will not be rehabilitative. If anything, such activities can be a reward for offending because they are pleasurable for the offender and break the monotony of incarceration. Likewise, community service is not a substitute for rehabilitation. Rehabilitation should involve confronting and overcoming offenders' deficits before making them feel good about themselves or creating opportunities for them to hide their criminality more effectively. Victims of crime often see "rehabilitation" as shorthand for not paying for a crime. Victims are entitled to expect rehabilitation to be hard work for the offender, a difficult confrontation with their shortcomings and weaknesses and a painful re-education about what it means to be a decent person. Then if there is any time left in their sentence, offenders can learn a trade or join a team or discover their inner angels!

Victims are also entitled to a written explanation of judges' sentencing rationale. For example, judges must justify in writing why sentences are at the low end of possible jail terms or why a jail term is not appropriate if not mandated or why a convicted criminal deserves leniency. They must explain their reasoning process and how the sentence respects the rights of victims.

I also allow victims to tell their convicted offenders the damage they have done and how the victims feel about them. While victims get to do this to some extent in victim impact statements, this right provides for a face-to-face confrontation, in public or in private, and without limitations apart from a requirement to speak only the truth. Many criminals have no idea how badly they damage their victims' lives.

Victims or their agents are also entitled to identify publicly juvenile offenders convicted of more than 3 property offences or 2 offences against persons, and any juvenile offender after they reach age 18. Victims are also entitled to see juvenile offenders transferred to adult prisons to serve their full sentences rather than be automatically released at 18 or 21 years of age.

Finally, I give to victims of crime complete control of publicity by criminals or their families or associates. Victims alone determine who is allowed to speak or write, about what, to whom and under what conditions, and they are entitled to demand payment from anyone who wishes to publicise the criminal's story in return for the right to do so. This should prevent criminals and their families and friends from glorifying criminal behaviour and associations, and from exploiting the suffering of victims and their families for money, personal fame and media attention.

- c. *The right of citizens to a free but professional media.* In my charter, the right does not belong to the media but to the citizens they must serve, in the interests of good governance, fair commerce, personal privacy and protection of reputation. These interests are not served by gossip-mongering or sensationalist shit-stirring or the pursuit of the next political embarrassment or gotcha, which characterise too much of the work of profit-driven media and self-aggrandising journalists.

The media have obligations they must meet: they are only protected if they publish truth and if they meet high professional standards. And they must accept limitations (which they generally already do) when it comes to police investigations, court proceedings, military operations, national security and personal privacy.

- d. I have expanded the media's access to government documents without an FOI process, but again, with a proviso that the documents must be cited in a published or aired investigative feature, not in a little odd spot or throwaway puff piece or a grubby little news story. I have made this proviso because what is being protected is the public's right to know and understand government processes and decisions, not the media's right to make a buck. This improved access is designed primarily to bring to light what governments are doing behind closed doors, but only if what is revealed is intelligently and insightfully reported and analysed to aid understanding rather than to just stir up trouble with a half-baked scoop or to confuse or incite citizens instead of clarifying issues.

Also, the expanded access to government documents is not to be used as an excuse to go fishing or make government departments do the media's research for them. When a media organisation requests a document, it must be on the basis that the document is likely to be a source cited in a story, not merely background or a source of story ideas. If media producers abuse their access by making too many blanket demands for documents, the government can challenge them in court on the basis that they are abusing this access, by comparing the documents demanded with the documents cited and by comparing the relevance of documents requested to stories produced. To be able to defend themselves against charges of abuse of access, media organisations should have an internal process to determine what documents to request. The media's internal test might be similar to what applies to legal discovery -- relevance to the matter and reliability of the document.

This access is limited to formal documents (reports, minutes, briefing papers) rather than to personal notes or recorded conversations. This limitation is based on the belief that governments and bureaucrats are entitled to work through issues, debates and decisions freely and without scrutiny until they decide what to put on the record. Politicians and bureaucrats are entitled to be misinformed or mistaken, to hold contrary positions, to make stupid statements, to be persuaded and to change their minds during deliberations without being publicly embarrassed for doing so.

I also require a media outlet (rather than a freelance individual) to pay for provision of the documents because I am more interested in using professional media to advance citizens' right to know and understand than having a lot of gossip mongers and stand-up comedians stirring up political trouble for the sake of a quid. However, freelancers might still be able to access what they need because I have introduced a right for all citizens to access the same formal documents as the media can request, provided they are prepared to pay for them.

To further assist the media and to guarantee citizens' right to know, I have given all citizens, including public servants and bureaucrats, the limited right to leak and whistleblow to the media, but only under strict conditions and only on matters that affect citizens' rights, entitlements and safety as well as revenue and expenditure. I have not extended this leaking and whistleblowing right to cover all aspects of political and bureaucratic processes and policy because I believe this would foster too much misunderstanding and misinformation, encourage second-guessing without adequate information, and interfere with the free exchange of ideas within governments and bureaucracies. The purpose of these rights is to protect citizens' interests, not to increase media news sources or to give disappointed or disgruntled bureaucrats a soapbox.

I also extend this right to elected representatives and political party members who wish to leak internal party deliberations or funny business, but again with strict conditions and limitations. This is to ensure that not only governments but political parties as well can face scrutiny by the people.

- e. *The right to free speech for public servants and bureaucrats* who currently cannot speak publicly about mismanagement, political infighting or improper conduct within their bureaucracies without endangering their careers. The people have a right to know what is going on in the bureaucracies they fund, and people at the coalface are better placed than anyone to alert the public to irregularities and inefficiencies. Shielding incompetent or unscrupulous politicians and bureaucrats from scrutiny does not serve the best interests of the people.

This right differs from the leaking and whistle-blowing right in that the areas it covers are not limited, but exercising this right requires being identified, in essence, testifying as an expert. This right can be exercised in the media, internally or to elected representatives.

- f. *The right of landlords to access their property* to protect its economic value and safety, tempered by the right of tenants to be free of arbitrary violations of their rights to privacy and security at home. I have introduced the former because I think there is great inequity in tenancy law. As a landlord, I feel that renting out my property is little different than selling it to a new owner because of the few rights I retain to monitor and protect my investment.

Current tenancy law is incompatible with capitalism and private ownership of capital. It is more suited to protecting tenants from intrusion by government owners like English councils who used to be the main landlords in the mother country! Those council landlords, much like public housing landlords here, have little interest in protecting their properties because they have not invested their own capital, they have unlimited taxpayer money to fix them, and they have to take and keep tenants no sensible person would rent to. Private landlords, who have huge amounts of capital tied up in their real estate investments, should be able to monitor and protect their assets more than they can now.

- g. *The right to privacy in all forms of communication*, including against commercial and individual monitoring of electronic communications. Electronics have greatly increased the ability of governments, businesses and individuals to monitor communications. Steps must be taken to prevent anyone from monitoring just because they can. Why should businesses or individuals have more rights to monitor citizens than law enforcement or government agencies have?

- h. *The right of citizens to access any government files that deal with them* without going through a Freedom of Information process, but with some limited exceptions. Monitoring and judging citizens without just cause and secretly is incompatible with democracy, and citizens need to be able to find out if and why they have come to the attention of government agencies and to vet what is said about them by, for example, Centrelink or human services departments.
- i. *The right to be protected from violence and bullying*, including on the internet, because both are becoming too prevalent across all sectors of society. Such a right will criminalise even adolescent bullying, and force the police and courts to act to prevent violence rather than to respond after the fact. A civil society has a right to expect that all citizens will behave civilly. Downplaying the significance of a loss of civility unsettles civilised people and gives license to the uncivil, aggressive and more powerful. This right sends a message and criminalises what society fears and rightly disapproves of.
- j. *The right to demand family friendly working hours*. This doesn't require that employers grant such hours, but it does allow workers who want to spend more time with their families to ask for and negotiate such hours without facing penalties from employers. It also encourages employers to organise their operations to accommodate family friendly hours.
- k. *Rights of children* including a right to academic and life skills education, framed to provide a minimum template for the abilities (rather than knowledge) with which students should leave school, and rights that specify their material, psychological and emotional entitlements.
- l. *Rights for child carers* designed to support and protect child carers from the mystifying and ad hoc bureaucracies and policies that deprive caring children of support, endanger their family situations and limit their future opportunities.

I suggest carer children should receive the same carer's pension and benefits that adult carers receive, whether or not the disabled person in their care receives a pension. A child carer cannot hop in a car to go to the shops or to hurry home from school. They need extra money for transport, to support the extra costs of their caring, and to cover their school expenses.

They also need extra in-home support so they can regularly attend school, so they don't fall behind or drop out. They should also have in-home support so they can have a part-time job if they want one because that is an important part of improving their future prospects for work and career and because it is a rite of passage for teens that should not be denied to a child willing to look after a relative rather than confine their relative to an institution and go into state care themselves.

However, child carers have these rights only so long as they continue with their education. If they quit school or do not advance on schedule, they lose the support because they are not meeting their obligation as children to get the best education possible. These rights are intended to enable child carers to maximise their educational opportunities. They are not intended to provide a bit of extra pocket money and free time so kids can run off the rails on the government tab under the excuse of being a carer.

- m. *The rights of children, parents and siblings to know of and access their biological relatives*, so long as doing so is in the best interests of any children involved. These rights address the myriad natural and artificial ways familial relationships are created and disintegrate. It doesn't exempt donors of genetic material.

- n. *The rights of children in state care*, which takes children off the cruel merry-go-round of repeated foster placements and returns to incompetent parents. The rights guarantee security and stability for children by authorising permanent foster placements and adoption after giving failed parents only one chance to sort themselves out before losing their parental rights.
- o. *The rights of children in detention*, both for locals in trouble with the law and foreigners caught up in immigration cases.
- p. *The rights of mentally or physically disabled adults and children*, with an emphasis on their best interests and with a focus on getting rid of the dysfunctional model of non-care that has been in vogue since the end of institutionalisation.

This failed model has resulted in mentally ill and drug-dependent people living miserable, dangerous and lonely lives on the streets; families in great distress; citizens subject to nuisance, threat and petty crime; and law enforcement compelled to deal with the dysfunctional behaviour of the mentally ill instead of solving and preventing real crimes.

I am suggesting that disabled adults capable of looking after themselves be in charge of their own lives and treatment. The standard for judging this capability is whether they have stable accommodation and recognise and consistently act in their own best interests. Disabled people who do not meet this standard can be “institutionalised” by the court for their own protection or simply in their best interests, to reduce homelessness and neglect.

Institutionalisation under these conditions need not infringe people’s right to personal liberty. It does not have to mean always being under lock and key. Many disabled people who may not be capable of looking after themselves or making good decisions consistently still pose no threat to the community or themselves. Such people can be free to come and go unsupervised to pursue their daily activities.

The institution is there to be sure they are safe and looked after, that they have a secure place to sleep and call their own, good food and company, any medical care or therapy they need, and a place where they can feel valued and cared for.

My hope is that people would be so happy in the institution that they would stay of their own free will. In fact, I even suggest that disabled people have a right to access this institutional care voluntarily, even if they don’t meet the standard for court-mandated institutionalisation. This can address homelessness and high accommodation costs among these people on meagre fixed incomes.

The only people who need to be locked in are people who pose a danger to themselves or others, who regularly come into contact with the law, or who regularly behave anti-socially and create nuisance and discomfort among the populace. Their forced confinement may only be required until their mental illness stabilises, they overcome their drug addiction, or therapy helps them to behave less anti-socially.

Institutionalisation also does not have to mean living in soulless, hospital-like wards. I suggest that institutions for the disabled be modeled on university dormitories or apartment complexes, with suites that contain several bedrooms around a shared lounge and kitchen. They shouldn’t resemble massive public housing estates (which creates ghettos) but rather apartment complexes dotted through communities with good services and transport.

The idea of institutions rather than community housing is a matter of economics and efficiency. Institutions can have on-site social workers, counselors, nurses, doctors, therapists, cooks, cleaners and security personnel to support residents more economically, effectively and consistently.

Institutions will take pressure off public housing, charities, emergency rooms, police and ambulance, and government community services bureaucracies. Fewer mentally ill citizens will be arrested and imprisoned. Most importantly, residents will be clean, well fed, clothed and cared for. They'll take their medications regularly. Their diet and health can be monitored. They can experience order, routine, structure and safety.

We don't have to repeat the mistakes of the past. We don't have to create bedlam-like asylums. But we do need to provide the mentally ill and drug addicted with effective and compassionate care rather than leaving them to their own devices or to charities. No one has a right to be an anti-social nuisance or an embarrassment to a wealthy and caring nation. All have a right to humane treatment, which is what is behind the rights I am suggesting for the disabled.

Decisions about institutionalisation always involve a legal advocate, and in the case of children, parents or relatives, with the advocate having priority in case of disagreement. A disabled person's best interests are determined by a doctor and social worker. Government departments are out of the loop because bureaucracies have shown they cannot be responsive to individual circumstances and they are not flexible enough to accommodate the diversity of problems and solutions involved in caring for the disabled.

- q. *Rights of the elderly.* Even before a charter of rights is passed by Parliament, baby boomers will be elderly, creating a vast pool of people in need of protection. These rights should put an end to the shameful mistreatment and exploitation of the elderly by families, the community, businesses and governments.

I realise that the rights I am suggesting are based on a pretty dim view of people involved with the elderly, and some of the rights may seem extreme to caring families and others who would never think of abusing their elders. But we cannot assume that these kind people are the norm.

I have personal experience of both down-at-heel and wealthy children ripping off their poor and well-to-do parents or sucking them dry for drug money or physically abusing them in their own homes. And then we have the purse-snatching druggies who end elderly women's independence, or the scam artists who rip off elderly customers or prey on their kindness or loneliness.

My aim in suggesting many of these rights is to provide a template of standards for how to treat the elderly. I hope they educate families, carers, governments, businesses and the community to look after the elderly appropriately.

The cornerstone of these rights is the allocation of an advocate to each person of pension age to guide and advise on family, financial and medical issues. The advocate does not need to be a lawyer, accountant or doctor. The advocate needs to be a person who is educated, rational and trained to spot exploiters and manipulators and to call in the experts when expert advice is needed. In the case of clients who are highly educated, successful or well off, their advocates should be at least as astute as the people for whom they advocate, in the interests of credibility.

Advocates may be drawn from a range of volunteer organisations that look after the elderly or they might be part of a special volunteer force set up by local councils, churches, charities or universities. Or they may be part of profit-making enterprises that tender to provide the services. The advocate must be independent of the persons they serve so they have no self-interest in the advice and supervision they provide, and they cannot accept gifts or be beneficiaries of their clients.

With the elderly who are still completely capable of looking after their own best interests, the advocate is primarily a resource and monitor and would usually not interfere with their decision-making. But these people still need an advocate because there is no way to know when people's mental acuity begins to decline or when undue pressure might be placed on them by others.

When elderly people become vulnerable, perhaps through the loss of a spouse who used to make all the decisions, or through an age-related illness or loss of mental acuity, or through lack of education, then the advocate is empowered to act to protect their interests. Of course, the elderly person is counseled and consulted about decisions, along with involved family or carers, but the advocate can override their wishes in the elderly person's best interests.

This may not be popular with children who like to control their parents' finances as they age, or who feel they should be able to make decisions about when parents enter nursing homes or about disposition of their assets. But children, carers and neighbours on whom the elderly may be dependent or to whom the elderly feel beholden may have too much self-interest to always give the best advice, and these people may not be any more educated, informed or rational than the elderly person.

This may also seem like an extreme nanny-state intrusion, but the state has obligations to protect vulnerable people and to prevent harm before it occurs. Further, the state has a right to ensure that it does not incur extra financial obligations or lose pension payments to manipulation and exploitation by children or carers of the elderly.

The advocate is not there to prevent parents being generous to their children or patients rewarding carers for faithful service. The advocate is not there to second-guess their share market picks or the asset mix in their investment portfolio. That is the job of a financial advisor. The advocate is there to ensure the elderly make informed decisions in their best interests, consult the right experts when appropriate, and are not preyed upon by people they trust.

The advocate may also be the only human contact a lone elderly person regularly has, to monitor their physical and psychological well-being, their diet, their cleanliness, their mood and their need for specialist support. They may be all that stands between a person dying alone, forgotten and undiscovered - a disgrace beyond measure in a caring society.

The rights of the elderly also place the onus of responsibility on anyone who does business with them to treat them fairly or face the consequences.

- (1) I suggest that contracts, wills and trusts involving the elderly be void unless an advocate has witnessed them. This is to prevent parents being coerced or deceived into co-signing loans and mortgages for their children, having their houses sold out from under them, or entering into complex financial and legal transactions without impartial advice.

- (2) It should also be a criminal and civil offence with strict penalties to do business with an elderly person without involvement of the advocate. This is aimed at shonky handymen, roof repairers and security consultants who prey on the elderly. It is likely to be more effective at cleaning up these industry practices than hit-and-miss consumer legislation that has to look into the details of the transaction or a pattern of transactions rather than the mere existence of a transaction.

The elderly are also granted the right to be safe from mistreatment, so that any mistreatment or manipulation of the elderly by family, carers, businesses or criminals should be criminal and civil offenses that attract legal penalties, in addition to the actual crimes committed.

I am also suggesting that the elderly in the care of family or friends should receive their pension as an account that can be monitored and with payment for their care being negotiated and paid directly to the carers, rather than having carers able to access or control the pensioner's account directly (sometimes even after they are dead). Access to the pensioner's account should be possible only for mentally competent pensioners and their advocates.

I have also specified what pensioners are entitled to, both in and out of care. These rights should be the basis for determining pension rates and supplements and for setting standards for nursing homes. Infringement of these rights by governments, carers and nursing homes should attract criminal and civil penalties.

- r. *Rights of asylum seekers and immigration detainees.* These rights make important distinctions and make clear what should and should not happen in different circumstances, so all people who consider transgressing know what lies ahead for them and all people responsible for detainees know what is expected of their conduct.

In particular, my charter distinguishes between (1) people who seek asylum in an appropriate way, while legally in the country (i.e., visiting artists, sports people, academics or tourists); (2) people who hire criminal people smugglers to select their destination for asylum, who pay large sums of money most refugees don't have, who destroy identity papers or use false ones, and who are justifiably seen as queue jumpers who buy their way into Australia, even if they are legitimate refugees; and (3) people who enter Australia legally but overstay or violate conditions of their visas.

The first and third groups have at least had some preliminary screening performed and usually have confirmed identities. People in the second category have demonstrated their willingness to break the law and spend money to get what they want (rather than what they need), to manipulate the compassion and decency of Australia, and often to hide their real identities. As a result, their screening becomes more costly and difficult, the dangers they pose to Australia are greater, and their likelihood of being law-abiding must be doubted. Even if they are found to be legitimate refugees, their circumvention of lawful processes and their determination to impose themselves on Australia, despite having already reached destinations of safety and asylum, make them less sympathetic and less worthy in the eyes of many Australians. Therefore,

- (1) The first group should get priority for determining their eligibility for asylum and they should be detained in Australia only if no one in the community volunteers to look after them during the vetting process.

- (2) The second group should be detained offshore, but not for more than 120 days. After 120 days, they can be released into the offshore community if the federal police determine they do not pose a threat to that community. But they do not set foot in Australia until they are found to be refugees.
 - (3) The third group have broken visa law and jumped an immigration queue but may already be demonstrating they can be hard-working, law-abiding residents. For this reason and in the interests of pragmatism, I suggest they be allowed to continue to live and work in the community until their cases are resolved by Immigration, especially if they have families, have been in Australia for a long time, or have been the victims of people traffickers or immigration scams.
- s. *Rights of stateless people who do not qualify as refugees.* These people exist in a rights limbo and can face unlimited detention. I think Australians would want to give these unfortunate people a chance in the name of common decency, unless they are dangerous criminals or potential terrorists. Also, a failure of international and Australian bureaucracy to deal with the issue seems a pretty poor reason to make someone suffer.

The rights I propose give a person 12 months after a failed refugee application to demonstrate that they can contribute to the community, look after themselves and not cause trouble. If they can do so, they are eligible to apply for permanent residency from within Australia and later for citizenship when they meet those criteria.

During those 12 months, they can live in a detention facility in Australia but have day-release to work, educate themselves and socialise. When they can afford to live outside the facility, they are allowed to do so. They must repay the costs of their room and board in the detention facility before they can apply for citizenship.

Until they qualify for permanent residency, they have all the civil and political protections offered by the charter but they do not have any entitlements beyond Medicare coverage and English language instruction. They have no rights to sponsor anyone else until after they become citizens.

I assume any stateless person would jump at this opportunity, so I don't know what to do with them if they fail to settle in. Perhaps they have to face permanent detention, as a further incentive to succeed.

- t. *Rights of alleged offenders.* These rights provide protections for people who come to the attention of police and advises how they should be treated. They also address problems that Aborigines and teenagers often have with heavy-handed policing.
- u. *The rights to initiative, referendum and recall,* which are highly valued but rarely used in the US. I have included them because Australia's extreme party political system leaves citizens too much at the mercy of political parties and inadequately represented by local members whose obligations are first and foremost to the party that pre-selects them rather than to the citizens who put them in office. This undermines the legitimacy of representative democracy and makes electors cynical.

The rights to initiative, referendum and recall, even if rarely exercised, return the balance of power to the people and, recall especially, makes local politicians more accountable to their constituents for their campaign promises and for their positions on local issues. Recall also encourages politicians to vote in the best interests of their constituents rather than along party lines. This will reduce the power of political parties (and their often unelected party apparatchiks).

- v. *Rights to legislation that gives these chartered rights the force of law*, criminalises violations of these rights and provides for civil action for violations. While some might argue there is the possibility for double jeopardy in these rights, I think it is possible to recognise rights violations quite apart from crimes that flow from those violations. Federal prosecutors in America often pursue acquitted lawbreakers for civil rights violations connected with their crimes. For example, even if you can't convict someone of rape or murder, you may be able to convict a perpetrator for violating someone's right to control their inviolable body or their right to humane treatment.
 - w. *Rights for Aborigines*: I have not suggested any special rights for Aborigines, even though the Attorney General has suggested they need some unspecified rights. After almost 40 years of legislation to provide land rights and special interventions to help Aborigines (with often disastrous results), I think we need to de-specialise Aborigines and treat them like members of the wider community, with the same rights and obligations as any citizen. Dealing with their disadvantage, especially since so much of it is self-inflicted, is not a matter of rights but of policy.
7. **Limits and Obligations**: I have also introduced or made explicit limits and obligations connected with these rights. I use the word "obligations" rather than "responsibilities" because the former mandates behaviour while the latter merely suggests it and provides an out for transgressors.
- a. I have made these rights expressly applicable to commerce, the practice of religion and the production of art, so there are no traditional excuses for violating these rights.
 - b. I have introduced the idea of "explicitly admitting" in legislation when rights are suspended or limited by a law. This is a reaction against the idea that governments have carte blanche to legislate against our rights when it suits them. The charter of rights provides the values framework and principles of the people's will. It must be inviolate except in the most extreme circumstances, and rights must never be suppressed or annulled in secret. An admission in legislation will make apparent the violation, invite public and media examination of the justification for it, and hold politicians accountable for their decisions to infringe citizens' chartered rights.
 - c. I have prohibited both negative and positive discrimination in laws or policies because even well-intentioned, positive discrimination is unfair to someone, disruptive to society and breeds resentment against privileged groups. But the prohibition allows for exemptions, subject to explicitly admitting and subject to laws that might necessitate the discrimination (e.g., defining marriage in law as between a man and a woman may mandate some discrimination against same sex couples).
 - d. I have also explicitly prohibited some culturally alien practices so they cannot be defended by reference to rights to religious or cultural freedom.
 - e. I have also protected citizens from service providers like doctors, teachers and public servants who would limit the citizens' rights by withholding information or by imposing their views and values on people they serve. This is designed to protect people from, for instance, creationist teachers, anti-abortion doctors or prejudiced or racist public servants. This protection does not require anti-abortion doctors to perform abortions, which I understand is one of Professor Brennan's concerns. Rather, it requires anti-abortion doctors to refer patients to doctors willing to perform abortions if the patient expresses interest in that possibility. This is consistent with conventions that privilege patients' wishes and rights over doctors' non-medical opinions or values. For example, a doctor cannot tell parents if a teen requests birth control, even if the doctor disapproves of teens having sex.

- f. I have made politicians responsible for honoring their election promises and positions under threat of recall. This is another attack on say-anything-to-get-elected politicians and on the strong party political system in Australia, which I think privileges the will of party operatives over the will of the people who are nevertheless compelled to vote. In a sense, all parliamentary votes should be conscience votes so long as we are talking about the conscience of the electorate rather than of the politician.
- g. I have also introduced government obligations to govern cost-effectively and to provide only “opportunities to access” government services.

The former obligation is designed to enable citizens and the opposition to hold governments responsible for economic extravagance, incompetence, carelessness and pork-barreling. It also qualifies governments’ obligations to provide essential services; it must do so cost-effectively, not absolutely, meaning all citizens are not entitled to the same standard of services if providing it would be economically irresponsible in cost-benefit terms.

The latter obligation suggests citizens have a right to expect that their tax dollars will not be spent profligately to duplicate government services in small, remote communities when such services can be accessed at a more economically serviced hub. People who choose to live remotely must fund their own infrastructure and travel to access government services. Pastoralists, tree-changers and miners already do this when they go bush.

- 8. **Implementation:** I have prohibited governments from enforcing any existing legislation that violates the charter of rights. This provides a blanket rescission of all legislation in conflict with the charter and avoids the need for numerous motions and votes in multiple venues. Excepted from rescission will be laws to be retained but amended to bring them into line with the charter. I have set a 12-month deadline for such amendments. I have also prescribed how adoption of the charter should affect existing court matters and parties to them.

Implementation of such a charter will involve significant economic cost. For example, new or increased benefits are provided for disabled people being privately cared for or living independently, for child carers and for the elderly. Institutions will need to be built for the dependent disabled. Expanded rehabilitation programs will need to be developed for offenders, and maybe bigger and different kinds of prisons. The advocate program for elderly will need funding. All such expenditure represents the cost of compassionately looking after the needs of people claiming rights to humane treatment, equity, fairness and justice. It is a small price to pay considering that other people pay with their lives for such rights.

AUSTRALIAN CHARTER OF CIVIL AND POLITICAL RIGHTS & OBLIGATIONS

Preamble

Whereas Australia is a unique and sovereign democratic nation committed to the rule of law but wary of excessive government restriction, intervention and control in the lives of its citizens, the people of Australia hereby delineate the roles and obligations of governments and citizens in safeguarding and exercising the rights chartered herein.

The elected Federal Government alone is free and obliged, after extensive community consultation and through parliamentary processes, to define and enforce the unique rights of its citizens, lawful residents and visitors contained in an Australian Charter of Civil and Political Rights and Obligations.

The elected Federal Government is prohibited from making changes to this charter, once it is passed by Parliament, without a community-initiated demand to do so in all states and territories, a 12-month period of public consultation and education, and a successful national referendum.

The elected Federal Government alone is free and obliged both to interpret these chartered rights and to set their limits and exclusions, legislatively through parliamentary processes. Interpretations cannot be changed once passed by Parliament.

The appointed judiciary of Australia is free and obliged to protect and invoke only these unique chartered rights as defined and interpreted by the elected Federal Government through parliamentary processes, to the exclusion of any other rights endowed by non-Australian institutions or traditions, and to rule always only in the best interests of Australian citizens and lawful residents on any question of competing rights.

All governments are prohibited from making or enforcing laws that infringe or limit any of these rights unless those possibilities are enshrined in the right.

The legislators and bureaucracies of all levels of government, in formulating and administering legislation and policy, are obliged to respect these unique chartered rights as defined and interpreted by the elected Federal Government of Australia.

Institutions, corporations, legal entities and groups operating in Australia and individual citizens, lawful residents and visitors, in the conduct of commerce, political activity, religion, education, social service, artistic production, and social interaction and discourse, are obliged to respect and uphold these unique chartered rights as defined and interpreted by the Australian Federal Government.

Obligations of Governments

All federal, state and local governments, separately and together, are obliged to maintain civil order; to collect and disperse taxes; to protect citizens, lawful residents and visitors from external or internal threats to their safety, security and economic well-being; and to represent the wishes of the majority of Australian citizens in dealings with other nations.

All federal, state and local governments, separately and together, are obliged to cost-effectively provide to Australian citizens and lawful residents opportunities to access education, employment, housing, water, sanitation, power, telecommunications, transport, health care, welfare services and legal justice.

All federal, state and local governments are obliged to ensure that all taxpayer-funded support payments made to individuals and families are used for their intended purposes, even if that means quarantining payments into special purpose accounts.

All federal, state and local governments, separately and together, are obliged to make laws only in the best interests of Australian citizens and lawful residents and only consistent with all these chartered rights.

Obligations of Citizens, Lawful Residents and Visitors

Australian citizens, lawful residents and visitors are free and obliged to uphold the laws and regulations of Australia and to respect and obey the lawful instructions of people charged with enforcing or applying them.

Australian citizens are free and obliged to elect qualified representatives for elected office by familiarising themselves with relevant issues, candidate qualifications and positions on the issues, and voting for their chosen candidates.

Australian citizens are free to stand for any public office for which they are qualified and they are obliged to pursue election by free and truthful exposition of their beliefs, values and positions on issues and policies and, if elected, they are obliged to vote consistently with the publicly professed beliefs, values and positions on which they campaigned.

Australian citizens and lawful residents without exception are free and obliged to express their views on contentious issues to their legal representatives in all governments directly or through any media without fear of censorship, retribution or legal action against them.

Australian institutions, corporations and groups, public or private and without exception, are free and obliged to express their views on contentious issues to their legal representatives in all governments directly or through any media without fear of censorship, retribution or legal action against them.

CHARTERED RIGHTS

Whereas Australian citizens and lawful residents are the foundation of Australia's democratic identity and values, they hereby endow themselves with the civil and political rights chartered herein.

Because egalitarianism is a lived value of Australia, every Australian citizen and lawful resident

- (1) *Is born free and equal in dignity and rights and is obliged to respect the dignity and rights of others, under pain of abrogation of some of their rights if they violate the rights of others.*
- (2) *Has a right to recognition and equality in the legal system, unless explicitly admitted and exempted by law.*
- (3) *Must not be discriminated against, positively or negatively, in law, employment, housing, education, finance or government services on the basis of gender, age, race, colour, religion, sexual preference, marital status, political opinion, association, or social origin or status, unless explicitly admitted and permitted by law.*
- (4) *Must not be subjected to social, cultural or individual values and practices that are abhorrent to Australia, specifically but not limited to*
 - a. *slavery or servitude,*
 - b. *marriage without uncoerced consent by both parties to the marriage,*
 - c. *marriage between children and adults,*
 - d. *bigamy and polygamy,*
 - e. *unequal rights within marriage,*
 - f. *honour killings or assaults,*
 - g. *female genital mutilation,*
 - h. *pedophilia, child prostitution and sexual abuse of children anywhere in the world or in cyberspace,*
 - i. *people trafficking, and*
 - j. *animal sacrifice.*
- (5) *Must not have their rights limited by the beliefs or values of people who provide public services (e.g., doctors, teachers, public servants), unless expressly permitted by law.*

Because compassion and respect for life are lived values of Australia, every person born in Australia or elsewhere

- (6) *Has an unwaivable right to life and freedom from arbitrary, intentional or legislated deprivation of life.*
- (7) *Has a right to control their inviolable body and determine its use and treatment until death, so long as such use and treatment does not violate (6) or any laws, and so long as they are judged capable of making decisions about treatment in their own best interests.*

- (8) *Has a right to humane treatment,*
- a. *including the right to medically provided freedom from extreme physical pain caused by illness or injury at the end of one's life, even if exercising this right results in death; and*
 - b. *excluding torture; cruel, inhuman or degrading treatment; medical experimentation or treatment without informed consent; physical or sexual abuse; violence in homes, schools, workplaces or in public; and bullying in homes, schools, workplaces, in public or through the internet.*

Because religious and cultural diversity is pervasive and widely accepted in Australia, every person in Australia

- (9) *Is free to adopt and demonstrate their religious and cultural identity, including through language, dress, observance, kinship relations and relationships with land and waters, so long as doing so does not violate laws or infringe the rights of others.*
- (10) *Is protected from coercion to adopt or demonstrate religious or cultural beliefs they choose to reject.*

Because Australians see themselves as free individuals in charge of and responsible for their own destinies, all Australian citizens and lawful residents

- (11) *Are free to live anywhere in Australia or overseas and to return to Australia if their legal status allows.*
- (12) *Are free to move within and between states and territories without government permission unless restricted by court order or law from doing so.*
- (13) *Are free to own real property and to access it without restriction to protect its economic value and safety.*
- (14) *Have a right to security and privacy within their home, free from arbitrary intrusion by police, government agents, family members, unwelcome visitors, landlords, journalists and photographers/videographers, or criminals.*
- (15) *Have a right to defend their property from unlawful intrusion by lawful use of minimum necessary force.*
- (16) *Have a right to privacy in written, oral and electronic communication without arbitrary monitoring or interference by police, government agents, commercial entities or individuals.*

Because people can only exercise their democratic rights and meet their obligations as citizens when they are adequately informed about activities and decisions that affect them, all Australians and lawful residents

- (17) *Have a right to unfettered media that are obliged, without fear or threat of retribution,*
- a. *To investigate, report and comment on public issues; politics and politicians; public administrative practices, bureaucracies and bureaucrats; and public figures, organisations, businesses and convicted criminals, so long as what is revealed is demonstrably true, is the product of sound professional practice, is in the public interest (not merely of public interest), does not interfere with police investigations, court proceedings or military actions, and does not compromise national security.*

- b. *To demand and receive meeting minutes and reports prepared by or for any level of government dealing with taxation policy and legislation (but not administrative procedures), government revenue and expenditure, program planning and performance, and citizens' rights, entitlements or safety; and*
 - c. *To demand and receive copies of written ministerial advice and minuted policy deliberations dealing with taxation policy and legislation (but not administrative procedures); economic, public infrastructure, health, justice, immigration, environment and trade policy and legislation; government revenue and expenditure; program planning and performance; and citizens' rights, entitlements or safety, so long as*
 - d. *The documents requested will be cited in a published or aired investigative media feature that is in the public interest (not merely of public interest) and a media organisation has paid the actual costs of providing the documents.*
- (18) *Have a right to keep the media informed about government policy, decisions or practices that affect citizens' rights, entitlements or safety and about revenue and expenditure, including the right to leak information to the media and the right to be whistleblowers, provided*
- a. *Any information provided is documented or sworn to, and*
 - b. *No incentive or reward is provided for the provision of the information, and*
 - c. *The information is in the public interest, not merely of public interest, and*
 - d. *The citizen is acting altruistically and not politically, maliciously or vengefully, and*
 - e. *The information does not compromise national security, military operations or criminal investigations or prosecutions.*
- (19) *Have a right to keep the media informed about party political policy, decisions or practices that might affect citizens' rights, entitlements or safety and about contributions and expenditure, including the right to leak information to the media and the right to be whistleblowers, provided*
- a. *Any information is documented or sworn to, and*
 - b. *No incentive or reward is provided for the provision of the information, and*
 - c. *The information is in the public interest, not merely of public interest, and*
 - d. *The citizen is acting altruistically and not maliciously or vengefully, and*
 - e. *The person is an elected representative or a paid-up member of a political party on which they are informing, and*
 - f. *The information does not compromise national security, military operations or criminal investigations or prosecutions.*
- (20) *Have a right to have their identity protected by any professional media with which they communicate.*
- (21) *Have a right to access the worldwide web without government limitation or control.*
- (22) *Have a right to view all government files that involve them personally, without going through a Freedom of Information process, unless doing so would compromise an on-going criminal investigation or unless expressly prohibited by law for national security reasons only, and provided the person pays the actual costs of preparing those files for viewing.*

Because suspicion of and disdain for government authority is a lived value of Australia, all citizens and lawful residents in Australia

- (23) *Have a right to assemble peacefully and associate freely with others to lobby, educate, demonstrate, negotiate or protest politically, socially or commercially, unless explicitly prohibited by law in clearly and narrowly proscribed circumstances.*
- (24) *Have a right to express opinions about political persons, public bureaucracies and government-funded organisations, and political, social and commercial issues privately without sanction and publicly so long as no lawful restrictions or rights are violated and, if government employees or contractors, without reproach by supervisors or damage to their careers.*
- (25) *Have a right to express opinions about non-political persons, private or commercial organisations and any issue privately without sanction and publicly so long as no damage is done to reputation by untruth and no law or chartered right is violated.*
- (26) *Have a right to personal liberty, so long as they are not breaking a law, creating a nuisance, making others uncomfortable, or interfering with anyone's free movement.*
- (27) *Have a right to protection from arbitrary moving on, arrest or detention.*
- (28) *Have a right to seek a court ruling on the lawfulness of their detention.*
- (29) *Are free from arbitrary search of one's person or property.*
- (30) *Are free to seek public and/or economic redress from any government authority for specific errors or failures to act.*
- (31) *Have a right to access web-published lists of any minutes or reports prepared by or for any level of government dealing with taxation policy and legislation (but not administrative procedures); government revenue and expenditure; program performance; and citizens' rights, entitlements or safety, as well as written ministerial advice and minuted policy deliberations in these areas and on policy and legislation dealing with economics, public infrastructure, health, justice, immigration, environment and trade. Information on the lists must be sufficiently informative to allow citizens to determine if they wish to see the documents.*
- (32) *Have a right to be provided with copies of any documents on the web-published lists, provided they pay the actual and full costs of such provision.*
- (33) *Have a right to know full details of all payments made to politicians, senior bureaucrats, and magistrates and judges from public funds, especially travel claims and expenditure on accommodation and personal support services.*

Because Australians see the family as the basic unit of society and because children hold a special place in society, all Australian citizens and lawful residents

- (34) *Have a right to naturally create or form families of any size or configuration,*
 - a. *provided the creation or formation of each family is guided by the principle of the best interests of any children in that family, and*
 - b. *provided the family is economically, intellectually, educationally, psychologically and medically able to serve the best interests of any children in the family and to satisfy the rights specified at (41).*
 - c. *provided the configuration does not violate any laws or rights.*

- (35) *Have a right to be legally recognised as part of a self-identified family for medical, financial and probate purposes.*
- (36) *Have a right to conceive children with medical assistance,*
 - a. *provided such conception is guided by principles specified by the elected federal government in legislation and*
 - b. *provided the parent or family is economically, intellectually, educationally, psychologically and medically able to serve the best interests of any children so created and to satisfy the rights specified at (41).*
- (37) *Have a right to regular access, physical or otherwise, to their biological and/or legal children, so long as no court rules otherwise in the best interests of the children.*
- (38) *Have a right to regular access, physical or otherwise, to their biological and/or legal parents, until the age of 18, so long as no court rules otherwise in the best interests of the children.*
- (39) *Have a right to regular access, physical or otherwise, to their biological and/or legal siblings, grandchildren and grandparents, nieces and nephews, aunts and uncles so long as no court rules otherwise in the best interests of any children.*
- (40) *Have a right to demand from employers at least 16 hours per day (or a weekly equivalent) and two full days weekly without work to meet family obligations.*

Because childhood is a special period of development and growth that determines future opportunities, all children

- (41) *Have a right to adequate food, clothing, shelter, affection, medical care, emotional and psychological support and effective discipline to enable them to be happy, healthy and safe.*
- (42) *Have a right to feel and be safe in the home, at school, in public and in any organised activity in which they participate.*
- (43) *Have a right to an education that encourages, supports and enables them to be productive members of society, good citizens and lifelong learners.*
- (44) *Have a right to an education that provides life skills to form satisfying relationships, manage money, hold down a job, make good decisions, and live safely.*

Because children who have been removed from their homes and biological carers deserve and need the same secure and stable home life other children enjoy, children placed in the care of the state for any reason except acute illness or injury of a parent

- (45) *Have a right to continuity of care in a foster home, uninterrupted by repeated returns to the biological home.*
- (46) *Have a right to return to the biological home from foster care only once, provided*
 - a. *the child has a strong and uncoerced wish to do so, and*
 - b. *a court rules -- once and only once -- that such a return is in the best interests of the child and only after the biological carer(s)*
 - (i) *have demonstrated at least 12 months of sobriety and law-abiding behaviour, and*
 - (ii) *have secure accommodation, steady employment and adequate financial resources, and*
 - (iii) *have successfully passed a six-month program of intensive parenting training.*

- (47) *Have a right to return to the original foster home after a failed return to biological carers, if the foster home is still willing to have them.*
- (48) *Have a right to remain in their foster home without further return to biological carers after one failed attempt.*
- (49) *Have a right to be adopted after 12 months in the foster care system or after a failed return to a biological carer.*
- (50) *If removed for sexual or serious physical abuse or serious neglect, or if removed because the biological carer is to be incarcerated for more than 12 months, have a right to be adopted immediately and without any return to the biological carer.*
- (51) *Have a right to communicate with and access biological relatives even after permanent foster placement or adoption, so long as the child wants to, and a court rules it is in the best interests of the child, and a court sets rules for exercise of this right after consultation with the foster or adoptive parent(s).*
- (52) *If from a distinctive ethnic or cultural group, has the right to be placed with a family of similar heritage if such a family is available, or*
- (53) *If from a distinctive ethnic or cultural group but with no foster or adoptive family of similar heritage available, has the right to regular and meaningful contact with people of similar heritage, facilitated by a government service.*

Because childhood is a special period of development and growth that determines future opportunities, all children who care in their homes for disabled relatives, so long as a home investigation by a social worker finds them to be primary carers and so long as they remain in full-time education

- (54) *Have a right to the same financial benefits from governments as adult carers until they reach age 18, without a means test and even if the relative receives a pension.*
- (55) *After age 18, have a right to all adult carer financial benefits without a means test and even if the relative receives a pension, so long as they remain in full-time education or training, up to and including a tertiary degree or apprenticeship.*
- (56) *Have a right to special in-home support services as required to enable them to complete their education on schedule, up to and including a tertiary degree or apprenticeship.*
- (57) *Have a right to special in-home support services as required to enable them to hold a part-time job while continuing at school and/or university or in an apprenticeship.*
- (58) *Have a right to special in-home support services as required to enable them to enjoy monthly respite and an annual holiday.*

Because Australians value and revere their elders but recognise that they may need special protections (even if they don't think so), all Australian citizens and legal residents at or over the pension age

- (59) *Have a right to live out their lives in peace, dignity, safety and comfort.*
- (60) *Have a right to make decisions about their living arrangements, relationships and activities, so long as they are competent to recognise and act consistently in their own best interests.*

- (61) *Have an unwaivable right to an independent advocate responsible for protecting their best interests in managing their personal and financial affairs and an obligation to listen to their advice. For people with age- or illness-related mental impairments, or over the age of 80, or who have left school before completing Year 10, the obligation is to accept the advice after negotiation with the advocate and, if relevant, after consultation with an expert the advocate calls in.*
- (62) *Have a right to confidentiality and privacy in all matters involving the advocate, unless this conflicts with the person's best interests in a particular situation.*
- (63) *Have a right to be protected from undue influence, pressure or manipulation by relatives, friends, carers, neighbours or strangers.*
- (64) *Have a right to be protected from violence, intimidation, bullying, harassment or physical, psychological, emotional or sexual abuse by relatives, friends, carers, neighbours or strangers.*
- (65) *Have a right to be protected from family, government, administrative or bureaucratic intervention in their living arrangements or relationships, including with pets, except when such interventions are deemed, by their advocate, necessary in their best interests.*
- (66) *Have an unwaivable right to have all legal agreements they enter into vetted and witnessed by their advocate, including but not limited to marriage contracts, real estate transactions, banking, finance and superannuation transactions, wills, and gift and trust deeds. Advocates can refuse to witness any agreement they judge to be against the best interests of the person, despite the person's wishes.*
- (67) *Are not bound by oral agreements or written contracts entered into without approval of an advocate or with sales people, companies, contractors and service providers who behave deceptively or unconscionably. Work done without the approval of an advocate does not have to be paid for.*
- (68) *If living independently in the community or a retirement village, have a right to an income sufficient to provide secure housing, a healthy diet, medical and dental care, adequate power, water and heat, clothing and personal care items, essential transport, insurance for their homes and possessions, occasional leisure activities or entertainment, and food and veterinary care for pets.*
- (69) *If living in the care of family or friends and receiving a pension, have a right to a pension account that makes a negotiated payment to the family or friends to cover living expenses and that preserves at least 20% of the pension for discretionary personal use.*
- (70) *If living in a managed care or assisted living institution, have a right to adequate nutrition, including fresh and healthy food served attractively; clean and comfortable facilities; enough privacy to protect their dignity and modesty even if they are not sentient; protection from violence, bullying, sexual abuse or intimidation by patients, staff, visitors or intruders; medical supervision and care; stimulation, diversion and entertainment activities; fresh air, sunlight and outdoor excursions; careful monitoring and administration of prescribed medications; and access to visitors and advocates without restriction except in the best interests of the person as determined by their advocate.*

Because Australians believe in looking after those who cannot look after themselves, every Australian citizen and legal resident

- (71) *Has an unwaivable right to publicly provided institutional care if, by reason of significant diagnosed mental or physical disability or defect, including drug addiction, a court determines institutionalisation to be in their best interests, based on the advice of a registered doctor and social worker.*
- (72) *If an adult with a significant diagnosed mental illness or defect that does not require court-mandated institutionalisation,*
- a. Has a right to be treated and managed as they wish, provided*
 - (i) such treatment and management is in their best interests as determined by a registered doctor and a social worker, and*
 - (ii) provided such treatment and management does not pose a danger or nuisance to society, and*
 - (iii) provided the person is in stable accommodation.*
 - b. Has a right to safe and secure public institutional accommodation away from able-minded residents who might abuse or exploit them.*
 - c. Has a right to access regular meals, medical care and medication in a public institutional setting, even if they don't live there.*
 - d. If successfully living independently in private accommodation and receiving a disability pension, has a right to manage their pension if, in the opinion of their social worker, they consistently act in their own best interests. If they fail to do so, then their pension must be paid into a managed pension account.*
 - e. If living in a public institution or using its resources, has a right to a managed pension account from which the costs of their publicly provided accommodation, food, clothing and toiletries are deducted as used and the balance of which can be drawn for incidental expenses and leisure activities.*
- (73) *If under age 18 with a significant diagnosed mental illness or defect*
- a. Has a right to be treated and managed as their parents and a legal advocate wish, including institutionalisation, provided such treatment and management is in the child's best interests as determined by a registered doctor and a social worker and provided such treatment and management does not pose a danger or nuisance to society.*
 - b. If in the care of their parents or relatives, has a right to an adult disability pension to be used for their special supervision, accommodation and treatment needs until they reach 18, without a means test and even if a carer's pension is being paid.*
 - c. If in the voluntary or mandatory care of the state, has a right to be provided with accommodation, healthy meals, medical care and medication, clothing, toys, education, recreation and medically-indicated therapy in a public institution if or when the family is unwilling or unable to care for them.*
 - d. If in the care of the state, has a right to a pension account worth 10% of the disability pension, which can be drawn as an "allowance" for their pleasure or saved for a special purpose.*

- (74) *If an adult with a significant diagnosed physical disability or defect that does not require court-mandated institutionalisation,*
- a. *Has a right to be treated and managed as they wish, provided*
 - (i) *such treatment and management is in their best interests as determined by a registered doctor and a social worker, and*
 - (ii) *provided such treatment and management does not pose a danger or nuisance to society, and*
 - (iii) *provided the person is in stable accommodation.*
 - b. *If in secure, private accommodation, has a right to a disability pension or managed pension account as determined by the federal government.*
 - c. *If receiving a disability pension or if self-supporting, has a right to public financial support to access therapy, prosthetics and aids medically determined to improve functionality or relieve pain.*
 - d. *Has a right to safe and secure public institutional accommodation away from able-bodied or mentally disabled residents who might abuse or exploit them, the cost of which will be deducted from a managed pension account..*
 - e. *Has a right to access regular meals, medical care and medication, therapy, aids, clothing, toiletries and amenities like disabled showers and toilets in an institutional setting, even if they don't live there, the cost of which will be deducted from a managed pension account.*
- (75) *If under age 18 with a significant diagnosed physical disability or defect*
- a. *Has a right to be treated and managed as their parents and a legal advocate wish, including institutionalisation, provided such treatment and management is in the child's best interests as determined by a registered doctor and a social worker.*
 - b. *If living with their natural parents or relatives or a foster family, has a right to an adult disability pension to be used for their special supervision, accommodation and treatment needs until they reach 18, without a means test and even if a carer's pension is being paid.*
 - c. *If in the care of the state or institutionalised by relatives, has a right to be provided with accommodation, healthy meals, medical care and medication, clothing, toys, education, recreation and medically-indicated therapy, prosthetics and aids in a public institution if or when a family is unwilling or unable to care for them.*
 - d. *If living in an institution, has a right to a pension account worth 10% of the disability pension which can be drawn as an "allowance" for their pleasure or saved for a special purpose.*

Because both the innocent and the guilty who come to the attention of law enforcement and the criminal justice system need protection from excessive government or public displeasure, all alleged law breakers, disturbers of civil order, or dangers to public safety who are under the control or supervision of law enforcement officers

- (76) *Have a right to know why they are being confronted or detained by such officers, provided so informing them does not endanger public or officer safety.*
- (77) *Have a right to be treated with dignity and civility in public, provided doing so does not endanger public or officer safety.*

- (78) *Have a right to be treated with dignity and civility while detained.*
- (79) *Have a right to be detained outside a jail or prison if they appear mentally ill.*
- (80) *Have a right to be segregated from convicted criminals during pre-trial detention unless they are previously convicted criminals.*
- (81) *Have a right to know charges laid against them.*
- (82) *Have a right to be informed of their legal rights.*
- (83) *Have a right to legal representation before and during questioning and during and in preparation for court appearances and this right is unwaivable if they appear mentally ill.*
- (84) *Have a right to an interpreter if English is not their first language.*
- (85) *Have an unwaivable right to a court-authorized advocate if they appear to be mentally ill.*
- (86) *Have a right to a prompt hearing on charges.*
- (87) *Have a right to reasonable bail if a court rules the community will be safe on their release.*
- (88) *Are protected from self-incrimination, including involuntary or ignorant self-incrimination, during questioning or in court.*
- (89) *Have a right to a swift and fair trial, and to judgment by a jury of citizens of Australia.*
- (90) *Have a right to be treated as not guilty during their criminal trial until the prosecution satisfies a judge or jury of their guilt beyond reasonable doubt by presentation of evidence and argument.*
- (91) *Have a right to confront witnesses (only through counsel) and compel witness testimony.*
- (92) *Have a right to appeal a judgment provided legally recognised grounds exist.*
- (93) *Are protected from excessive fines, and from cruel or inhuman punishment.*
- (94) *Have a right to practice religious observance while detained, provided doing so does not threaten the safety of others.*
- (95) *Have a right to be treated for mental illness inside prison and to be segregated from the general population until treatment stabilises the illness.*
- (96) *If acquitted, are protected from retrial for the same offence and from excessive legal prosecution.*

Because children who attract the attention of law enforcement and the criminal justice system require special protection, any child under 18 years of age who is under the control or supervision of law enforcement shall, in addition to the rights of adult accused,

- (97) *Have a right to patient and non-intimidatory treatment by law enforcement officers, provided this does not endanger the safety of the child, the officers or the public.*
- (98) *Have a right to contact an adult relative or legal guardian before being removed to detention, provided such a person is readily contactable and provided doing so does not endanger the safety of the child, the officers or the public.*

- (99) *Have a right to pre-trial home detention, with appropriate electronic monitoring, only if charged with non-violent crimes, if a reliable adult relative assumes responsibility for supervision, if the home environment is stable and secure, if doing so does not pose a threat to public safety, and if there is little likelihood of absconding or re-offending.*
- (100) *Have a right to be separated during pre-trial detention from adult prisoners under all circumstances and from convicted juveniles unless already a convicted juvenile offender.*
- (101) *Have an unwaivable right to have a court-authorized child advocate present during interrogations and trial.*
- (102) *Have a right to have an adult relative or legal guardian present during interrogations and trial, unless that adult is a co-suspect or likely witness.*
- (103) *Have a right to have court proceedings explained to them while in court.*
- (104) *Have a right to have their identity protected while they are less than 18 years of age, unless they are convicted of 2 or more crimes against persons or 3 or more crimes against property, in which cases their identity can be made public before they reach 18 years of age.*
- (105) *If convicted, have a right to be separated from adult prisoners during incarceration until they reach 18 years of age.*
- (106) *If convicted, have a right to mandatory education or vocational training while incarcerated.*
- (107) *If convicted, have a right to mandatory drug or psychological rehabilitation services while incarcerated.*

Because victims of crime have already had several of their rights violated by the criminal action of adults or children, in reparation, victims of crime are endowed with exceptional rights as follows:

- (108) *The right to confront, in a secure environment, adult and juvenile criminals convicted of crimes against them, their relatives and friends or their property, to orally express their feelings freely and at length in private or in public without fear of retribution or legal action, so long as what is said is true.*
- (109) *The right to veto charges if dissatisfied, but only after extensive consultation with prosecutors and their own legal representation.*
- (110) *The right to penalties for convicted adult offenders for first and second offenses against property that give primary emphasis to punishment, secondary emphasis to restitution, tertiary emphasis to mandatory rehabilitation and without regard for prison overcrowding.*
- (111) *The right to penalties for convicted adult offenders on subsequent offenses against property that give primary emphasis to punishment by incarceration, secondary emphasis to restitution, tertiary emphasis to mandatory rehabilitation and without regard for prison overcrowding or for the offender's personal history.*
- (112) *The right to penalties for convicted adult offenders on first offenses against persons but without injury that give primary emphasis to serious punishment and secondary emphasis to mandatory rehabilitation and without regard for prison overcrowding.*

- (113) *The right to penalties for convicted adult offenders on first offenses against persons but with injuries that give primary emphasis to removing the offender from society for at least one week, secondary emphasis to serious punishment, tertiary emphasis to mandatory rehabilitation and without regard for prison overcrowding or for the offender's personal history.*
- (114) *The right to penalties for convicted adult offenders on repeated offenses against persons that give primary emphasis to removing the offender from society until they demonstrate fitness to return, and secondary emphasis on punishment and without regard for prison overcrowding or for the offender's personal history.*
- (115) *The right to penalties for convicted juvenile offenders on first and second offenses against property that give primary emphasis to mandatory rehabilitation and secondary emphasis to punishment.*
- (116) *The right to penalties for convicted juvenile offenders on subsequent offenses against property that give primary emphasis to punishment in a juvenile facility and secondary emphasis to mandatory rehabilitation and without regard for facility overcrowding or for the offender's personal history.*
- (117) *The right to penalties for convicted child offenders on first offenses against persons but without injury that give primary emphasis to intensive mandatory rehabilitation and secondary emphasis to serious punishment and without regard for facility overcrowding.*
- (118) *The right to penalties for convicted child offenders on first offenses against persons but with injuries that give primary emphasis to removing the offender from society for at least one day and night, secondary emphasis to intensive mandatory rehabilitation and tertiary emphasis to serious punishment and without regard for facility overcrowding or the offender's personal history.*
- (119) *The right to penalties for convicted child offenders on repeated offenses against persons that give primary emphasis to removing the offender from society until they demonstrate fitness to return, secondary emphasis on intensive mandatory rehabilitation and tertiary emphasis on serious punishment and without regard for facility overcrowding or the offender's personal history.*
- (120) *The right to make public the names of convicted child offenders after repeated offenses against persons (2 convictions) or property (3 convictions).*
- (121) *The right to a plain English written justification for the sentence from the presiding judge, including explanations for any leniency shown and for the length or lack of any custodial sentence, and a written explanation of how the sentence satisfies victims' rights.*
- (122) *The right to publicise and debate the judge's decision and reasoning in private or in public and to enlist others to comment.*
- (123) *The right to sue judges for violations of victims' rights but only in cases where legal advice suggests sentences, justifications or explanations are inconsistent with these chartered rights.*
- (124) *The right to decide if any convicted criminal can speak or write publicly about their crimes or experiences, even after release from incarceration.*
- (125) *The right to decide if a convicted criminal's family or associates can speak or write publicly about the criminal or their crimes or about their experiences with the criminal.*

- (126) *The right to demand payment from any media organisation, publisher or film maker in return for granting the criminal or the criminal's family or associates license to speak, or write about the criminal's crimes or their experiences with the criminal.*
- (127) *The right to claim in court, from criminals, their family or their businesses, any proceeds of the crime committed against them, including homes, property, stock and chattels.*
- (128) *The right to sue criminals and, if they knowingly benefited financially from the crime, their families and/or their businesses for punitive damages flowing from the crime.*

Because Australia values justice and the rule of law but resents convicted criminals who exploit the law to mitigate their punishment or impose themselves on a fearful community, all citizens, legal residents, government agencies and legal entities

- (129) *Have the right to petition the court to abrogate selectively a convicted person's rights if it can be shown on the balance of probabilities that the person has criminally or civilly infringed the rights of another and if it is in the best interests of the victim(s) or the community that they be so abrogated.*

Because Australians are compassionate toward asylum seekers, all asylum seekers who have entered Australia without the paid assistance of people smugglers and with lawful identity papers

- (130) *Have the right to priority assessment of their refugee status ahead of applicants who used people smugglers.*
- (131) *Have the right to live in the community while their application is being processed, provided an Australian citizen or legal resident assumes responsibility for their accommodation, maintenance and security, and provided they are not judged a danger to the community.*
- (132) *Have a right to live in a detention facility with day-release privileges while their application is being processed, if no one is willing to assume responsibility for them and if there is little likelihood of absconding and provided they are not judged a danger to the community.*
- (133) *Have the right, if traveling with children under 16 years of age and living in a detention facility, to be assigned only to a family unit separate from singles units and single detainees.*
- (134) *Have the right, if traveling with children under 16 years of age and living in a detention facility, to elect to have children placed into foster care in the community.*
- (135) *Have the right, if a child under 16 years of age traveling alone, to live in a foster home if no Australian citizen or legal resident assumes responsibility for them.*
- (136) *Have the right, if living in detention, to be separated from malcontents and troublemakers who make detention worse than it needs to be and who traumatise children by their behaviour.*
- (137) *If unsuccessful in their application for asylum, have the right to only one appeal to the Tribunal and one appeal to a court before deportation and with no continuances to be granted in either venue.*

Because Australians are cynical and resentful of foreigners seeking to exploit their compassion by abusing the asylum and refugee system, all asylum seekers who have entered Australia by criminally engaging people smugglers and/or with false identity papers, and/or under suspicion of having destroyed identity papers, or who are suspected of terrorist connections

- (138) Have the right to an interpreter if English is not their first language.*
- (139) Have an unwaivable right to a court-authorized advocate if they appear to be mentally ill.*
- (140) Have the right in detention to be separated from malcontents and troublemakers who make detention worse than it needs to be and who traumatise children by their behaviour.*
- (141) Have the right to only one appeal to the Tribunal and with no continuances to be granted.*
- (142) Have the right to be held in offshore secure detention for no more than 120 days while their health and refugee application are being assessed, after which they will be released into the offshore community, with conditions, while assessment continues, unless the Federal Police present credible evidence to the Federal Court that they may pose a danger to that community.*
- (143) Have the right, if traveling with children under 16 years of age, to be detained in family units separate from singles units and single detainees.*
- (144) Have the right, if traveling with children under 16 years of age, to elect to have one parent and children removed from detention into the offshore community as soon as identity and health checks have been completed, unless the Federal Police present credible evidence to the Federal Court that doing so poses a threat to the offshore community.*
- (145) Have the right, if traveling with children under 16 years of age, to elect to have children removed from detention into foster care in the offshore community as soon as identity and health checks have been completed.*
- (146) Have the right, if a child less than 16 years of age traveling alone, to be held in secure detention in Australia only until identity and health checks have been completed, unless the Federal Police present credible evidence to the Federal Court that they may pose a danger if released into the community.*
- (147) Have the right, if a child less than 16 years of age traveling alone, to be detained in a family unit separate from singles units and single detainees until cleared for community placement.*
- (148) Have the right, if a child less than 16 years of age traveling alone, once cleared for community placement, to be removed from detention and placed in foster care in the community while assessment continues.*
- (149) Have the unwaivable right, if a child less than 16 years of age traveling alone, to a court-authorized advocate.*

Unlawful residents (immigration violators) who have entered Australia lawfully but overstayed or violated their visas who are apprehended by Immigration or police

- (150) Have the right to be separated from the community and held in secure detention in Australia for the shortest time possible, only until their health, identity, immigration status and police records have been checked, no longer than 7 days for immigration purposes.*

- (151) *Have the right to contact their family to advise them of their situation, without any repercussions for those contacted.*
- (152) *Have the right to contact anyone in the community who can help them, apart from suspected criminals responsible for their immigration violations.*
- (153) *Have the right to legal representation during interrogation and any hearings.*
- (154) *Have the right to an interpreter if English is not their first language.*
- (155) *Have an unwaivable right to a court-authorized advocate if they appear to be mentally ill.*
- (156) *Have a right, after preliminary detention checks are completed, to live in the community and continue working if employed until their immigration status is finally decided, unless their job involved law-breaking and unless Immigration or the Federal Police present credible evidence to the Federal Court that they may pose a danger of absconding or to public safety if returned to the community.*

Families of detained illegal residents, who are also illegal residents,

- (157) *Have the right to remain in the community, under conditions, unless Immigration or the Federal Police present credible evidence to the Federal Court that they pose a danger to the community or are likely to abscond.*
- (158) *Have the right to an ex gratia payment to sustain them economically during the detained violator's preliminary (up to 7-day) detention if the violator was the family breadwinner.*
- (159) *Have the right, if also detained and with children under 16 years, to be detained in family units, separate from single units and single detainees.*
- (160) *Have the right, if detained with children under 16 years, to have children placed in foster care in the community until their immigration status is finally decided.*

Because Australia values commonsense and compassion, stateless people who come to Australia but who are denied refugee status have the following rights:

- (161) *The right to day-release from a detention facility in Australia to learn English and find a job or organise training for a job;*
- (162) *The right to work for a period of up to 12 months from day-release to demonstrate employability;*
- (163) *The right to live in the community for all or part of that 12 months from day release, once they are earning a wage sufficient to finance their accommodation and living expenses;*
- (164) *The right to a Medicare card and up to 12 months government-supported English language instruction;*
- (165) *The right to apply for permanent residency from within Australia after demonstrating English proficiency, employability and good character over that period of 12 months from day release.*
- (166) *The right to apply for citizenship after an additional 3 years residency provided the person has been gainfully employed, self-supporting and of good character during that time and has substantially repaid the cost of their room and board in detention until they moved into the community.*

(167) *The right to government assistance to organise an alternative destination if unwilling or unable to qualify for permanent residency and/or citizenship.*

(168) *The right to all protections offered by this charter but not to the entitlements unless specifically approved by the Government.*

Because representative democracy is a lived value of Australia but because all power in a democracy flows directly from the people, all Australian citizens

(169) *Have a right to initiate legislation at any level of government provided it has the support of 5% of eligible voters across all level-relevant electorates. Elector-initiated legislation goes through normal parliamentary processes and may or may not pass. Elector-initiated legislation must be consistent with these chartered rights and with existing laws unless seeking to repeal those laws.*

a. *Support is expressed by signatures of eligible voters on a petition.*

b. *Petition must contain the terminology of the legislation that has been vetted by qualified parliamentary counsel at the expense of the petitioner, refunded on success of the initiative.*

c. *Legislation requiring expenditure must have been costed by relevant government officials at the expense of the petitioner, refunded on success of the initiative.*

d. *Costs of implementing the legislation must be shown in the petition.*

(170) *Have a right to recall any elected representative, forcing them to re-contest their position in a by-election*

a. *if they fail three times to vote consistently with the publicly professed beliefs, values and positions on which they campaigned, or*

b. *if they bring disgrace to the people they represent by their public behaviour or moral turpitude.*

c. *The mechanism of electoral recall is a petition signed by eligible voters equal to at least 25% of total votes cast for the representative.*

d. *The by-election is to be held within 30 days of the successful recall petition being submitted to the head of the relevant level of government.*

(171) *Have a right to initiate referenda on important issues or existing legislation. Referenda cannot be elector-initiated in the areas of chartered rights, national security, emergency actions or taxation. Elector-initiated referenda must be presented to the relevant electorate at the next election provided sufficient signatures are obtained as follows:*

a. *at local government level: 5% of eligible voters at the last local election.*

b. *at state government level: 1% of eligible voters at the last state election.*

c. *at national government level: 1% of eligible voters in at least 5 states or territories at the last federal election or 2% of eligible voters nationally.*

Because rights must be actively safeguarded to ensure they are understood and rigorously applied, all Australian citizens and lawful residents

(172) *Have a right to legislation that gives these chartered rights the status of enforceable laws and that specifies reasonable criminal and civil penalties for infringements.*

(173) Have a right to demand that prosecutors lay criminal charges for infringements of any of these chartered rights, unless more serious criminal charges are flowing from the infringements.

(174) Have the right to demand prosecutors lay criminal charges for violation of any of these rights if other criminal charges relevant to their infringement have not been successfully prosecuted.

(175) Have the right to sue civilly for violation of any of these chartered rights.

Implementation

This Charter shall be in force from the day it passes in Parliament.

These chartered rights supersede any rights granted by non-Australian institutions if they conflict with the chartered rights, even if those rights were previously recognised by Australian governments and courts.

These chartered rights supersede any common law rights that conflict with them, and no common law rights can be created that are not compatible with these chartered rights.

All governments are prohibited from enforcing existing laws that infringe or limit any of these chartered rights, unless such limits are enshrined in the right.

All governments are required to identify, before the charter is passed by Parliament, any existing laws they intend to preserve and amend to bring them into line with these chartered rights.

All governments must complete amendment of existing laws to bring them into line with the charter within 12 months of the charter coming into force or the laws can no longer be enforced.

To avoid retroactivity, courts may adjudicate cases relying on laws to be rescinded or set for amendment if the cases commenced before adoption of this charter.

Parties to any matters before the court before the charter is adopted may invoke the charter to support their cases provided doing so, in the judge's opinion, does not unfairly disadvantage another party through retroactivity.

*So Say the People of Australia
through their Representatives in Parliament*