R . O . A . N

REPATRIATION OF A NATION

The Reconstitution Framework

A staged pathway to constitutional repair, electoral reform, and restored trust in Australian governance

Working draft — for development and internal review

Purpose and method

This document sets out a reform framework for the Australian constitutional and political system that works through the system's own mechanisms rather than denying their validity. The distinction matters. Movements that begin by declaring the existing order void end up talking only to themselves, because they have removed every lever they could have pulled. Movements that identify the genuine defects in the existing order — and there are genuine defects — and then use the amendment, legislative, and electoral machinery to fix them are the only ones that have ever succeeded.

The method throughout is the same standard applied to every piece of research behind this project: the instrument beats the inference. Every claim in this framework is anchored to a document, a statute, a judgment, or a documented institutional failure. Where a popular claim cannot be anchored that way, it is either reframed into its defensible form or excluded. That is not timidity. It is what makes the framework impossible to dismiss.

The framework has nine pillars, ordered here for the reader rather than for the calendar: the constitutional pillars that answer the deepest grievances come first, and the statutory machinery follows. The action order is different and is set out in the Sequencing section — the statutory reforms of Pillars 7, 8 and 9 move first precisely because they require no referendum, prove that reform is achievable, and build the public trust needed to carry the constitutional package of Pillars 1 through 6.

The framework at a glance

Nine pillars. Every mechanism proposed is currently operating in a stable democracy — most of them in Switzerland, three of them already in Australian states or territories. Nothing here is untested.

The order of action is different from the order above. Pillars 7, 8 and 9 are statutory — achievable now, no referendum, and they generate the public evidence that carries everything else. Pillars 1 to 6 travel together as a referendum package from a constitutional convention.

The one-sentence version: reform the system using the system, so the alternative is not rupture or resignation.

	PILLAR	WHAT IT DOES	WHY
1	**Repatriate the Constitution**	Re-enacted as an Australian instrument, ratified by the people; treaties require parliamentary approval before ratification	Our founding document is still a British Act of 1900, and the Executive can enlarge Commonwealth power by treaty without a parliamentary vote
2	**Land, title and custodianship**	Ultimate title held in express trust; First Nations custodianship entrenched; every existing title confirmed	Repatriation forces the question of where ultimate title vests. Answer it openly or reproduce the same defect
3	**The popular initiative**	The people can start a referendum, not only Parliament	Every referendum ever put to Australians was chosen by the politicians it might constrain
4	**Direct democracy machinery**	Any Act *or instrument made under one* may be recalled by the people; four voting days a year	A parliament that knows a law can be recalled drafts laws the people will accept
5	**An entrenched Bill of Rights**	Speech, assembly, conscience, due process, property, bodily integrity — beyond ordinary legislation, and binding on the States as well as the Commonwealth	Australia is the only Western democracy with no national bill of rights
6	**Electoral and executive restructure**	Proportional representation; a seven-member Federal Council replaces the Prime Minister	40% of the vote should not produce 100% of the seats. Not one extra politician
7	**Judicial accountability**	Deliver the Federal Judicial Commission the ALRC recommended and the Government accepted; jury floor; open justice	Recommended 2022, accepted 2022, still not built. Five states and territories already have one

	PILLAR	WHAT IT DOES	WHY
8	**Parliamentary integrity**	Audited beneficial-ownership disclosure by members; lobbying and ministerial-diary transparency; public corruption hearings; enforced foreign interference register	The 2027 donation reforms fix money going *to* politics. Nothing audits the finances of the people already in it
9	**A sovereign resource fund**	A genuine rent charge above a royalty floor, quarantined by statute into a fund that may only spend its real return	Resource revenue is spent the year it arrives. Norway converted the same kind of revenue into a permanent national asset

What this document is, and what it is not

It is a conversation starter, not a constitution. Nothing here is drafted text. These nine pillars exist to give several million ordinary Australians a working understanding of what is wrong and what could be done about it — in plain words, before the lawyers, constitutionalists and parliamentary draftsmen get hold of it. That stage comes later, and when it comes the language will get technical, because it has to. This stage is not that stage. If a paragraph here cannot be read by someone at a kitchen table in Emerald or Elizabeth, it has failed at its actual job.

It is deliberately incomplete, and says so. The Commonwealth statute book runs to tens of thousands of pages, the case law to more, and no research process — human or otherwise — surveys all of it at once. Every question in this framework had to be gone looking for specifically. That means there are certainly instruments, cases and existing reforms bearing on these pillars that have not yet been found, and some of them will change what is written here. Two examples from this draft alone: the judicial accountability pillar was rewritten once the ALRC's 2022 report and the Government's response to it were located, and the integrity pillar was rewritten again once it became clear that the *Electoral Legislation Amendment (Electoral Reform) Act 2025* had already legislated more than the framework was asking for. Both changes came from outside. Both made the document stronger.

So the invitation is genuine. If you know of a statute, a case, a report, a commission or a reform already underway that bears on any of these nine pillars — particularly one that shows a claim here is wrong, outdated, or already answered — that is the most useful thing anyone can contribute. A framework that has to be defended against correction is not worth building. This one is designed to absorb it.

And it does not pretend to have the answers it does not have. Where a question needs specialist opinion, the document says so rather than asserting through it. The covering-clause question and the drafting of the Crown transposition and savings provision in Pillar 1; the choice between trust and stewardship in Pillar 2, and whether the express trust is intended to be justiciable and by whom; the constitutional room for multi-member electorates under sections 7 and 24 in Pillar 6; and the allocation of every existing executive function in Pillar 6 all sit in that category. Naming them is not weakness. It is the difference between a proposal and a wish.

Pillar 1 — Repatriation of the Constitution

The grievance. The Commonwealth of Australia Constitution Act 1900 is an Act of the Parliament of the United Kingdom. The covering clauses — including covering clause 2 and its reference to the Queen's "heirs and successors in the sovereignty of the United Kingdom" — sit outside the s.128 amendment power, meaning the Australian people cannot amend the very provisions that frame their own Constitution. Since Sue v Hill (1999) the High Court treats the United Kingdom as a foreign power. The result is an instrument enacted by a parliament now classified as foreign, containing provisions its own people cannot touch, deriving its formal validity from a source the courts themselves no longer rely on.

Treaty ratification. One further defect belongs here, because it concerns how the instrument itself allocates power. Entering a treaty is pure executive power under section 61 — the Governor-General acts on advice, and Parliament has no formal role in ratification at all. The Joint Standing Committee on Treaties reviews treaties before binding action is taken, but its review is advisory and the Executive may proceed regardless.

Two things follow. Treaties do not become Australian law by themselves; implementation requires legislation, and the Department of Health states this plainly in its own published material on the pandemic agreement. But under section 51(xxix), the external affairs power, entering a treaty *expands what the Commonwealth may legislate about* — including in areas otherwise left to the States, as settled in the Tasmanian Dam Case in 1983.

So the accurate statement of the problem is not that a foreign body can make Australian law. It is that **the Executive alone can enter an agreement that permanently enlarges Commonwealth legislative power, and the people's representatives never vote on the entry.** That is a structural defect of the same kind as the others in this framework, it applies to every treaty — trade, defence, environment, health — and the repatriated instrument should close it by requiring parliamentary approval before ratification.

Transposition of the Crown, and savings. The word "Crown" is load-bearing in Australian law well beyond ceremony, and removing it without provision would leave thousands of Acts ambiguous on the day the new instrument commences. It is the vehicle through which governments hold property and are sued — the Crown in right of the Commonwealth and in right of each State. It carries the presumption that a statute does not bind the Crown unless it says so. It underpins the executive power in section 61 and the prerogatives exercised under it. And it is the tenurial root of every parcel of Crown land in every State.

The repatriated instrument must therefore carry an express transposition and savings provision: that every reference to the Crown, to Her or His Majesty, or to the Sovereign, in any law in force immediately before commencement, is read as a reference to the Commonwealth or to the relevant State as the context requires, and that all rights, duties, immunities, liabilities, proceedings and property continue unaffected. Repatriation is a change in where authority is sourced, not a discontinuity in the legal order, and the instrument should say so in terms.

What it does not change. The duties of public officials do not derive from the word "Crown" and are not disturbed by removing it. The obligations of officials are statutory: sections 25 to 29 of the *Public Governance, Performance and Accountability Act 2013* impose duties of care and diligence, good faith and proper purpose, and duties governing use of position, use of

information and disclosure of interests — drafted on the model of directors' duties. Section 13 of the *Public Service Act 1999* imposes the Code of Conduct. Those Acts continue in force and are untouched by this pillar. Australian courts have generally declined to find that public officials owe fiduciary duties to the public at large in the private-law sense, and this framework does not assert otherwise. What Pillars 7 and 8 change is the enforcement of existing duties, not their content — with the single exception noted in Pillar 2.

What this framework does not claim. It does not claim the Constitution is void. No court has held that and no court will, because the High Court has resolved the question the other way: the Constitution's continuing authority now rests on its acceptance by the Australian people, not on the imperial enactment. Voidness arguments have a one hundred percent failure rate in Australian courts and their inclusion in any document destroys the credibility of everything around them.

Nor does it claim that British legislative power over Australia survives. It does not. The *Australia Act 1986* ended it. Anyone using "repatriation" to mean escaping Westminster's reach is describing something that already happened forty years ago.

And it does not need the covering-clause argument to be right. Whether the eight covering clauses sit beyond the reach of s.128 is genuinely disputed, with credible authority both ways, and this framework deliberately does not stake itself on either view. The reform pathway is designed to work whichever way that question is eventually resolved — using the s. 128 alteration process together with whatever Australia Acts machinery and State requests specialist counsel advises, on the model of the coordinated approach used for the 1999 republic proposal. A reform that depends on winning a contested historical argument can be defeated by losing it. This one cannot.

The defensible reform. The High Court's own reasoning is the lever. If the Constitution's authority genuinely rests on the Australian people, then the honest completion of that logic is to have the Australian people actually enact it. **Repatriation**: a constitutional convention produces a consolidated Australian constitutional instrument — incorporating the existing Constitution as amended, resolving the covering clauses, and absorbing the Australia Acts 1986 and the Statute of Westminster — which is then put to the people for ratification under s.128 and enacted as an Australian instrument deriving authority from that vote alone.

There is precedent, and it is worth describing accurately rather than conveniently. Ireland's 1937 Constitution replaced an instrument of imperial origin by popular enactment and without any voidness claim — though it did so by a route that departed from the amendment procedure in the 1922 instrument, and some scholars describe that as a legal break rather than a continuation. Canada's 1982 patriation solved a related but distinct problem: Canada had no domestic amending formula at all, which is not Australia's difficulty. Neither is a template. What both show is that a country can bring its founding instrument home, by popular process, without the state collapsing. Australia is the last major Westminster federation that has not completed the step.

Repatriation also cleanly resolves the archival questions this project has pursued for years — the trust territory definition in the Nationality and Citizenship Act 1948, the Royal Powers Act 1953 sequence, the status of the Letters Patent — not by litigating each one, but by superseding the

entire contested foundation with an uncontested one. Whatever ambiguity exists in the 1943–1953 record becomes historically important but legally moot the day the people enact their own instrument.

Pillar 2 — Land: radical title and custodianship

The problem. Since Mabo (No 2) (1992), the settled position is that on acquisition of sovereignty the Crown took not full ownership of the continent but **radical title** — the underlying title that functions as the technical postulate of the doctrine of tenure. Every freehold and leasehold estate in Australia is granted out of radical title; native title survives as a burden upon it; land without an owner escheats back to it. It is the root of the entire tenure system, and it is vested in the Crown — the same Crown whose constitutional character the repatriation in Pillar 1 resolves. Repatriation therefore forces the question rather than permitting it to be deferred: when the Crown ceases to be the frame, where does ultimate title vest? Leaving the answer implied would reproduce, in the new instrument, the exact structural vulnerability this project's research has documented in the old one — an ultimate title held above the people rather than for them.

The design.

> Land title structure — current Crown tenure versus the proposed express trust
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The structural change in one view: nothing in the right-hand panel moves except the top of the chain and the entrenchment of what was previously revocable. Grants, registration, and every existing estate operate exactly as before.

Ultimate title vests in the Commonwealth, in express trust for the people. The repatriated instrument provides that the ultimate title to the lands and waters of Australia is held by the Commonwealth (the polity) and the States **in trust for the people of Australia**. "Commonwealth" here carries its true and original meaning — the *common wealth*, the body of the people itself — and the instrument defines the term expressly so that it can never be read down to mean merely the federal executive of the day. This converts the current implied and contested trust architecture into an express, entrenched one, removes the executive Crown as the holder of the root of tenure, and changes nothing in the day-to-day operation of land law: grants continue to issue from the Commonwealth, escheat runs to the Commonwealth in trust subject to the custodianship interests below, and the Torrens registers continue untouched, because Torrens is statutory machinery indifferent to who holds the root title.

An entrenched custodianship clause — in the body of the instrument, not the preamble. Aboriginal and Torres Strait Islander peoples are recognised as the **original and continuing custodians** of the lands and waters of Australia, whose custodianship under their own laws and customs preceded the acquisition of sovereignty and was never extinguished as a relationship of care and responsibility. Preamble-only recognition is what failed in 1999 precisely because it was visibly weightless; a body clause carries legal consequence, defined below.

Why the custodians do not hold radical title itself. The intuitive design — vest radical title in Indigenous peoples as grantor, with existing tenures preserved — fails on its own mechanics. The holder of radical title is the source of every future grant and the destination of every escheat. Vesting it in an Indigenous entity therefore either confers real power over all future land dealings, which no referendum in this country would survive, or is drafted as purely nominal, which is tokenism that still unsettles every landholder in the country while giving custodians nothing. It also requires inventing a single national Indigenous title-holding entity

where none exists — there are hundreds of nations, each with their own law — reproducing the structural argument that defeated the Voice. The stronger position is that title flows from the Commonwealth (the polity) while custodianship is entrenched as a substantive recognised relationship. Recognition with content, without a choke point.

What custodianship means with teeth. Three concrete consequences, none of which touch any registered estate. First, **native title is entrenched**: under current law native title is a common law and statutory right extinguishable by ordinary legislation, and entrenchment beyond the reach of the parliament of the day is a genuine legal upgrade on the present position, not a gesture. Second, **unallocated public land** — the former unallocated Crown land, a vast share of the continent — is held by the Commonwealth (the polity) subject to custodianship interests, with joint management as the default arrangement. Third, **cultural heritage protection** acquires constitutional footing rather than depending on state statutes of demonstrated weakness. Every existing freehold, leasehold, and registered interest is expressly confirmed and continued by the instrument; the clause is drafted so that no current title is diminished by a word of it.

What entrenchment does and does not do to the future act regime. This is the question every pastoral, mining and infrastructure interest will ask first, and it deserves a direct answer rather than silence.

Entrenchment sets a **floor, not a freeze**. The future act regime under Part 2 of the *Native Title Act 1993* — the validity provisions, the right to negotiate, Indigenous Land Use Agreements, the six-month negotiation period and arbitral determination where agreement is not reached — continues to operate as ordinary legislation, and Parliament retains full power to amend it. Projects proceed on the same timetables, through the same processes, with the same certainty of outcome as today. Nothing in this pillar lengthens an approval, adds a veto, or invalidates an act already done.

What entrenchment removes is the power to **extinguish native title wholesale by ordinary statute**. That power has been used: following *Wik* (1996), the 1998 amendments confirmed the validity of past acts and substantially confined the right to negotiate — a legislature adjusting a recognised property right of one group by simple majority in a way it would never contemplate for freehold. Three consequences follow from closing that door. Native title survives as a recognised interest regardless of the parliament of the day. The right to negotiate cannot be abolished outright, though its terms remain amendable. And the just-terms protection is extended to reach State acts, which is where the real remaining gap lies — see below.

An express trust is not a metaphor, and the instrument must say what it means by one. This is the single place in the framework where a duty is created rather than an existing one better enforced, and it deserves to be stated plainly rather than left to be discovered later. A trustee at general law owes real fiduciary obligations: loyalty, no conflict between duty and interest, no unauthorised profit, and a duty to account to the beneficiaries. If the ultimate title to Australia is held by the Commonwealth and the States on an express trust for the people, then on the ordinary meaning of those words every Australian is a beneficiary and every government is a trustee.

Three questions follow, and the drafting must answer all three.

Is the trust justiciable, and by whom? Comparable "held for the people" language has often been treated by courts as a political trust — a statement of the purpose of public power, enforceable at the ballot box rather than in a courtroom. If that is the intended reading, the instrument should say so. If instead the trust is meant to be enforceable, the instrument must define standing, because a rule allowing any one of eighteen million beneficiaries to challenge any land dealing would make ordinary land administration unworkable. The workable middle is a defined class of applicants and a defined class of decisions — dealings with unallocated public land, and dealings affecting custodianship or native title interests — reviewable on the same public-law grounds that already govern administrative decisions.

What are the trustee's duties, concretely? At minimum: that ultimate title is not alienable in a way that defeats the trust; that dealings with unallocated public land are made for a public purpose and recorded; and that the custodianship and native title interests recognised by this pillar are accounted for. Not a general fiduciary duty over the whole of government — that would be both unprecedented and unadministrable — but a specific duty attached to a specific asset.

Does it bind the States? It has to, because the States hold the radical title to most of the continent. This is the same State-binding requirement that appears in Pillar 5 and for the same reason: a duty that reaches only the Commonwealth would not reach the government that actually administers the land.

Drafted well, this is the strongest accountability mechanism in the framework. Drafted loosely, it is either unenforceable rhetoric or an open invitation to litigate every ordinary land dealing. It belongs on the list of questions requiring specialist opinion before a convention sits, not after.

What the High Court has since confirmed, and what it leaves open. In *Commonwealth v Yunupingu* (2025) the High Court held that native title is property for the purposes of s.51(xxxi), that extinguishment of native title by the Commonwealth is an acquisition of property, and that the territories power in s.122 cannot support an acquisition otherwise than on just terms. That is a substantial part of this pillar's argument delivered by the Court itself, and this framework is stronger for saying so plainly rather than claiming to invent protection that already exists.

But s.51(xxxi) binds the Commonwealth. It does not bind the States — and the States are where the great bulk of land administration, and of extinguishment, actually happens. Entrenching custodianship and native title in a repatriated instrument therefore does two things the current position does not: it extends just-terms protection to State acts affecting native title, and it places the protection beyond ordinary legislative reach rather than leaving it to the composition of a future Court.

That is the whole of it. Native title is treated as property is treated: adjustable in its regulation, not erasable at will. A pastoralist's lease is not vulnerable to legislative extinguishment and neither, after this pillar, is a native title determination. The certainty runs both ways, which is precisely the argument for it.

On language. The clause deliberately uses *custodian* and *guardian* and deliberately avoids *sovereign*. This is not evasion; it is precision twice over. "Sovereign" in Australian constitutional usage means supreme ruler over subjects — the exact relationship this entire framework exists to dismantle — and after years of that word being brutalised in public discourse, no formulation containing it can carry a double majority. More importantly, custodianship is the truer

description of the relationship most traditional owner groups themselves articulate: responsibility for country rather than dominion over it. One honesty note this framework carries openly: some Indigenous nations assert continuing, unceded sovereignty and will regard custodianship language as insufficient. This instrument cannot settle that assertion and does not pretend to; what it offers is the strongest recognition ever entrenched in Australian law, with the Pillar 3 popular initiative leaving the conversation permanently open rather than closed. Language that brings people in on both sides of a wound is the only language a referendum can be written in.

Pillar 3 — The popular initiative

The grievance. Section 128 gives the amendment power to the people — but only Parliament can initiate. Every referendum question ever put to Australians was chosen by the politicians whose power it might constrain. Electors have never been asked whether they should be able to start a referendum themselves. The people hold a veto but not a pen.

The reform. Amend section 128 to add a **popular initiative** pathway alongside the parliamentary one, on the Swiss model — the name is taken directly from the Swiss instrument (*Volksinitiative*, the people's initiative), and section 128 already supplies the operative word for who votes: **electors**.

A proposed constitutional amendment supported by a defined threshold of enrolled electors — the Swiss federal threshold is 100,000 valid signatures within 18 months, which scaled to Australian enrolment gives roughly **315,000 verified signatures**, with the same 18-month collection window — proceeds to a referendum without requiring parliamentary approval. The double majority requirement (national majority plus a majority of states) is retained in full. That safeguard is what has made section 128 conservative, and keeping it answers the objection that popular initiation opens the door to rash change: any proposal still has to convince a majority of voters in a majority of states, the hardest ratification test in the democratic world.

Drafting support and constitutional compliance review would be provided by an independent office (a Referendum Council, established under the new instrument) so that initiative proposals arrive at the ballot in legally coherent form — a lesson from the Swiss system, where the Federal Chancellery performs preliminary examination of initiative texts.

A note on words. This framework speaks of *the people* and, where mechanical precision is needed, of *electors* — the Constitution's own word in section 128 itself. It avoids building anything on the word *citizen* not because the word is defective, but because a movement's vocabulary should never depend on a term currently being contested; and it deliberately does not adopt *national* as the substitute, because "national" is the signature vocabulary of the American state-national pseudolegal movement, and any Australian instrument using it would be read as aligned with that movement and dismissed accordingly. *The people* and *electors* are older than both fights and owned by neither.

This is the keystone pillar. Every other reform in this framework becomes self-correcting once it exists, because defects no longer depend on parliamentary self-interest for their repair.

IS THE THRESHOLD REACHABLE? THE AUSTRALIAN EVIDENCE.

The figures above are the argument. This section is the working behind them, set out separately so it can be checked without interrupting the case.

How the threshold was scaled. At the Swiss federal votes of 2025 the registered electorate was 5,618,325. The initiative threshold of 100,000 valid signatures is therefore 1.78 per cent of Swiss electors. The certified list for the 2023 Australian referendum recorded 17,671,784 electors. The same proportion of the Australian electorate is approximately 315,000. The facultative referendum threshold in Pillar 4, 50,000 signatures or 0.89 per cent, scales to approximately 157,000 on the same basis.

Why not a lower figure. An earlier draft of this framework proposed 200,000 to 250,000, which is 1.13 to 1.41 per cent — below the Swiss proportion rather than scaled from it. The Swiss experience argues against going lower. The threshold of 100,000 signatures today represents about 2 per cent of the electorate; the 50,000 required in 1891 represented about 8 per cent. As the real barrier fell, volume rose: initiatives averaged fewer than one a year between 1891 and 1970, more than two a year from the 1970s, and more than four a year since 2000. Switzerland responded by *raising* its thresholds — the optional referendum requirement went from 30,000 to 50,000 valid signatures in 1977, approved at a popular vote in September of that year, following population growth and the introduction of women's suffrage in 1971. The one country with a century of experience raised the bar when it got too low. Setting Australia's below the Swiss proportion would be the opposite move.

Have Australians ever produced numbers like that? Yes, and the record is instructive.

PETITION	YEAR	SIGNATURES	FORM	AGAINST A 315,000 THRESHOLD
Community pharmacy funding (Pharmacy Guild of Australia)	2014	1,210,471	Paper	3.8×
Royal commission into media diversity (Rudd)	2020	501,876	Electronic	1.6×
Declare a climate emergency	2019	404,538	Electronic	1.3×
Remove the goods and services tax from sanitary items	2018	104,441	Electronic	0.33×

The pharmacy petition is the largest ever received by the Australian Parliament. The Rudd petition is the largest electronic petition ever submitted, and it gathered more than 500,000 signatures in about four weeks — against a proposed collection window of eighteen months. This list is drawn from public reporting rather than a complete database extract, and the Parliament's own petitions records should be used to compile a definitive series before publication.

What that implies about calibration. Roughly three times in fifteen years, Australians have produced a petition that would have cleared a Swiss-proportional threshold. About once every five years is a defensible target: frequent enough that the mechanism is real, rare enough that it cannot be triggered casually. It also indicates who can clear it — an industry body with thousands of member businesses, or a former prime minister with national reach. That is a feature, and it is the answer to the objection that any determined crank could force a national vote.

One caveat that must be stated in the drafting. A parliamentary petition takes a name and an email address. A constitutional initiative would require *verified signatures of enrolled electors*, checked against the roll in the way Swiss communes verify signatures before the Federal Chancellery counts them. Attrition between raw and verified signatures will be

significant and is currently unmeasured in Australia, because nothing here has ever had to be verified. Any threshold this framework adopts must be expressed as valid signatures from enrolled electors, or the first serious critic will exploit the ambiguity. Even in Switzerland, with an eighteen-month window and long experience, 153 of 539 initiatives launched since 1891 — about 28 per cent — never reached the threshold at all.

And the closing argument is the Rudd petition itself. More than half a million Australians signed it. Two former prime ministers, one from each side of politics, publicly supported it. It was the largest electronic petition in the history of the Parliament. There is no requirement in Australia for a petition to be debated even if it reaches a given number of signatures, and no royal commission was established. A Senate committee inquiry was later initiated by the crossbench, which is a different instrument answering a different question.

Australians have already demonstrated that they can reach the threshold. What they have never had is a mechanism that makes reaching it mean anything.

Pillar 4 — Direct democracy machinery

The reform. The Swiss facultative (optional) referendum, adapted: any Act of Parliament may be challenged within a defined window — Switzerland uses 100 days and 50,000 valid signatures, which scales to roughly **157,000 verified signatures** on Australian enrolment — and if the threshold is met, the Act is suspended pending a national vote. The scaling, and the reasons for expressing it as verified signatures of enrolled electors, are set out at the end of Pillar 3. This single mechanism changes legislative behaviour more than any other reform in this document, because parliaments that know a law can be recalled by the people draft laws the people will accept. The Swiss call this the referendum's "shadow effect" and it does most of its work without a vote ever being held.

What cannot be suspended. A mechanism that allows *any* Act to be suspended on petition would put supply and rights already accrued under commenced legislation at risk, and an opponent will find that gap immediately. The design therefore carves out appropriation and supply legislation, which must continue so that government does not stop, and rights already accrued to individuals under an Act before challenge, which are preserved regardless of outcome. One further limit follows from Pillar 5: a popular vote determines whether an otherwise valid Act survives. It cannot validate an Act that is unconstitutional, because the entrenched rights sit above the referendum, not below it.

Emergency power is the hard case, and it gets a protected window rather than an exemption. An emergency measure that could be suspended on the day it commences is useless; a measure that cannot be reached at all is the problem this pillar exists to solve. The resolution is a short protected window — emergency legislation and emergency instruments commence immediately and cannot be challenged for a defined initial period, long enough to be effective and short enough that nobody can govern inside it. After that window they are reachable on the ordinary petition threshold, and they lapse automatically unless Parliament confirms them by recorded vote. Confirmation is the trigger, not the passage of time: an emergency that continues must be voted for by name, repeatedly, by people who face election.

And the mechanism reaches instruments, not only Acts. This is the point at which most recall mechanisms fail in practice. Almost nothing that directly affects people during an emergency is an Act of Parliament. It is delegated legislation — a determination, a direction, a declaration made by a minister or an official under powers an Act granted years earlier. Section 477 of the *Biosecurity Act 2015* permits the responsible Minister, during a declared human biosecurity emergency, to determine any requirement the Minister is satisfied is necessary. That is an extraordinarily wide power exercised by one person, and a recall mechanism limited to Acts would never touch it. Under this pillar, any instrument made under an Act is subject to the same petition, the same protected window, and the same confirmation requirement as the Act itself.

Voting cadence. A maximum of four national voting days per year, one per quarter, with all pending initiative and referendum questions bundled onto scheduled days. This is directly the Swiss practice. It keeps participation manageable, makes voting days civic rituals rather than disruptions, and prevents strategic scheduling of questions on obscure dates.

On the voting method. This framework deliberately does not propose blockchain or internet voting, and the document should say so plainly rather than hedge, because the evidence is not close. Switzerland — the most experienced direct-democracy state on earth and the natural model for everything else in this pillar — suspended its e-voting trials in 2019 after independent researchers demonstrated critical vulnerabilities in the Swiss Post system, and its cautious re-trials since have remained limited precisely because the security problem is unsolved. A voting system must not only be secure; every voter must be able to *verify* it is secure without trusting experts, and no electronic system yet achieves that. Paper ballots, hand-counted in public, with digital scrutiny tools layered on top for verification and audit, remain the gold standard. A reform movement whose central promise is restored trust cannot build its most important mechanism on infrastructure that requires trust in unauditable systems. If verifiable technology matures, the machinery can adopt it later; the machinery should not depend on it now.

Pillar 5 — An entrenched Bill of Rights

The grievance. Australia is the only Western democracy with neither a constitutional nor a national statutory bill of rights. The Constitution contains a handful of express rights (s.80 jury trial, s.116 religion, s.51(xxxi) just terms, s.117 residence discrimination) and most have been read narrowly, though not all — *Street v Queensland Bar Association* gave section 117 real work, and *Commonwealth v Yunupingu* has since given section 51(xxxi) more. Everything else — speech, assembly, privacy, due process, bodily autonomy — exists only as far as the parliament of the day tolerates it. The period from 2020 onward demonstrated to a large share of the population exactly how far that tolerance extends under pressure, and much of the current distrust dates from that demonstration.

The reform. An entrenched charter within the repatriated instrument, amendable only under s. 128 (including the popular initiative), covering at minimum: freedom of expression, assembly, and association; freedom of religion and conscience; due process, habeas corpus, and the entrenched jury floor from Pillar 7; freedom from arbitrary detention; privacy of person, home, and communications; property rights with just terms extended to the states; equality before the law; freedom of movement within and to and from the country; and bodily integrity and informed medical consent.

Bodily integrity, and who the charter binds. Two additions follow from the period after 2020, and both are drafting choices rather than new principles.

The first is that the charter should name **bodily integrity and informed medical consent** explicitly rather than leaving them to be read into privacy or liberty. A right that has to be inferred is a right that gets argued away at exactly the moment it matters.

The second is more important and easier to miss. **The charter must expressly bind the States.** This framework has now hit the same structural gap twice. In Pillar 2, section 51(xxxi) protects against Commonwealth acquisition of property but does not reach the States, which is where most land administration happens. Here the same gap is larger: the overwhelming majority of restrictions people experienced after 2020 were imposed under *State* public health legislation, not Commonwealth law. A charter that binds only the Commonwealth would leave the actual source of the grievance untouched. It must be drafted to bind every Australian government, at every level, or it addresses a problem nobody had.

The honest drafting fight. The genuine debate is not whether to have a charter but whether rights are expressed as near-absolutes on the American model or subject to a general limitation clause on the Canadian model (“subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”). The American model is stronger on paper and produces decades of definitional litigation; the Canadian model is more workable and gives judges a doorway that some parliaments have driven trucks through. This framework recommends a middle position: a small core of non-derogable rights (habeas corpus, freedom of conscience, freedom from torture, jury floor) expressed absolutely, with the remainder subject to a strict limitation clause requiring demonstrated necessity and proportionality — and, critically, with any legislative override subject to sunset and to the facultative referendum from Pillar 4, so the people themselves are the final judge of any claimed emergency. No override survives without the consent of the governed. That is the answer to both drafting camps.

Pillar 6 — Electoral and executive restructure

Correcting the diagnosis. The two-party lock is real, but it is not caused by preferential voting, and a document that blames the wrong instrument gets dismissed by every psephologist who reads it. Preferential voting is friendlier to minor parties than first-past-the-post — it lets voters support a minor party without wasting the ballot. The actual cause is **single-member electorates**: a party polling 15% nationally but nowhere near 50% in any one seat wins nothing. Australia already proves the alternative works, because the Senate, Tasmania's House of Assembly, and the ACT Assembly all use proportional representation and all sustain genuine multi-party competition.

The worked example — Flynn, 2022 and 2025. Flynn (Central Queensland) is the diagnosis in miniature. In 2022, seven candidates contested the seat: the LNP took 36.9% of primaries, Labor 33.5%, and everyone else — One Nation on 12.2%, United Australia, the Greens, two independents and the Great Australian Party — took 29.6% between them and won nothing. In 2025, nine candidates contested it. The share of the electorate voting for someone other than the two majors rose to 37.5%: One Nation 14.2%, People First 6.3%, the Greens 5.7%, Trumpet of Patriots 3.8%, Family First 2.5%, and two independents. Nearly four voters in ten declined both majors.

The LNP primary vote moved half a percentage point — 36.9% to 37.4% — and the seat became *safer*, the two-party margin widening from 53.8% to roughly 60%. Adding choices to the ballot changed nothing, because no mechanism existed by which 37.5% of an electorate could convert votes into representation. Note also what the two-party-preferred figure conceals: a 60–40 "result" between two parties who together attracted 62.5% of the primary vote. The remaining 37.5% did not choose that contest; they were sorted into it by a counting process so that the system could produce the binary number it requires.

Scaling up honestly — the five-division aggregate. It is tempting at this point to take Flynn's percentages and run them against a multi-member quota. That would be wrong, and it is worth saying why, because the same shortcut appears in a great deal of published electoral advocacy. A multi-member electorate is not one division with a lower threshold. It is several divisions merged, containing different voters in different proportions, and a party's share across the merged region is not its share in its strongest seat. Holding one division's percentages constant while changing the district magnitude produces a number that cannot be checked against anything.

So the figures below are the actual aggregate of five adjacent regional Queensland divisions at the 2025 election — Flynn, Capricornia, Dawson, Hinkler and Herbert. They are not all Central Queensland: Herbert is Townsville and Hinkler is Bundaberg and Hervey Bay. What they share is that each is a regional division held on a plurality — reconciling exactly to the AEC's declared formal totals.

	VOTES	SHARE	SEATS WON
Liberal National Party	203,129	**40.43%**	**5 of 5**
Australian Labor Party	138,482	27.56%	0
One Nation	59,085	11.76%	0

	VOTES	SHARE	SEATS WON
All other candidates	101,705	20.24%	0
Total formal	**502,401**	**100%**	**5**

Forty per cent of the vote returned one hundred per cent of the representation, and 59.57% of those electors hold no seat at all. That is the finding, and it needs no modelling — it is simply what the declared results say when five adjacent divisions are added together.

What a five-member count would do with the same ballots. The Droop quota for five seats is 83,734 votes, or 16.67%. On those aggregate primaries the Liberal National Party holds 2.426 quotas and elects two members immediately; Labor holds 1.654 and elects one. One Nation holds 0.706 quotas — **it does not reach quota on primaries, and would need preferences to fill the gap**, drawing on a remaining minor-party pool of 65,885 votes. AEC preference flow data from the same election is consistent with that being achievable: People First preferences in Flynn ran 81.07% to the Liberal National Party, Family First in Hinkler 70.01%, in Capricornia 67.72%, and Trumpet of Patriots between 60.59% and 63.16%. But a real Hare-Clark count requires ballot-level preference data across the merged region, which does not exist and cannot be constructed, so **the fifth seat is deliberately left uncalled here.**

The structural point does not depend on who wins it. The threshold falls from *beat everybody in your own division* to *one in six across the region*, and four of the five seats are determined by the arithmetic above rather than by the accident of where boundaries happen to fall. That also answers the fragmentation objection: fragmentation is only fatal under single-member electorates. Under a quota system, preferences perform the aggregation that the minor parties themselves could never negotiate.

The objection that will be loudest in a regional room: “you are handing the bush to the city.” It deserves the arithmetic rather than a reassurance, because the instinct behind it is sound. Merging divisions does pool country voters with provincial city voters, and anyone who has watched a council amalgamation knows how that can go.

Start with what the divisions actually are, on AEC figures for 2025.

DIVISION	ELECTORS	AREA (KM²)	AEC DEMOGRAPHIC RATING	MAIN CENTRE
Flynn	117,940	132,824	Rural and provincial	Gladstone, Emerald
Capricornia	115,175	90,903	Rural and provincial	Rockhampton
Dawson	117,233	14,630	Provincial and rural	Mackay, Whitsundays
Hinkler	127,816	3,504	Provincial and rural	Bundaberg, Hervey Bay
Herbert	121,315	946	Provincial	Townsville
Region	**599,479**	**242,807**		

Flynn covers one hundred and forty times the area of Herbert and has fewer electors. That comparison, on its own, is the clearest statement of the problem this pillar addresses. None of these divisions contains a capital city — Brisbane is Queensland's only one — but four contain a substantial provincial city, and Herbert's AEC rating is simply "provincial," meaning a majority of its enrolment sits inside a major provincial city. It is Townsville and its immediate surrounds.

Then the arithmetic, both ways. On a rough split of the region's electors — in the order of seventy per cent in provincial cities and coastal towns, thirty per cent dispersed across smaller towns and country — a dispersed rural constituency numbers around 180,000 electors against a five-member quota of roughly 100,000. That is about 1.8 quotas: one member comfortably, a second in contention. Under the present arrangement the same voters are a majority in roughly one division of five, and only narrowly. **Pooling helps a dispersed minority; it is being spread thin across five separate contests that hurts them.** That split is an estimate drawn from local government populations rather than from enrolment by locality, and it should be replaced with AEC enrolment data at statistical-area level before the figure is relied on publicly.

And the mechanism that does the real work is not the quota — it is Robson rotation. Under Hare-Clark a party does not field one candidate across a region; it fields five or six, and voters choose among them. Tasmanian parties field candidates from different towns precisely because voters sort them geographically. A grazier west of Emerald can vote for the Emerald candidate ahead of the Townsville one. Under single-member electorates that same voter receives whoever won a preselection and has no say at all in which part of the electorate the member comes from. The geographic tie is not weakened by this reform; it is moved from the party room to the ballot paper.

The alternative worth naming, because it is a genuinely different proposal. Regions need not follow the coast. An inland region — the western portion of Flynn, Maranoa, the western portion of Kennedy — drawn as a three-member region at a 25% quota would contain no provincial city at all. The threshold is higher and the seat count lower, but the constituency is wholly rural. Whether regions are drawn to mix coast and country or to separate them is a real design decision with real consequences, and this framework does not pretend it has been settled. It belongs to the convention, informed by submissions from the communities affected.

And magnitude is the lever, not a detail. A four-member region — the same five divisions without Herbert, 404,039 formal votes — has a quota of 20.00%, at which the Liberal National Party holds 1.920 quotas and One Nation would need 51.2% of the entire minor-party pool rather than 37.4%. Larger regions lower the threshold and weaken the local connection; smaller regions do the reverse. There is no arrangement that maximises both, and any honest proposal says so rather than choosing the magnitude that flatters its example.

The reform, lower house. Proportional representation through multi-member electorates — Hare-Clark on the Tasmanian model, with Robson rotation to neutralise ballot-order effects and no group voting tickets (Victoria's GVT system, and the sham-party manipulation it invites, is the documented cautionary tale). Electorates of five to seven members preserve local representation while ending the situation where 30% of the national vote can produce 60% of the seats.

The reform, executive. Replacement of the prime-ministerial executive with a **collegial Federal Council on the Swiss model**: seven councillors elected by a joint sitting of both houses at the start of each parliament, serving a fixed term coterminous with that parliament

and removable only by failure to be re-elected, each administering a portfolio, with the presidency rotating annually as a chairing role carrying no additional power. Decisions are collective; councillors publicly defend Council decisions regardless of personal position (the Swiss concordance principle). The effects are structural, not cosmetic: no single point of capture for lobbying or foreign influence, no leadership coups (Australia burned through six prime ministers between 2007 and 2018 under the current design), no cult of personality, and an executive that must permanently negotiate across party lines because no party controls it. Switzerland has run this design since 1848 through two world wars without a constitutional crisis.

The Governor-General’s position, and the reserve powers, are resolved within the repatriation instrument — the Council structure replaces the vice-regal executive function, ending by design the ambiguities around the Letters Patent and prerogative powers that this project’s research has documented, because the offices those ambiguities attach to cease to exist in their current form.

Pillar 7 — Judicial accountability

The grievance. A substantial number of Australians believe the courts answer to no one, that judicial misconduct has no remedy short of the near-impossible s.72 removal process, and that complaints about a judge are heard by that judge's colleagues. The grievance is real, it is documented in the Commonwealth's own law reform record, and this pillar rests on that record rather than on assertion.

The commonly proposed remedy — parallel "common law courts" staffed by citizens — is rejected here explicitly. Parallel tribunals have no enforcement power, no legitimacy, and a documented history of being vehicles for pseudolegal fraud. Oversight must sit above the courts within the system, not beside them outside it. What follows is not a novel proposal. It is a reform the Australian Law Reform Commission recommended, the Commonwealth Government accepted, and no one has delivered.

What has already been established.

In 2020 the Commonwealth Attorney-General referred to the ALRC the first comprehensive review in Australian history of the law on judicial impartiality and bias. The trigger was *Charisteas v Charisteas*: a trial judge and counsel for one party in a long-running family law matter had met for coffee and exchanged text messages during the proceedings, and the Full Court of the Family Court concluded this gave rise to no reasonable apprehension of bias. The High Court, unanimously, held that it did.

The ALRC reported in *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Report 138), tabled on 2 August 2022, drawing on consultation and survey work involving more than two thousand participants — judges, legal practitioners, litigants and court users. Its findings are worth stating precisely, because they cut both ways and the document is stronger for saying so.

The ALRC found that the substantive law on bias — the *Ebner* test — does not need to change, and that public confidence in Australian courts is comparatively high: trust in the courts ranked second among the institutions measured in the Australian Survey of Social Attitudes, and 76% of surveyed court users considered their proceedings had been handled fairly. Anyone claiming the judiciary is uniformly distrusted is arguing against the evidence.

But the same surveys found that 8% of court users had no confidence at all in the courts and the legal system, and a further 17% had very little — a quarter of the people who had actually been through the system. And on the structural question the ALRC was unambiguous. Existing mechanisms for raising allegations of bias were found not sufficient to maintain public confidence in the administration of justice. Under the *Courts Legislation Amendment (Judicial Complaints) Act 2012*, a complaint about a federal judge goes to the head of that judge's own jurisdiction, who may consult the judge, refer the matter on, or refer it to Parliament. Stakeholders told the ALRC this produces an inherent conflict of interest; the Australian Bar Association put it that the procedures lack the transparency public confidence depends on. Applications that a judge disqualify themselves are, at present, heard and decided by the judge whose impartiality is in question — a procedure the ALRC found has a chilling effect on the willingness of parties to bring them at all.

Recommendation 5 was that the Australian Government establish a federal judicial commission with complaints-handling and educative functions — a body independent of the courts, able to collect data on the source and nature of complaints and to identify systemic issues. On 29 September 2022 the Government responded, agreeing in principle, and the Attorney-General's Department subsequently ran a scoping consultation on its design.

Four years on, the commission does not exist. That is the fact this pillar turns on. This is not a fringe demand or an untested idea: it is a recommendation of the Commonwealth's own law reform body, accepted in principle by the Commonwealth Government, consulted upon, and then left undone. Meanwhile independent judicial complaints bodies operate in New South Wales, Victoria, South Australia, Tasmania, the Northern Territory and the Australian Capital Territory. Western Australia and Queensland have considered the question without legislating. **The Commonwealth is behind its own states on judicial accountability, by its own admission, on its own timetable.**

The reform.

Establish the Federal Judicial Commission — Recommendation 5, delivered. Independent of the courts, receiving and investigating complaints about federal judicial officers, collecting and publishing data on the volume, source and disposition of complaints, and referring matters warranting removal to Parliament. It does not overturn judgments; appeals do that. What it ends is the situation in which a court considers the conduct of its own members.

Implement the procedural recommendations the Government has not. The ALRC also recommended court-specific published guidelines on judicial disqualification, on the New Zealand model; a discretionary procedure to transfer disqualification applications to a different judge, with a streamlined appeal where transfer is refused; and that in multi-member courts, objections on bias grounds be decided by the court as a whole rather than the judge concerned. None of these require constitutional change or any diminution of judicial independence.

Transparent appointment — Recommendation 7. Published selection criteria and a public call for expressions of interest for federal judicial appointments, together with the collection and reporting of judicial diversity statistics (Recommendation 8). The Government supported both. Neither has been delivered.

Add what the ALRC's terms of reference did not reach. Three further measures belong in the statutory package. **A graduated remedy scale** — the present system is all-or-nothing, offering removal under s.72 or informal counselling by a colleague and nothing between; public reprimand, mandatory training and formal findings on the record give the Commission proportionate responses that the existing framework simply lacks. **Jurisdiction over former judicial officers**, so that resignation or retirement cannot terminate an investigation and seal the file. **Published performance data** — appellate reversal rates, judgment delivery times, and annual reporting of suppression orders by justification category — because open justice is built by visibility rather than by assurance.

And two matters for the constitutional package. The jury floor: s.80 guarantees trial by jury for indictable Commonwealth offences, but the High Court has long held Parliament decides what is "indictable," which hollows the guarantee out. Legislate a floor now — offences carrying

more than a defined term attract the jury right regardless of how the charge is labelled — and entrench it under Pillar 5 so no future parliament can drop it. Open justice obligations should likewise be constitutionalised rather than left as ordinary statute.

Why this pillar leads the sequencing. Every element above except the two entrenchment items can be enacted by ordinary legislation tomorrow. It is the most winnable reform in this framework, because opposing it means opposing a recommendation the Government has already accepted. And it answers the “common law courts” constituency honestly: the demand underneath the slogan is that judges be accountable to the law they administer. That demand is legitimate, the Commonwealth’s own law reform body agreed with it in 2022, and the only thing missing is delivery.

Pillar 8 — Parliamentary integrity and the financial audit

The grievance. Distrust of sitting parliamentarians is at documented lows across every published measure of institutional trust. Claims of foreign interference are not fringe speculation: ASIO's own annual threat assessments state that foreign interference and espionage are at extreme levels and that attempts to cultivate Australian political figures are ongoing and real. The Foreign Influence Transparency Scheme Act 2018 exists precisely because Parliament itself concluded the risk was genuine. Meanwhile the existing integrity instruments are demonstrably weak: the parliamentary registers of interests are self-declared and effectively unaudited, the FITS register is barely enforced, and the National Anti-Corruption Commission has conducted almost all of its work behind closed doors and declined high-profile referrals.

The line this framework holds. A demand to forensically audit every sitting parliamentarian *because we distrust them* is, in legal form, a punishment ordered against named individuals without adjudication — and it would be struck down, rightly, under the same due-process principles this framework seeks to entrench in Pillar 5. You cannot found a constitution on due process and launch it with an act that denies due process. More practically: a purge framework hands every opponent the "witch hunt" headline and discredits the reform package it rides with. The defensible version is universal, prospective, procedural, and evidence-driven — and it is *more* powerful than a purge, because it never stops running.

The reform: a standing transparency and audit architecture.

Mandatory audited disclosure. Every parliamentarian, on nomination and annually, files a full financial disclosure — assets, liabilities, beneficial interests through any trust or corporate structure, income sources, and material foreign ties — under penalty of the same offences that apply to false statutory declarations. Disclosure of *beneficial* ownership is the teeth: the current registers are trivially defeated by trusts, and this project's own research into trust architecture shows exactly how. The disclosures are audited, not merely filed, by an independent Parliamentary Integrity Office with the powers and independence of the Auditor-General, on a rolling schedule plus risk-triggered and randomised audits.

A strengthened NACC. Public hearings as the default where corruption issues involve parliamentarians, reversing the current "exceptional circumstances" test; a mandatory public report on every referral concerning a sitting member, including reasons where investigation is declined; and jurisdiction expressly covering the interaction of parliamentary decisions with donors and foreign principals.

Donations: acknowledge what has already been done, and target what has not. The *Electoral Legislation Amendment (Electoral Reform) Act 2025* — the largest change to the *Commonwealth Electoral Act* in forty years — commences on 1 January 2027. It drops the disclosure threshold from around $17,300 to $5,000, introduces caps on both donations and electoral expenditure, and requires disclosure within 24 hours during the period around polling day. This framework does not propose weaker versions of reforms already legislated, and any document still calling for "faster disclosure" as though nothing has happened has not read the statute book. The remaining questions on donations are implementation ones — whether the

caps hold, whether enforcement is resourced, and how civil society advocacy is treated — and they are better assessed once the regime has operated through a full election cycle than pre-judged now.

The gap the 2027 reforms do not touch is the members themselves. Donations are about money going *to* politics. The registers of members' interests are about the financial position of the people already in it, and they remain self-declared, effectively unaudited, and straightforwardly defeated by trust and corporate structures. Nothing commencing in 2027 changes that. This is where the audit architecture above does its work, and it is the specific, demonstrable gap this pillar targets — not an institutional vacuum, but an unexamined register.

Lobbying and the revolving door. The Commonwealth lobbying register covers third-party lobbyists and not the in-house corporate and industry lobbying that makes up the larger share of access; ministerial diaries are not published federally as they are in some States; and post-office employment restrictions are enforced by convention rather than by anything with teeth. Each is a specific gap with a specific statutory fix.

Foreign interference transparency with enforcement. FITS registration actively policed with resourcing and published enforcement statistics; a ban on donations from foreign principals and their subsidiaries closed against the known workarounds; and cross-referencing of the parliamentary disclosures against the FITS register as a standing audit function, published annually.

Where evidence emerges, the pathway is criminal referral and prosecution under existing espionage, foreign interference, and corruption offences — which since 2018 are among the strongest in the democratic world and have barely been used. The claims of foreign administration and capture that circulate publicly are, under this architecture, finally *testable*: either the audits and registers surface documented ties, in which case the instrument beats the inference and prosecutions follow, or they do not, in which case the claims die the death unverified claims should. Either outcome rebuilds trust. Only the standing architecture delivers it; a one-off purge delivers neither.

Pillar 9 — A sovereign resource fund

The other eight pillars deal with constitutional and electoral architecture. This one deals with the financial architecture, and it exists because of a problem that can be stated in figures rather than argued.

The problem. Australia's resources are owned by the Crown on behalf of the community, and the community's return on them is collected as recurrent revenue and spent inside the budget cycle. It is never converted into a permanent national asset. Meanwhile, the money in the Australian economy is now created overwhelmingly by lending against housing: mortgages account for roughly $2.4 trillion of about $3.9 trillion in total credit, up from around 30 per cent in 1991. Physical currency is about 3 per cent of the money supply. A country whose money is created mainly against the collateral value of existing houses needs house prices to keep rising and wages to keep pace with the resulting debt. Since 2000 the Wage Price Index has compounded 123 per cent while capital city house price medians have risen between 249 and 561 per cent. Those two lines have already separated.

This pillar builds a source of national wealth that is not created by issuing credit against domestic property. Resource rent is the obvious candidate, because Australia already owns the asset and already collects a return on it — just badly, and just temporarily.

What Norway actually does, precisely. The Norwegian Parliament legislated the Government Pension Fund Global in 1990 and made the first transfer in 1996. Petroleum companies pay ordinary company tax plus a special petroleum tax, combining to a marginal rate of 78 per cent under the Petroleum Taxation Act, and the State holds direct equity in fields and infrastructure through the State's Direct Financial Interest. The entire net petroleum cash flow goes into the fund — around 686 billion kroner estimated for 2026 — and the fund is invested wholly outside the domestic economy. Parliament may draw only the expected real return, a fiscal rule set at 3 per cent since 2017. The fund reached roughly 21,268 billion kroner at the end of 2025, about four times Norway's gross domestic product.

The structurally important part is not the size. It is that cumulative investment returns since inception, about 13,457 billion kroner, now far exceed cumulative petroleum inflows of about 5,420 billion kroner. The fund has become self-sustaining. That transition, from resource-funded to return-funded, is the whole object of the exercise, and it takes about three decades.

What Australia does instead.

	NORWAY	AUSTRALIA
Primary capture	78 per cent marginal rate on petroleum profit, plus direct state equity	State royalties on production; Petroleum Resource Rent Tax on petroleum projects
Annual resource revenue	About 664 billion kroner (2025)	About $26.9 billion in state royalties (2023–24); about $1.98 billion Petroleum Resource Rent Tax at its peak
Where it goes	Entirely into the fund	Consolidated revenue, spent in the budget cycle

	NORWAY	AUSTRALIA
Sovereign fund	About US$2.27 trillion	Future Fund, $289.7 billion at 30 June 2026
Capitalised from	Resource rent	Telstra sale proceeds and surpluses, $60.5 billion in 2006
Further contributions	Continuous	**None since inception**

Three things follow. **The Future Fund is not a resource fund** — it was capitalised between 2006 and 2008 across nine contributions, to cover unfunded public sector superannuation liabilities, and has received none since; its growth is investment return, not accumulated national resource wealth. **Royalties are volatile recurrent revenue, not saved wealth** — they fell from $31.5 billion to $26.9 billion in a single year on a 13.4 per cent commodity price decline, and every dollar is spent. **The Petroleum Resource Rent Tax has underperformed for its entire life**, projected to raise about $6.9 billion across four years against liquefied natural gas exports that reached $92 billion in 2022–23 alone; the Callaghan review of 2016–17 and the Treasury gas transfer pricing review of 2023 both produced adjustments without materially changing the yield.

And a royalty is a poor instrument by design: levied on production rather than profit, it over-taxes marginal projects, under-taxes windfalls, and captures none of the upside in a boom.

The mechanism, in four parts. First, a genuine rent instrument — a profit-based resource rent charge on major projects, with royalties retained as a minimum-payment floor so no state is worse off in a downturn. Second, a legislated destination — revenue above the floor quarantined from consolidated revenue and transferred by operation of statute, not annual appropriation, because the failure mode of every Australian saving initiative is that saved money stays legally available to a future budget. Third, a spending rule — only the expected real return may be drawn, at a legislated percentage, published and visibly appropriated. Fourth, governance — the Future Fund Board of Guardians already manages seven funds under separate legislated mandates; this would be an eighth, with its own Act and, critically, its own contribution rule, which the Future Fund has never had.

The real obstacle is federal, not economic. Onshore minerals are vested in the Crown in right of each State under State legislation — the *Mineral Resources Act 1989* in Queensland, the *Mining Act 1978* in Western Australia, the *Mining Act 1992* in New South Wales. Offshore petroleum beyond coastal waters falls to the Commonwealth, following the *Seas and Submerged Lands Act 1973* and the Seas and Submerged Lands Case of 1975. That split explains the entire Australian pattern: the Commonwealth's only rent instrument applies to the only resource the Commonwealth controls, while the bulk of Australia's resource value is onshore iron ore, coal, bauxite, lithium and gas in which the Commonwealth has no proprietary interest.

Section 51(ii) confers the taxation power but forbids discrimination between States, and section 99 forbids preference — so a charge falling mostly on Western Australia and Queensland invites challenge, though the orthodox position is that a uniform law of general application survives an uneven practical incidence. Section 96 is the stronger and more cooperative lever: grants to a State on such terms as Parliament thinks fit, which makes a Commonwealth grant conditional on a State establishing its own fund constitutionally uncontroversial. Section 90 gives the

Commonwealth exclusive excise power, but State royalties have consistently been held not to be excises because they are consideration for taking State property — a distinction any redesign must respect.

The precedent that must not be repeated. The Minerals Resource Rent Tax commenced on 1 July 2012 and was repealed in 2014, having raised a negligible fraction of forecast revenue. Its central design failure was allowing a full credit for State royalties, so States could raise their royalty rates at direct Commonwealth expense and at no cost to themselves. The Commonwealth built an instrument whose yield its counterparties could set to zero. The federal financial interaction must be resolved before the rate is set, not after.

Two structures work. **State-level funds, Commonwealth-encouraged** — each State legislates its own fund and rent charge above a royalty floor, with section 96 grants making participation attractive. Constitutionally clean, politically slow, produces several funds rather than one. Or **a negotiated intergovernmental agreement** on the model used for the goods and services tax, establishing a single national fund with legislated State entitlements. Better economics; requires unanimity, which is where it will be tested. The first is more likely to happen.

What this pillar does not propose. It does not propose backing the currency with mineral resources. In-ground resources are not a stock of value — a resource estimated under the JORC Code and valued under the VALMIN Code is a discounted cash flow, so iron ore at $180 a tonne and at $60 a tonne produce entirely different “backing,” and a currency backed that way would lose half its backing in a Chinese downturn, precisely when stability matters most. A commodity standard also requires redeemability, and no holder of Australian currency can be delivered a tonne of unmined ore. And the minerals belong to the States, which raises a federal proprietary question the backing proposal does not answer. Nor does this pillar propose a monetary reset. It changes how existing, already-collected revenue is captured and held. It requires no new monetary theory and no new institution beyond one enabling Act.

Honest limits. The disanalogy with Norway is real: Norway captures offshore petroleum under exclusive national jurisdiction, one commodity, one legal owner, 5.5 million people. Australia’s resources are onshore, spread across many commodities, owned by six States and two Territories, with five times the population. The Norwegian per-capita outcome is not reproducible here and should not be promised. Foreign ownership cuts both ways — the Centre for Independent Studies argues Australia’s royalty model is efficient *because* production-based royalties are collected regardless of where profit is booked, whereas profits-based taxes are exposed to transfer pricing, and the Petroleum Resource Rent Tax record supports that. The royalty floor in the first component is the answer, but the objection deserves meeting rather than dismissing. Timing is unfavourable: Norway began saving near the start of its production profile, and Australia is decades into iron ore and coal. Offshore investment will be politically difficult, since a fund invested abroad will face immediate pressure to invest at home. And sovereign risk is a genuine cost, not just industry rhetoric — design should apply prospectively.

What it would change. A fund receiving $10 billion a year, well under half the current royalty take, compounding at a real 4 per cent, would hold roughly $250 billion in real terms after twenty years and about $620 billion after thirty. That is not Norwegian scale. It is a permanent national asset generating $15 to $20 billion a year in perpetuity, funded by resource rent rather

than by taxing wages or by creating credit against a housing valuation that cannot be realised in aggregate. This pillar does not fix the credit structure. It builds the beginning of an alternative to it.

The $10 billion scenario is illustrative modelling, not a policy costing.

Transition — the fresh start

The new system is not implemented over the top of the current parliament, and does not need to be purged into existence either. The mechanism is the ordinary one used by every successful constitutional transition: **the repatriated instrument provides that upon ratification, the existing houses are dissolved and fresh elections are held under the new electoral system within a defined period**, with a caretaker convention governing the interim. Every member of the old parliament is free to stand under the new rules — before the new disclosure regime, under proportional representation, for a parliament that elects a collegial executive. The people, not a tribunal, decide who carries over. That is a fresh start with clean hands.

Sequencing

Stage one — statutory (achievable by a reform bloc in the current parliament, no referendum): Federal Judicial Commission; jury-floor legislation; open justice package; the Pillar 8 integrity architecture in its statutory form; and the Pillar 9 rent instrument and fund. These are winnable, they prove reform is real, and Pillar 8's audits begin generating public evidence immediately — which builds the case for everything that follows.

Pillar 9 carries a different kind of weight in this stage, and it is worth being explicit about why. Everything else in stage one is accountability work — necessary, and politically hard to oppose out loud, but it asks the public to be satisfied by better behaviour from institutions. Pillar 9 is the only proposal in the framework that produces a tangible national asset, and it is the only one a government could campaign on rather than merely concede. It also carries the longest lead time of anything here: on the Norwegian timetable a fund takes about three decades to become self-sustaining, which means the cost of delay is measured in compounding years rather than parliamentary terms. Its federal negotiation should therefore begin alongside stage one rather than after it.

Stage two — the convention: an elected constitutional convention (delegates chosen by proportional ballot, sitting parliamentarians ineligible) drafts the repatriated instrument incorporating Pillars 1 through 6 — including the Pillar 2 resolution of radical title and custodianship — and entrenching Pillar 8.

Stage three — ratification: the package is put under s.128, with the double majority as the test of consent. On success: dissolution, fresh elections, first sitting of the new parliament, election of the first Federal Council.

Objections, answered in advance

“This is too radical.” Every mechanism proposed is currently operating in a stable Western democracy — most of them in Switzerland, several already in Australian states. Nothing here is untested.

“This is not radical enough.” It is the maximum reform achievable without rupture — and rupture has a documented failure mode, visible in every state that has attempted it. The popular initiative in Pillar 3 means anything this framework gets wrong, the people can subsequently fix without asking permission. That is the real answer to the radicals: this framework doesn’t claim to be final, it claims to hand over the pen.

“The politicians will never allow it.” Stage one is designed to be electorally irresistible — opposing judicial accountability and financial transparency is not a survivable public position. Stage two and three bypass parliamentary self-interest by design: the convention excludes sitting members and s.128 puts the question to the people. The pathway is built so that at no point does the reform depend on incumbents voting against their own interests more than once.

“Trust is too far gone.” Then the choice is between a credible pathway and the alternatives — and the alternatives are apathy or rupture, both of which guarantee the outcome they fear. A visible, staged, achievable pathway is the only instrument that has ever converted distrust into participation. This document is that instrument.

Appendix — what changes, at a glance

	POSITION NOW	UNDER THIS FRAMEWORK	WHY
Source of the Constitution	An Act of the UK Parliament, 1900. Whether the covering clauses can be amended by Australians under s.128 is genuinely disputed	A consolidated Australian instrument, ratified by referendum, deriving authority from that vote alone	Several High Court justices have grounded the Constitution's continuing authority in the Australian people. This completes that logic, and works whichever way the covering-clause question resolves
Radical title	Held by the Crown. Implied trust, contested foundation	Held by the Commonwealth and the States in express trust for the people	Repatriation forces the question. An express trust removes the executive Crown from the root of tenure
Native title	Property under section 51(xxxi) since *Yunupingu*, and protected against State discrimination by the *Racial Discrimination Act 1975* — but still alterable by ordinary legislation, as the 1998 amendments demonstrated	Entrenched beyond ordinary statute. Future act regime, ILUAs and negotiation periods unchanged	Treats native title as property is treated: regulable, not erasable. Certainty runs both ways
Torrens registers	State statutory machinery	Unchanged. Every freehold, leasehold and registered interest expressly confirmed	Torrens is indifferent to who holds root title. No title is diminished by a word of this
Who starts a referendum	Parliament alone	Parliament, or a popular initiative on a signature threshold. Double majority retained	Electors have never been asked whether they should be able to start a referendum themselves. The people hold a veto but not a pen
Recalling legislation	No mechanism	Facultative referendum — an Act may be suspended and put to a vote on petition	The Swiss "shadow effect": most of the work happens without a vote ever being held
Rights protection	Four narrow express rights. Everything else exists at parliamentary tolerance	Entrenched charter; small non-derogable core; strict limitation clause; any override sunset and subject to recall	Australia is the only Western democracy with no national bill of rights

	POSITION NOW	UNDER THIS FRAMEWORK	WHY
Lower house	150 single-member electorates. In five adjacent regional Queensland divisions in 2025, 40.43% of the vote returned 100% of the seats	Multi-member regions counted by Hare-Clark. Quota of one vote in six in a five-member region, one in five in a four-member region	Single-member electorates, not preferential voting, are what convert a plurality into a monopoly
By-elections	Cost millions; electorate unrepresented for months	Countback from the original ballot papers	The replacement holds a mandate from the actual votes cast
Executive	Prime Minister and cabinet drawn from the majority; six PMs between 2007 and 2018	Seven-member Federal Council elected by joint sitting, presidency rotating annually as a chairing role	No single point of capture, no leadership spills, and confidence votes stop functioning as party discipline
Head of state	Governor-General exercising reserve powers that are nowhere defined in the Constitution	The Council. Assent becomes a duty of promulgation, not a discretion	Resolves the prerogative ambiguities by removing the office they attach to
Judicial oversight	Complaints go to the head of the judge's own jurisdiction under the 2012 Act; disqualification decided by the judge complained of; s.72 removal or nothing in between	Independent Federal Judicial Commission (ALRC Rec 5); graduated remedies; jurisdiction over retired judges; published court data; entrenched jury floor	The ALRC found existing mechanisms insufficient to maintain public confidence. Government agreed in principle in September 2022 and has not delivered
Members' finances	Self-declared registers, effectively unaudited, defeated by trust structures	Audited disclosure including beneficial ownership, on nomination and annually, under statutory declaration penalties	Disclosure of beneficial ownership is the teeth. Everything else is a filing exercise
Corruption investigation	NACC hearings private unless exceptional; referrals declined without published reasons	Public hearings the default for parliamentarians; mandatory public report on every referral	Trust in an integrity body is built by visibility, not assertion
Foreign interference	FITS register barely enforced. Donation rules substantially reformed by the Electoral Reform Act 2025, commencing 1 January 2027	Enforced registration with published statistics, cross-referenced annually against members' disclosures	Makes the claims of foreign capture testable. Either the register surfaces documented ties, or the claims die unverified

	POSITION NOW	UNDER THIS FRAMEWORK	WHY
The Crown in existing law	Load-bearing across thousands of Acts: Crown immunity, Crown in right of the Commonwealth and of each State, the tenurial root of Crown land	An express transposition and savings provision reading every reference to the Crown as the Commonwealth or the relevant State, with all rights, duties and immunities continuing	Repatriation is a change in where authority is sourced, not a discontinuity in the legal order
Duties of public officials	Statutory, under the Public Governance, Performance and Accountability Act 2013 and the Public Service Act 1999. No general fiduciary duty to the public at large	Unchanged in content. Pillars 7 and 8 change enforcement, not duty	The duties do not derive from the word “Crown” and are not disturbed by removing it
Treaty ratification	Pure executive power under section 61. Parliament has no formal role; the Joint Standing Committee on Treaties reviews but cannot bind	Parliamentary approval required before ratification	Entering a treaty enlarges Commonwealth legislative power under section 51(xxix). The people’s representatives never vote on the entry
Emergency powers	Emergency instruments made by a minister under powers granted years earlier, renewable by the executive three months at a time and beyond Parliament’s power to disallow	Short protected window, then reachable by petition; automatic lapse unless Parliament confirms by recorded vote	Almost nothing that affects people in an emergency is an Act. It is an instrument made under one
Resource revenue	State royalties on production plus a Petroleum Resource Rent Tax on petroleum project profits. Collected as recurrent revenue and spent in the budget cycle	A profit-based rent charge above a royalty floor, quarantined by statute into a dedicated fund	A royalty over-taxes marginal projects and under-taxes windfalls. It captures none of the upside in a boom
National savings	The Future Fund, capitalised between 2006 and 2008 with $60.5 billion and no contributions since	A sovereign resource fund with a legislated contribution rule and a spending rule limited to the real return	Norway’s fund now earns more than it receives. That transition takes about thirty years and Australia has not started
Removing the current parliament	No mechanism. Any new system would have to be installed over the top of the parliament it was meant to replace	Ratification dissolves both houses. Fresh elections under the new rules. Every sitting member free to stand	A fresh start with clean hands. The people do the filtering, not a tribunal

Working draft. Every factual claim herein is anchored to primary instruments cited in the project’s research base and should carry full citations before public release.

*The R.O.A.N Initiative is a trading name of **Average AF Pty Ltd** ACN 647 769 579, ABN 24 647 769 579.*