Governments often consult. They set up inquiries about new laws and policies on everything from taxation to climate change to how to reform the system of government itself. These processes rarely live up to the aim of giving the community a say; they typically turn into dialogues with experts and those with a stake in the outcome. Ordinary Australians, most of whom are completely divorced from how they are governed, rarely participate.

It is not meant to be this way. In his 1863 Gettysburg Address, US President Abraham Lincoln famously described democracy as being ‘government of the people, by the people, for the people.’ We seldom live up to the ideal of government ‘by the people’ and consequently Australians are typecast as apathetic, lazy and ignorant when it comes to showing an interest in government. After all, if they do not take part when given the opportunity, surely this indicates a lack the desire.

My experience demonstrates the opposite to be true. Australians do not lack the motivation to be involved; rather there are few real opportunities. Although political rhetoric often talks of ‘community engagement’, government makes little effort to move beyond those people already engaged, rarely expending the extra effort needed to reach the suburbs and regional and rural Australia.

My interest in public engagement lies in the area of reforming government. I believe that change is needed to improve our democracy, and that the process by which we bring this about should itself proceed by democratic means. I am sceptical about the capacity of any large reform to be successful unless it has been generated and owned by the people it is meant to serve. Of course it is easy to criticise community participation in government and law reform; the much harder task is to put good practice into action. My first opportunity to do so came when I was asked to chair the Victorian government’s community consultation on whether that State should be the first in Australia to have a bill or charter of rights. The process demonstrated that, if given an opportunity, Australians want to be involved in how they are governed and can be passionate about expressing their views. I even found that many self-described apathetic Australians became actively involved when given the chance.
The four-person Consultation Committee was given six months to consult before reporting back to the Attorney-General by November 30, 2005. When the Committee first met in April 2005, we quickly realised the enormous challenges involved in consulting with Victorians about their views on human rights and whether State law needed to be changed. These challenges included the alienation of many people from their system of law and government, the difficulties in getting young people to participate, and the need to work with government to ensure that recommendations were consistent with what could work in practice.

Another major challenge was the lack of knowledge about the most basic issues at the heart of the consultation. A 1987 survey conducted for the Constitutional Commission found that almost half the population was unaware that Australia has a written Constitution. Similarly, in 1994 the Civics Expert Group reported that only 18 per cent of Australians had some understanding of what it contained. Only a third felt reasonably well-informed about their rights and responsibilities as citizens. These findings were replicated by a 2006 nationwide survey of 1,001 voters by Roy Morgan Research commissioned by Amnesty International Australia on a range of issues relating to anti-terrorism legislation and human rights. Asked ‘how much do you know about your own human rights?’, only 5 per cent of people said ‘a great deal’, while over half said ‘a moderate amount’, close to a third ‘a little’ and 5 per cent ‘nothing’. Remarkably, well over half falsely said that Australian human rights were protected by a bill of rights. Only 13 per cent said this was not the case and a quarter indicated they were unsure.

This revealed even higher levels of factual error than earlier surveys and reflected the significant public attention on such matters since September 11, 2001 and false assumptions about the legal system including those drawn from popular American cop shows. Many Victorians said that they already had a bill of rights, and some said that they opposed change because there was no need for a second charter. Others talked about the rights in this fictitious bill of rights, particularly freedom of speech and even ‘taking the fifth’, a reference to the Fifth Amendment to the US Constitution which states that no-one ‘shall be compelled in any criminal case to be a witness against himself’.

To meet these challenges the Consultation Committee developed a grassroots process to give as many Victorians as possible a genuine say. This was very different from the way other inquiries normally operate. One major change lay in how we dealt with the media. We recognised that it was the nature of much of the media to try to sensationalise the issues by polarising debate around an issue like same-sex marriage or abortion. This would have attracted those with strong views, but turned off most ordinary Victorians. This did not meet our aspiration for a process of grassroots education and debate about a fundamental reform that could
cut across all areas of government. We were seeking participation at the community level, not just on the front pages of the newspapers or among the callers to talkback radio.

We sought media coverage to encourage people to meet with us, but the strategy was to meet with and listen to small groups in their communities and to work through local and peak community organisations. This involved long hours and many days on the road. We talked to community groups in Mildura, Indigenous people in Warrnambool, victims of crime and businesspeople in Melbourne, the Country Women’s Association in Gippsland and many more. We sought out people who knew little or nothing about human rights and who might be the most alienated from the political and legal system. We held up to four meetings per day, each typically lasting two hours. These were not open town hall meetings, but discussions with a committee member arranged through community organisations or as a result of information in the local media. A large part of the time was spent listening to their thoughts about the issues, followed by basic information they needed to respond. We directed the conversation to ten key questions we needed their help to answer, beginning with: ‘Is change needed in Victoria to better protect human rights?’ At the end of each meeting, we encouraged people to reflect on the discussion, to talk to their family, colleagues and friends and make a submission in writing or online. We promised to read every submission.

The key questions, as well as important background information, were set out in a fifty-two-page booklet the committee prepared within a few weeks of its formation. The booklet, entitled Have Your Say about Human Rights in Victoria provided information about issues of governance and law explained as accessibly as possible for a broad section of the community. Similar information was also set out on a website and in pamphlets for Indigenous people, those speaking other languages and young people in schools. The committee encouraged submissions by email and through an interactive online submission form on its website. We found that many people who would not have been prepared to come to community meetings, write letters to the Committee, or be involved in any government process were willing to provide their views on these questions, sometimes at great length, via electronic means. If I had my time again, I would have accepted submissions via SMS. People should be able to have their say using whatever medium they are most comfortable with to break down the barriers to their participation. For many young people, SMS is the obvious and easiest way to have a say.

The committee ran a parallel process of consultation with the Victorian Government. We met with the judiciary, members of parliament, independent agencies and senior executives of government departments, to inform them of the process and ensure their views were considered. The Department of Justice set up an inter-departmental committee to shadow our community process. As ideas emerged,
but before our report was written, departments had a chance to comment to ensure that our views were informed by current practice. This made a real and important difference with the experience and advice of government helping to produce outcomes that not only had broad community support, but which also could be implemented effectively and cheaply. This involvement also gave public servants a sense of ownership of the reform. It proved extremely successful – we held fifty-five community meetings in Victoria and seventy-five meetings with government, peak organisations and the like. A round table of academic and other experts from Australia and New Zealand provided advice on key legal questions.

All up, the Consultation Committee received 2,524 written submissions – most, in my assessment, from people who had never before made a written submission to any public process. These submissions, whether received via the internet, written on the back of a postcard or set out in a letter, was the largest number of submissions in Australia for a process that has looked at this issue. By comparison, the New South Wales Parliamentary Standing Committee on Law and Justice and considered a bill of rights for New South Wales over a much longer period from 2000–01 received only 141 submissions. After six months of listening to Victorians of all ages and backgrounds, it was clear that a substantial majority wanted their human rights to be better protected by the law. They did not want radical change, but supported reform to strengthen their democracy and system of government. Overall, 84 per cent of the people we talked to or received submissions from (94 per cent if petitions are included) said that they wanted the law to change to better protect their human rights.

Many wanted their human rights better protected to shield themselves and their families from the potential misuse of government power. For even more people, however, the desire for change reflected their aspiration to live in a society that strives for the values that they hold dear – equality, justice and a ‘fair go’ for all. The idea of a community based on a culture of values and human rights was one that we heard again and again. Victorians sought not just a new law, but a law that could help them participate in building a society in which government, parliament, the courts and citizens have an understanding of, and respect for, basic rights and responsibilities.

One of the many ways that community views had a direct impact was the inclusion of the term ‘responsibilities’ in the title of the Charter. For many people, responsibilities were a more powerful way of addressing community problems than what they perceived to be more individualistic conceptions of human rights. For example, some argued in favour of both a right to vote and a responsibility to cast a vote as already recognised in Australia’s system of compulsory voting. People across the community spoke positively about a document that recognised, even in symbolic terms, the interrelated nature of their human rights and responsibilities. The Victorian Charter of Human Rights and Responsibilities, so far as I am aware, is the first such instrument in the world that includes a direct reference to responsibilities in its title.
The consultation led to a 232-page report that made thirty-five recommendations. The report was full of quotes and stories from people who had taken the time to speak or write to us. Marg D’Arcy said she wrote: ‘… for the coming generation. A Human Rights Charter gives us the opportunity to develop a vision for how we want to see our future. I write it for my grandson, Tykeim Sol Rashid, who is two. He is at an age where he will happily sit in a hammock and sing with his grandmother, pick flowers to give to the people he loves, test his physical ability by jumping and skating … I want him never to be made to feel bad about who he is or his choices about how he lives his life as long as he respects and protects other people’s rights. It is for him and others like him that I am excited about the prospect of a … Charter for Victoria. I want him to know what his rights are and how he can expect to have them protected. The other side of that is that I want for him to know and respect the rights of others.’

The report, Rights, Responsibilities and Respect: Report of the Human Rights Consultation Committee, included a Draft Charter of Human Rights and Responsibilities prepared by the Victorian Chief Parliamentary Counsel, and was delivered at the end of November 2005. It was released less than a month later on December 20, 2005 when the Bracks Government accepted the central recommendation that the Victorian Parliament enact a charter of human rights and responsibilities. It said, however, that it needed time to work through the recommendations. The detail and implications of the Report then wended through government for five months before the Charter of Human Rights and Responsibilities Bill 2006, with only minor modifications from the report, went on to the Victorian Parliament and came into force on January 1, 2007 – with a twelve month delay for parts dealing with the role of the courts.

The Victorian inquiry was a successful community consultation in which people took part enthusiastically and in large numbers. Similar processes in recent years on better human rights protection have taken place in the ACT, Western Australia and Tasmania. They met with like success and demonstrate that the desire to participate resonates Australia-wide.

The latest opportunity comes in the form of the National Human Rights Consultation announced by the Rudd government on December 10, 2008. That process, a four-person panel chaired by Father Frank Brennan, has been given the job of asking the Australian community as a whole what rights they would like to see protected, whether they are sufficiently protected now and how Australia could do a better job. The panel has been given until the end of August 2009 to report and is open to submissions until June 15, 2009. The success of that process, and any meaningful change to the protection of human rights in Australia, will depend not only on the hard work of the committee and the quality of its analysis, but, critically, upon its ability to inspire and engage with Australians from all walks of life.