

## How are human rights enforced generally?

Just about every decision you, or anyone else, can make has the potential to affect someone else's rights...but not all decisions are of the same "weight". The decisions of government and other political, economic, cultural and social organisations, from clubs to companies, are far more complex than the decisions you make as an individual, with much more complicated motives. They have a much more substantial effect on a lot more people. They are "bigger pieces" in the jigsaw of Australia's ethical/legal infrastructure. For example:

- a government that orders people to stay at home in a COVID pandemic; or
- a company that releases the private information of its customers for reasons other than those it was collected for.

Importantly, there is a substantial power imbalance between government or other political, economic and social organisations and the people affected by their decisions. This means that carelessness by the agencies making those decisions can have inhumane consequences:

- An unemployed divorcee is denied access to public housing when she refuses to live in the apartment allocated to her because her young child is allergic to the carpet;
- A First Nations prisoner with severe mental illness and drug dependency is denied access to culture, education, friends and family in jail because it is easier to control him by locking him in solitary; or
- A disruptive student is banned from school – denying access to the only place where she can attend programs designed to manage her behavioural problems.

Countries like Australia that are subject to the family of UN human rights instruments have three key tasks in managing these complex decisions with substantial effects and major power imbalances:

- To make sure that all of the rules it makes through laws and regulations are passed through the filter of its human rights obligations;
- To make sure that its decision makers (eg, bureaucrats/public servants) pass their decisions through that human rights filter as well; and
- To make sure that people who feel their rights have been qualified or abused have a tribunal they can go to that evens out the power imbalance when their complaints are considered.

This is an immensely complicated process. In the same way that governments create an infrastructure of airports, roads and railways to manage transport, or companies create supply chain infrastructure to get goods and services to market, governments construct an ethical infrastructure to manage their human rights obligations.

Ethical infrastructure usually has two elements to it – the formal element, which deals largely with the legal consequences of breaching human rights and the informal element, which focusses on the social consequences of unethical behaviour.

The formal element of ethical infrastructure is the system of commissions, tribunals and courts as well as enforcement agencies like the police, which is designed to apply core values and principles consistently to all laws and regulations and to every decision arising from those laws and regulations.



The informal element covers unwritten conventions and the words and deeds of leaders. In other words it sets up an expectation that our leaders will do the right thing, and there is an infrastructure of ethical checks and balances in place that will hold them to account if they don't.

In countries like Australia that means we trust that our basic freedoms are adequately protected by the common law and by the good sense of executive government as checked by voters at elections and by Parliament at all other times.

Importantly, ethical infrastructure is what we rely on to ensure that, when decisions limit rights, there is a legitimate purpose for the limit, a rational connection between the limit and the purpose of the decision, and that the limit is proportional to the issue in question.

Going back to an example raised earlier. When a government limits your right to travel in a COVID pandemic, the purpose is to stop the spread of a potentially fatal disease that is easily transmitted, the rational connection between the limit and the purpose is that stopping travel stops the spread and the proportionality is the promise that the travel ban will last no longer than the threat offered by the pandemic.

The aim of ethical infrastructure is therefore to preserve society's integrity and coherence by making sure there are consequences for unethical behaviour, and to act as a shock absorber to cushion the effects of change.

In all advanced democracies and common law countries other than Australia, ethical infrastructure is underpinned by a human rights act or charter, or a bill of rights – for ethical infrastructure purposes they are all pretty much the same thing – spelling out in one place:

- the rights to be protected – usually drawn directly from the UN family of human rights instruments; and
- the reasons why they can be limited through government decision making – which might include emergencies, like pandemics or war, or because of the effect the decision might have on other rights

This ensures that all decision making is based on the same set of principles and rules, and that human rights are interpreted consistently across the jurisdiction.

Australia doesn't have a human rights act – which means that we have made what is already a very complicated piece of infrastructure even more complicated and even less transparent.

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