

THE ROLE OF A HUMAN RIGHTS ACT IN INTERNATIONAL RELATIONS

A Civil Liberties Australia SCOPING PAPER

Summary

A national Human Rights Act:

- Provides assurance to international partners that Australia is accountable for how it treats its citizens, which lowers the risk of domestic blowback in other countries from being associated with human rights abuses in Australia;
- Provides a clear, independent statement of the principles on which Australia will base its approach to international relations, obligations and priorities separate from the views of its allies and great powers; and
- Provides quality assurance and control over governance that generates leverage for smaller countries to ensure that Australia does not ignore the rights of their citizens in its decision making in larger fora.
- Facilitates trade as global markets increasingly link trade liberalisation to human rights compliance.

Who we really are globally

Australia is frequently described as a “middle power punching well above our weight.” While this is a comfortable, and flattering, assertion it is also highly contestable.

Of the 188 countries tracked by the World Bank, as of 2023 Australia was the 13th largest national economy by nominal GDP. The nation ranks just behind Italy and roughly on a par with Canada, Russia and South Korea. Australia's per-capita GDP is higher than that of the UK, Canada, Germany and France in terms of purchasing power parity.

Australia is the 21st largest goods exporter and 24th largest goods importer in the world. The Sydney stock exchange is the 16th largest in the world by capitalisation and five Australian universities are consistently in the top 100. We were fourth in the number of gold medals awarded at the 2024 Olympics.

To call Australia a “middle power” is only true in the most global of senses. In that context we are not a superpower but we do have a strong economy, advanced technology, and the potential for diplomatic influence. Traditionally middle powers have maximised their influence by supporting multilateralism and cooperative solutions to global and regional issues like security and economic development.

Australia has been an active participant in the WTO, the UN and in UN-specialised organisations like ICAO, ITU and IMO. Australia has also taken a leading role in seeking solutions to regional issues through developing fora for cooperation in organisations like APEC, the Quad and Trans-Pacific Partnership.

Middle powers also traditionally run policies of strategic ambiguity (as opposed to blind loyalty to certain powers or groupings) as it reduces their risk in conflicts between great powers. Australia has not chosen this role in the past but, as the bi-polar world of the cold war continues to break down, we may be forced to do so and think about what differentiates an ally from an acolyte.

Who we really are regionally

Regionally however, we are the superpower. Australia's GDP is roughly equal to all ASEAN economies combined other than Indonesia and far exceeds the combined value of all Pacific Island economies including New Zealand. We are also the largest development partner for Pacific Island countries (PICs). This has a sobering effect on how others in the region view Australia.

South East Asia has created an umbrella for its members' relations with Australia through ASEAN. Australia was ASEAN's first Dialogue Partner. The ASEAN, Australia, New Zealand Free Trade Agreement and the Comprehensive Strategic Relationship gives Australian companies access to ASEAN markets in exchange for ensuring that ASEAN priorities are accounted for in complex regional challenges involving Australia.

The growth in Chinese influence and Australia's reaction to it have left some PICs wondering whether they are sovereign nations or pawns in a larger geopolitical game with Australia acting as a proxy for US interests. PICs are also concerned that, on issues like climate change, when their interests are contrary to Australia's priorities in other global fora, their own local superpower will abandon them.

The elephant and the ant

While the PICs have attempted to create a regional equivalent to ASEAN in the Pacific Island Forum, where Australia enters as the equal to PIC members as a group, their principal concern is the same as an ant. How can you trust an elephant not to step on you, even by mistake?

So, two key issues facing Australia in the rapidly changing international environment are:

- How do we expand our options for multilateral cooperation and mitigate being seen as an acolyte in great power conflicts, convincing the world that we speak for ourselves; and
- How do we gain the trust of nations fearful that we might just step on them, inadvertently or otherwise, on the way to meeting other Australian priorities?

Who other states think we are

Resolving these issues has a lot to do with developing trust. Trust that what Australia says is what Australia thinks, and trust that we will account for the priorities of smaller nations when dealing with larger ones. A lack of trust is a growing problem for Australia internationally: the doubt and fear of an increasing gap between what we say as a nation and what we do.

The Northern Territory intervention and the status of Aboriginal Australians, Robodebt and our treatment of asylum seekers are seen as human rights breaches on a substantial scale. The world starts to suspect that Australia is less open, less tolerant, less fair than we claim to be.

World leaders and senior administration officials read that:

- We hold trials in secret and silently imprison citizens as well as bringing the full weight of the law to bear on journalists and lawyers who might embarrass us.
- We keep asylum seekers outside our jurisdiction so they cannot access what rights our law would otherwise provide, and we hide them from people who want to tell the truth about how we treat them.
- We abuse children we lock away in juvenile jail, and assume social security recipients are criminals, treating them accordingly.
- We increasingly accept that the poor deserve to be poor, homeless and disadvantaged.
- Our soldiers commit war crimes against unarmed civilians when serving overseas.
- We marginalise Australia's First Nations people, denying them their history and their culture, jailing them in unprecedented, disproportionate numbers and turning our backs on their offer of forgiveness and reconciliation.

Australians' usual response is that:

- These are uninformed criticisms of isolated acts arising in specific circumstances, that they are unrepresentative of the "real Australia," the land of mateship and the fair go, or that
- These issues can be resolved by more enlightened governments.

But the widely reported acts are real enough to those who suffer them and the rest of the world notices and draws its own conclusions about the value of Australian commitments in a variety of international fora, including our trade treaties.

Criticism of Australia's human rights record is regularly made by the UN as part of its Universal Periodic Review. Our failings are also used as leverage during multilateral discussions involving Australia according to diplomats, trade negotiators and UN representatives, with entrenched negative attitudes adversely affecting bilateral and regional trade negotiations.

The role of a human rights act in building international trust.

In contrast, a federal "no rights without remedy" Human Rights Act (HRA) as proposed by the Australian Human Rights Commission, recommended by the Parliamentary Joint Committee on Human Rights and being implemented by the ACT Government, helps form a positive platform to develop greater trust in international relations in three ways:

- It assures international partners that Australia is accountable for how it treats its citizens, lowering the risk of domestic blowback in other countries from being associated with human rights abuses in Australia;
- It clearly states the principles on which Australia will base its approach to international relations, obligations and priorities independent of the views of allies and great powers; and
- A HRA managing quality assurance and controlling administrative governance will reassure smaller countries that Australia takes the rights of their citizens into account in larger fora.

The indirect effect of a Human Rights Act on international relations – trade and the private sector

Corporate commitments have delivered the biggest gains in human rights for Australia over the past decade. The private sector has widely adopted an active campaign against modern slavery. Australian companies have benefited from the rise of the UN Global Compact, now the world's largest corporate sustainability initiative with over 11,383 participating business and 3,000 non-business organisations in 167 countries driving human rights and broader UN Sustainable Development goals.

While businesses participating in these initiatives are often accused of “rights washing,” there are three clear commercial motivations for doing it:

- Consistently applying human rights underpins a stable, rules based and sustainable international and domestic business environment.
- Adhering to human rights generates a global social licence to operate, enhances a corporate reputation and engages with social risk. By mitigating negative social impacts and creating shared value with stakeholders, businesses become welcome partners for communities.
- Companies increasingly need to meet human rights benchmarks to qualify for international trade agreements.

Australia includes human rights clauses in its trade agreements, and the practice of linking human rights with trade liberalisation has gained ground among many of our trade partners like the US, Canada, and particularly the European Union.

The EU aims to ensure that all of its external actions, trade policy included, should reflect its fundamental values as defined in its foundation treaties: democracy, human rights, and the rule of law. The EU ensures that bilaterally agreed human rights provisions also apply to its trade agreements and uses its leverage as the world's biggest trade bloc to promote respect for these rights together with its trade partners and impose sanctions where it thinks those rights have not been complied with.

It is in the direct business interest of any company trading in or with the EU to be able to demonstrate compliance with EU human rights provisions. A HRA is also increasingly a facilitator for states wanting to take advantage of a trade agreement with the EU, as it provides the EU with a clear statement of the human rights obligations entered into by its trading partners, making human rights-based trade sanctions easier to avoid.