Corporate fears about a human rights charter are unfounded. In fact, a charter would benefit business, says Edward Santow. Anne Suiskind reports.

Had Australia had a Charter of Human Rights, business would have been much less likely to now be facing the prospect of a second, expensive major industrial relations upheaval in just a few years, according to the Gilbert + Tobin Centre of Public Law.

Edward Santow, one of the authors of the centre's new paper on the subject, and a senior lecturer in law at the University of NSW, said it was a misconception that a charter would impact negatively on business. In fact, he and co-author Francine Johnson argue, there are many benefits for business in the kind of charter Australia is now considering.

Santow told LJ: "One impact of a human rights act is that it would require parliament and especially the government to consider the impact of draft legislation on human rights. It would require, where there is some kind of impingement, open debate - the government would have to justify its position publicly.

"Wherever one stands on the Coalition's and Labor's respective industrial relations policies, we are now left in the unsatisfactory position of two IR reforms in just a few short years. Such regulatory flux has onerous compliance costs on businesses which have to change IR practices and policies.

"If the original bill had been debated under a human rights act framework, then it is likely that the potential impact on the rights of Australian employees would have been more openly and thoroughly debated, and there is every likelihood that the final result would have been much more palatable to the various stakeholders.

"One of the benefits of a human rights act is that it encourages balanced law-making, and consideration of all potentially significant impacts."

"Almost everyone now accepts that we didn't get the IR reforms right the first time, but under a human rights act, there's a much better chance that we would have done so."

The same principle applied, Santow said, for example, with the Northern Territory intervention. While it was clear that significant problems needed to be addressed in the Territory, the legislative changes were introduced without appropriate consultation and without enough consideration given to their possible consequences.

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The model of the human rights act under consideration, he said, would impose obligations on public authorities - government agencies and departments - but not the private sector, with the exception of out-sourcing where corporations provide a service on behalf of government, such as in immigration detention centres.

Most human rights acts worldwide apply first and foremost to government, because the main obligation under international law is on the government itself to comply with human rights and to regulate the market and the nation more generally. On the whole, Santow said, Australian corporations were "pretty good and generally respectful" of human rights. If a company was not respectful, then people could shop elsewhere, whereas with government there was usually no other option.

Opting in
Research had shown that the introduction of a human rights act would impose no net cost for the vast majority of corporations. In fact, it would bring a number of benefits, Santow said.

Corporations are made up of individuals and businesses and are often partnerships - and a collection of individuals would be able, under the human rights act, to enforce rights like anyone else, as had been seen occurring overseas.

"Certainly it is not bad for business. Another thing that became clear in our research is that there is a direct correlation between a commitment to human rights and a company's long-term financial success, increased employee productivity and better relations with customers and shareholders."

"There's a really neat mechanism for a corporation that wants to show its human rights credentials in the ACT's Human Rights Act. It can essen-
A human rights charter would have led to a more open debate on industrial relations, says UNSW law lecturer Edward Santow.

tially opt into the human rights regime. It can undertake to be respectful of human rights in the way the Act requires.”

By way of illustration, he said, the Privacy Act, which deals with one particular right, has a similar mechanism and over 100 companies have signed up to it.

This means that companies must ensure their policies and practices comply with the Act, which often puts them at a competitive advantage in the market place and among prospective employees.

Human rights acts overseas have been shown to improve the overall regulatory framework, improving government decision-making and making government more transparent, accountable and responsible as a whole. Business, in turn regulated by government, benefits from a more stable, accountable regulatory environment.

For example, if the legal protection of free speech was strengthened, individual journalists would benefit in terms of what they could publish, as would media proprietors because they now operate in a global market.

Australian journalists and media owners at present faced real limitations on what they were able to say. They were disadvantaged in terms of investigative projects.

Santow, who used to work at Mallesons in the defamation area, said that, when compared with the US and the UK, Australia’s combination of strong defamation laws without an overarching principle of freedom of speech as a safety net, limited a lot of legitimate journalistic expression.

It also costs organisations like Fairfax and PBL an astronomical amount of money on defamation or defamation advice.

“It’s a balance. No right is absolute. This model we’re considering would give us the opportunity to strike a balance between competing rights, for example, freedom of speech and privacy.”

Disingenuous

The model that had crystallised as dominant in Australia, he said, was a compromise model.

As in many similar jurisdictions, judges would be given very limited power. The concern that it would upset the constitutional balance by giving unelected judges too much power ignored the very careful research and analysis in Australia and comparable jurisdictions like the UK and New Zealand which had models that got the balance right and did not give enormous power to judges.

It was, he said, also disingenuous to equate Australia’s proposed human rights charter with a US-style constitutional bill of rights which enshrined rights antithetical to Australian values — for example, the right to bear arms.

Our charter would be the result of an ordinary act of parliament, and could be amended, if necessary, like any other act of parliament.

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