

10 February 2025

Ms Danielle Wood
Chair, Productivity Commission
4 National Circuit
Barton ACT 2600, Australia
GPO Box 1428
Canberra City ACT 2601, Australia
By email: chair@pc.gov.au
CC: media@pc.gov.au

Dear Ms Wood,

Re: Grave Concerns regarding your Upcoming Appearance before the Australia Israeli Chamber of Commerce (AICC)

INTRODUCTION

1. We are a group of concerned Australian and international legal practitioners, lawyers, barristers, with expertise in international law and international human rights law (IHRL) who hold grave concerns about your upcoming appearance before the Australia Israeli Chamber of Commerce (**AICC**) on 13 February 2025 at an undisclosed location in the Sydney CBD, given:
 - a. the extant situation of widespread violations of international law in the Occupied Palestinian Territory (OPT) including and what the International Court of Justice (ICJ) has declared to be a “plausible” genocide being perpetrated by the State of Israel on the Palestinian population of Gaza and recent widespread military incursions on the Occupied West Bank since the negotiated so-called “ceasefire”, the obligations of yourself as Chair of the Productivity Commission and the Productivity Commission itself as a Commonwealth/federal government agency vis-à-vis Australia’s international legal obligations;
 - b. recent media reports that the AICC and its associated entity in Israel, the Israeli-Australia Chamber of Commerce (IACC) are funding illegal settlements in the Occupied Palestinian Territory (OPT) and are likely sponsored by or associated with companies involved in

perpetrating widespread war crimes and what the International Court of Justice (ICJ) has declared to be a “plausible” genocide in Gaza and the OPT such as Elbit Systems.¹

2. As an independent, taxpayer funded, statutory agency and your position as an officer of the Commonwealth and the express mandatory obligations in the [Productivity Commission Act 1998 \(Cth\)](#) (**PC Act**), namely section 8(1)(j) which provides **as follows**:

General policy guidelines for Commission

(1) In the performance of its functions, the Commission **must** have regard to the need:

[...]

- (i) to ensure that industry develops in a way that is ecologically sustainable; and
- (j) **for Australia to meet its international obligations and commitments.**

(Emphasis added).

we respectfully submit that it is entirely inappropriate for you to be lending your imprimatur and that of the Productivity Commission to promote and enrich an organisation that has reported links with gross violations of international law given Australia’s binding international legal obligations as detailed herein.


3. In the premises, and for the reasons detailed herein, we submit that you are under both a legal and moral obligation not to attend the AICC event.

MEDIA REPORTS ON THE AICC

4. On 13 February 2025, you are scheduled to present at the Australia Israeli Chamber of Commerce (**AICC**) as follows:²


¹ See: Y Aharon, “Investigation: elite Australian big business group monetises Israeli war machine”, *Michael West Media Independent Journalists* (2 January 2025). Available: <https://michaelwest.com.au/aicc-monetises-israeli-war-machine/>

² Available: <https://portal.aiccnsw.org.au/all-events/events-details/?id=f8dafce3-8f37-4ee4-8df1-f9e5d55845da>



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Australia's Productivity Challenge



Danielle Wood
Chair
Productivity
Commission

Join Chair of the Productivity Commission, **Danielle Wood** as she shares her focus on the recommendations and reform directives of the *Advancing Prosperity - FiveYear Productivity Inquiry*, the headwinds and challenges ahead, and what must be done to advance Australia's productivity growth.

OUR GUEST SPEAKER:

Danielle Wood commenced a 5-year term as Chair of the Productivity Commission on 13 November 2023.

Prior to joining the Commission, she was CEO of the Grattan Institute and Head of its Budgets and Government Program. During her time at Grattan, Danielle also held roles as a member of the Australian Government's Women's Economic Equality Taskforce, the Parliamentary Budget Office Expert Advisory Committee, the Jobs and Skills Australia Consultative Forum, and the Australia and New Zealand School of Government Research Committee.

Danielle previously worked in senior roles at the ACCC and at NERA Economic Consulting. She started her career as a graduate at the Productivity Commission.

Danielle holds an Honours degree in Economics from the University of Adelaide and two Masters degrees, one in Economics and one in Competition Law, from the University of Melbourne.

Danielle is an Honorary Fellow and former President of the Economic Society of Australia and a Research Fellow of the Women's Leadership Institute. She was the co-founder and first Chair of the Women in Economics Network.

She is currently an ex-officio member of the Australian Government's Competition Review Expert Advisory Panel.

REGISTRATION

[REGISTER NOW](#)

COST

Complimentary to AICC Members

WHEN

Thursday 13 February 2025
12.00 - 2.00pm



WHERE

Sydney CBD

CONTACT US

For more information, please contact
events@aicc.org.au

PARTNERS

5. However, it has recently been reported that the AICC and its associated entity in Israel, the Israeli-Australia Chamber of Commerce (IACC) are funding illegal settlements in the Occupied Palestinian Territory (OPT) and are associated with and sponsored by certain Israeli weapons manufacturers who are involved in the perpetration of war crimes, atrocities and what the International Court of Justice (ICJ) has declared to be a “plausible” genocide in Gaza and the OPT such as Elbit Systems, as follows:³

“Israel’s “innovation ecosystem will be supercharged” by the war, Dave Sharma said. Indeed, the bloody rubble of Gaza has been a human testing ground for drones and all manner of new military technologies.

Sharma, the Liberal Party senator and former ambassador to Israel, was addressing corporate moguls at the 2024 summit of the Australia-Israel Chamber of Commerce (AICC).

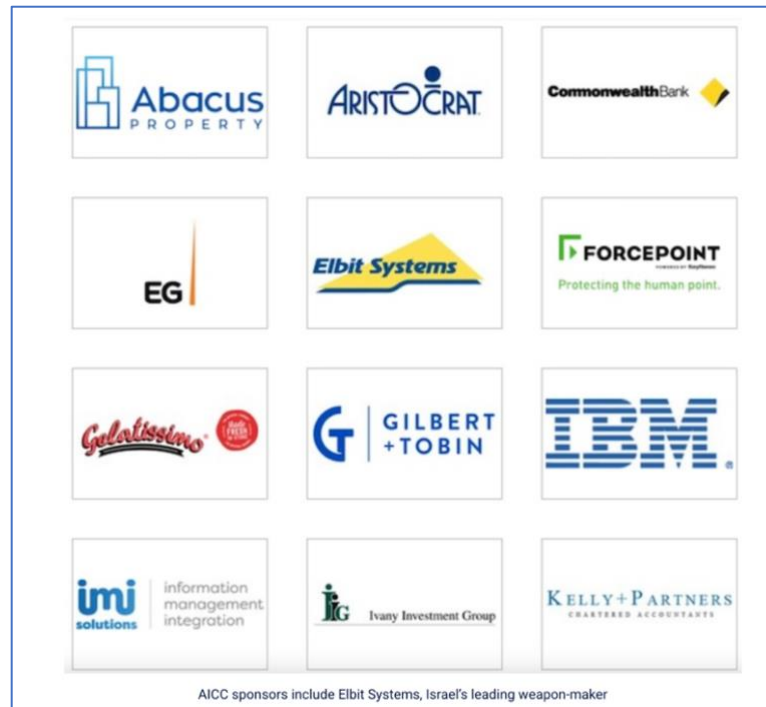
The Chamber is, perhaps with the exception of the Business Council of Australia, this country’s preeminent big business lobby; holding regular junkets, summits at lunches at ritzy five-star hotel ballrooms where business leaders deliver their speeches before packed audiences spending thousands of dollars per table.

It is the premier networking organisation for Israel in Australia and high-tech is at the vanguard of the lobbying. The ‘Start-Up Nation’ begins with the Israel Defence Force’s (IDF) intelligence units.

³ See: Y Aharon, “Investigation: elite Australian big business group monetises Israeli war machine”, *Michael West Media Independent Journalists* (2 January 2025). Available: <https://michaelwest.com.au/aicc-monetises-israeli-war-machine/>

While the soldiers are given unlimited access to the army's deep pockets and free reign to innovate, the subjects of the experiments are the Palestinian people. And the illegal military occupation of Palestinian land is being richly monetised.

The Chamber's role in this is to showcase military products on Australian shores where they are marketed as "[battle-hardened](#)".



...
Despite its sizeable media presence, finding public information about AICC proved difficult.

There are at least 9 AICC ABNs according to the ASIC database, but the profiles rarely interlink with ASIC Connect, nor do they show up easily in searches. Often their ASIC profile lacks basic compliance like a 'company extract'.

The Chamber's website disclosures also lack these details.

The majority of AICC businesses, including the NSW Division, are membership-based body corporates. So they are tax exempt.

The [AICC NSW Division](#) is one primary AICC entity. It's is formerly known as – and simply trades as – the name AICC, has three separate ACNs, and hosts the annual summit.

It is standard for business councils to list their members. The Business Council of Australia and Minerals Council of Australia do this, but the AICC does not.

Much of the Chamber's website has been scrubbed since the outbreak of the war in late 2023, specifically the defence industry sponsorships.

However, it would be unusual for a business council to be handing out free favours. The allure of membership and sponsorship of the Chamber includes invitations to its prestigious events and junkets, and an expectation that your business's interests will be represented and advanced.

...Israel's national identity is its military power. Its national exports are the tools of the military occupation. To a hammer, everything is a nail.

Funding illegal settlements

For example, the AICC's associate the Israel-Australia Chamber of Commerce (IACC) directs 35% of its funds to government districts with illegal settlements. Its chair is (ret) Major General Ido Nehushtan, a former commander of the Israeli Air Force, and currently engaged in the arms trade as president of Boeing Israel and a consultant for Elbit Systems.

According to the Israeli Ministry of Defence, the arms industry [makes up](#) 10% of Israeli exports.

A [submission](#) by the AICC to the Department of Foreign Affairs & Trade noted that a further 10% of exports are related to cybersecurity.

The submission urged a Free Trade Agreement with Israel, arguing it would “increase defence cooperation” and citing the example of the Australian-Israeli joint venture Rafael Varley Group's Spike LR2 missiles. When then-Minister of Defence Christopher Pyne addressed the AICC in 2018 he delivered a [comprehensive outline](#) of the bilateral arms trade, including the same Rafael Varley missiles. The former minister, who is known for his sense of humour, opened his speech with a joke: AICC chairperson Jillian Segal “always seems to be following me around”, gets “a lot of good information out of me”, and it is important to stay on her “good side”...

6. Therefore, the opaqueness of the AICC, its related entities (i.e. the IACC), its membership and associations with Israeli-based companies, military industries and entities, makes it very difficult, if not impossible, in the context of recent developments in international law detailed herein, to ascertain and ensure that the AICC is not more broadly linked to and/or involved in, the voluminous evidence of very serious violations of international law and international human rights law (and corresponding Australian domestic laws) without further accountability and transparency.
7. Notably, the work of Jewish Australian journalist Antony Loewenstein⁴ in publishing “The Palestine Laboratory - How Israel Exports The Technology Of Occupation Around The World” (Verso + Scribe 2023)⁵ and its related podcast (on Drop Site News)⁶ and recently released two part-documentary (on the Al-Jazeera Network)⁷, provides voluminous evidence and comprehensive reporting on Israel's military industrial complex using the OPT as a lethal testing ground for weaponry and surveillance technology against millions of innocent Palestinian civilians, that they then export around the world to despots and democracies and literally, figuratively and metaphorically “make a killing” from.

Serious Violations of International Law by the State of Israel and its Agents

8. On 19 July 2024, the ICJ delivered its Advisory Opinion in the matter of Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, which had been referred by the UN General Assembly on 30 December 2022 via UN General Assembly

⁴ See: <https://antonyloewenstein.com/>

⁵ See: <https://antonyloewenstein.com/books/the-palestine-laboratory-how-israel-exports-the-technology-of-occupation-around-the-world/>

⁶ See: <https://www.dropsiteneeds.com/p/the-palestine-laboratory-podcast> and <https://www.thepalestinelaboratorypodcast.com/>

⁷ See: <https://www.aljazeera.com/program/featured-documentaries/2025/1/30/the-palestine-laboratory-ep-1>

resolution A/RES/77/247 in which, referring to Article 65 of the Statute of the Court, it requested the ICJ to give an advisory opinion on the following questions:

“(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?”

“(b) How do the policies and practices of Israel referred to . . . above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”

9. In its Advisory Opinion, the ICJ responded to the questions posed by the General Assembly by concluding that:⁸

- (a) **the State of Israel’s continued presence in the Occupied Palestinian Territory is unlawful;**
- (b) **the State of Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible;**
- (c) **the State of Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from the Occupied Palestinian Territory;**
- (d) **the State of Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory;**
- (e) **all States are under an obligation not to recognise as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory;**
- (f) **international organizations, including the United Nations, are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory; and**
- (g) **the United Nations, and especially the General Assembly, which requested the opinion, and the Security Council, should consider the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory.**
(Emphasis added).

10. As you would also be aware, the State of Israel is subject to proceedings at the International Court of Justice (ICJ) regarding allegations of genocide brought by the Republic of South Africa⁹ and now joined by the following countries:

- (i) **Nicaragua:** filed an application to join on 8 February 2024
- (ii) **Belgium:** filed an application to join on 11 March 2024
- (iii) **Colombia:** filed a declaration of intervention on 5 April 2024
- (iv) **Turkey:** filed a declaration of intervention on 1 May 2024
- (v) **Libya:** filed an application to join on 10 May 2024
- (vi) **Egypt:** filed a declaration of intervention on 12 May 2024
- (vii) **Maldives:** filed a declaration of intervention on 13 May 2024
- (viii) **Mexico:** filed an application to join on 24 May 2024
- (ix) **Ireland:** filed a declaration of intervention on 28 May 2024
- (x) **Chile:** filed a declaration of intervention on 2 June 2024
- (xi) **Palestine:** filed an application to join on 3 June 2024
- (xii) **Spain:** filed a declaration of intervention on 6 June 2024
- (xiii) **Bolivia:** filed a declaration of intervention on 9 October 2024

⁸ See: <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf> and <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-pre-01-00-en.pdf>

⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v. Israel*) (General List No. 192). Available: <https://www.icj-cij.org/case/192>

11. On 26 January 2024, the ICJ delivered an order for provisional measures and its reasons for decision which relevantly included the following findings:

66. *In view of the fundamental values sought to be protected by the Genocide Convention, the Court considers that the plausible rights in question in these proceedings, namely the right of Palestinians in the Gaza Strip to be protected from acts of genocide and related prohibited acts identified in Article III of the Genocide Convention and the right of South Africa to seek Israel's compliance with the latter's obligations under the Convention, are of such a nature that prejudice to them is capable of causing irreparable harm* (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p 26, para. 70).

[...]

72. *In these circumstances, the Court considers that the catastrophic humanitarian situation in the Gaza Strip is at serious risk of deteriorating further before the Court renders its final judgment.*

73. *The Court recalls Israel's statement that it has taken certain steps to address and alleviate the conditions faced by the population in the Gaza Strip. The Court further notes that the Attorney General of Israel recently stated that a call for intentional harm to civilians may amount to a criminal offence, including that of incitement, and that several such cases are being examined by Israeli law enforcement authorities. While steps such as these are to be encouraged, they are insufficient to remove the risk that irreparable prejudice will be caused before the Court issues its final decision in the case.*

74. *In light of the considerations set out above, the Court considers that there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision.*

(Emphasis added. Citations omitted).

12. On 6 March 2024, the Republic of South Africa filed an *Urgent Request And Application For The Indication Of Additional Provisional Measures And The Modification Of The Court's Prior Provisional Measures Decisions Pursuant To Article 41 Of The Statute Of The International Court Of Justice And Articles 75 And 76 Of The Rules Of Court Of The International Court Of Justice* as:¹⁰

The Republic of South Africa ('South Africa') is compelled to return to the Court in light of the new facts and changes in the situation in Gaza — particularly the situation of widespread starvation — brought about by the continuing egregious breaches of the Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention') by the State of Israel ('Israel') and its ongoing manifest violations of the provisional measures indicated by this Court on 26 January 2024 (the 'Order').

13. On 28 March 2024, the ICJ delivered further modified provisional measures.¹¹
14. On 10 May 2024, the Republic of South Africa filed an *Urgent Request For The Modification And Indication Of Provisional Measures Pursuant To Article 41 Of The Statute Of The International Court Of Justice And Articles 75 And 76 Of The Rules Of Court Of The International Court Of Justice* as:¹²

The Republic of South Africa ('South Africa') regrettably finds it necessary to return to the Court to seek an urgent Order from the Court in the case of the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* for the protection of the Palestinian people in Gaza from grave and irreparable violations of their rights, and of South Africa's rights, under the Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention'), as a result of Israel's ongoing military assault on Rafah.

¹⁰ Available: <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240306-wri-01-00-en.pdf>

¹¹ See: <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf>

¹² Available: <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240510-wri-01-00-en.pdf>

15. Further public hearing were held by the ICJ on 16 and 17 May 2024 at the Peace Palace, President Salam presiding, in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel).
16. On 24 May 2024, the ICJ delivered further modified provisional measures including the following:

45. In conformity with its obligations under the Genocide Convention, and in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation, Israel shall: (a) take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary; and (b) ensure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Genocide Convention, including by preventing, through any action, the delivery of urgently needed humanitarian assistance.

46. The Court further considers that the catastrophic situation in the Gaza Strip confirms the need for immediate and effective implementation of the measures indicated in its Order of 26 January 2024, which are applicable throughout the Gaza Strip, including in Rafah. In these circumstances, the Court finds it necessary to reaffirm the measures indicated in that Order.

47. In view of the specific provisional measures it has decided to indicate, the Court considers that Israel must submit a report to the Court on all measures taken to give effect to this Order, within one month as from the date of this Order. The report so provided shall then be communicated to South Africa, which shall be given the opportunity to submit to the Court its comments thereon.

48. The Court recalls that its orders on provisional measures under Article 41 of the Statute have binding effect and thus create international legal obligations for any party to whom the provisional measures are addressed (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I), p. 230, para. 84*).

(Emphasis added. Citations omitted).

17. Notably, Australian ICJ Judge, Professor Hilary Charlesworth made a declaration on 28 March 2024 which included the following:¹³

4. As the Court observes today, the catastrophic humanitarian situation is unrelenting and in fact rapidly deteriorating (Order, paras. 18-21). Given that the Palestinian population in the Gaza Strip is now on the brink of famine, South Africa has requested the Court to indicate further provisional measures and/or to modify the measures indicated on 26 January 2024. Starvation, and the resulting loss of life in overwhelming numbers, clearly poses a threat to the right of existence of the Palestinians as a group, a right protected by the Genocide Convention.

5. Against this background, the Court's task is to determine whether the existing measures indicated in its Order of 26 January 2024 are sufficient to preserve the rights forming the object of the proceedings on the merits. In its reasoning, the Court draws on a number of United Nations documents to satisfy the requirement of Article 76, paragraph 1, of the Rules of Court that there has been a change in the situation justifying modification. These documents illustrate how the provision of humanitarian aid in the Gaza Strip is undermined by the military campaign. The documents make clear that the only way to prevent further destruction of the Palestinian population in the Gaza Strip is to bring military operations to an end. They all call for ceasefires, whether temporary or permanent.

6. In the dispute brought by South Africa, the Court's mandate is confined to protecting the

¹³ Available: <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-05-en.pdf>

right of the Palestinian group to be protected from acts of genocide and other prohibited acts under the Genocide Convention only if, and in so far as, that right is prejudiced by Israel's acts. And the Court cannot order a ceasefire as the conflicting parties are not all before it. However, while the Court cannot remove the risk to the Palestinian group completely, it can at least mitigate it by indicating measures directed at the Parties that are before it: Israel and South Africa.

7. In this light, the measures indicated by the Court today only partly respond to the situation that the Court describes and to the continuing threat to the right of the Palestinian group to exist. While the measure in subparagraph (2) (a) identifies appropriate actions for Israel to take, the measure in subparagraph (2) (b) is elliptical. Instead of employing the convoluted terms of operative subparagraph (2) (b), in my view the Court should have made it explicit that Israel is required to suspend its military operations in the Gaza Strip, precisely because this is the only way to ensure that basic services and humanitarian assistance reach the Palestinian population.

8. Of course, the suspension of Israel's military operations too only partly addresses the risk of destruction of the Palestinians in Gaza. The Court may not have the power to indicate measures directed at entities not bound by its Statute, but it has the power to indicate measures directed at the parties to the dispute before it. While it is Israel's conduct that is in issue before the Court, it does not follow that South Africa has no role to play in preserving the rights in dispute. After all, invocation of responsibility for the breach of erga omnes obligations carries duties with it. In my view it is open to the Court to order both Israel and South Africa to take all reasonable measures within their power to achieve an immediate and sustained humanitarian ceasefire, which would serve to preserve the rights in dispute between them.

(Emphasis added. Citations omitted).

18. On 16 November 2023, in a show of unprecedented solidarity, some 22 independent UN expert special procedures of the UN Human Rights Council (including 15 UN Special Rapporteurs) made an urgent call to the international community to prevent genocide against the Palestinian people, stating *inter alia*:¹⁴

"We are deeply distressed at the failure of Israel to agree to – and the unwillingness of the international community to press more decisively for – an immediate ceasefire. The failure to urgently implement a ceasefire risks this situation spiralling towards a genocide conducted with 21st century means and methods of warfare," the experts warned. They also expressed alarm over discernibly genocidal and dehumanising rhetoric coming from senior Israeli government officials, as well as some professional groups and public figures, calling for the "total destruction", and "erasure" of Gaza, the need to "finish them all" and force Palestinians from the West Bank and east Jerusalem into Jordan. The experts warned that Israel has demonstrated it has the military capacity to implement such criminal intentions. "That is why our early warning must not be ignored," the experts said. "The international community has an obligation to prevent atrocity crimes, including genocide, and should immediately consider all diplomatic, political and economic measures to that end," the experts said. They urged immediate action by UN Member States and the UN system as a whole.

19. In early December 2023, Palestinian human rights organisation Al-Haq and UK-based Global Legal Action Network (GLAN) commenced legal proceedings against the UK after written requests to suspend arms sales to Israel due to grave breaches of international law and UK rules were repeatedly ignored. The filed papers detail indiscriminate attacks on civilians, destruction of infrastructure critical for their survival -including hospitals, bakeries, (UNRWA) schools where displaced people sheltered, food storages and water reserves- starvation, forced displacement and the increasing risk of genocide. The action is supported by the International Centre of Justice for Palestinians (ICJP) and a press briefing

¹⁴ Available: <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>

was held (details below) with GLAN, Al-Haq and ICJP and with Campaign Against Arms Trade (CAAT) and a member from Oxfam.¹⁵ Previously internationally renowned and high esteemed human rights organisation, Human Rights Watch, alongside a group of UK-based civil society groups working in Gaza, wrote to the UK Government calling for an immediate halt to UK arms transfers to the government of Israel given the clear risk that arms and military equipment transferred to Israel might be used to facilitate or commit serious violations of international law, including attacks that may amount to war crimes.¹⁶

International Criminal Court (ICC) Arrest Warrants

20. Furthermore, the Prime Minister of Israel, Benjamin Netanyahu, and former Defence Minister of Israel, Yoav Gallant, are currently subject to international arrest warrants issued by the International Criminal Court (ICC) on 21 November 2024 for the Charges of “*Allegedly responsible for the war crimes of starvation as a method of warfare and of intentionally directing an attack against the civilian population; and the crimes against humanity of murder, persecution, and other inhumane acts from at least 8 October 2023 until at least 20 May 2024.*”¹⁷

The Australian Government (and its Agents) Have a Positive Legal Duty to Prevent and Punish Genocide

21. The Australian government has a positive legal duty to prevent and punish genocide, including investigating and prosecuting persons suspected of being involved in genocide and atrocity crimes at both international law (the *1948 Convention on the Prevention and Punishment of the Crime of Genocide* (**Genocide Convention**) and the *1998 Rome Statute of the International Criminal Court* (**Rome Statute**)) and at domestic law, namely Division 268 of the Commonwealth Criminal Code (as contained in the Schedule to the *Criminal Code Act 1995 (Cth)*).
22. Australia signed and ratified the *Rome Statute of the International Criminal Court* (**the Rome Statute**) on 9 December 1998 and 1 July 2002, respectively, which ratification entered into force on 1 September 2002.
23. Australia has also signed and ratified the *1948 International Convention on the Prevention and Punishment of the Crime of Genocide* (**the Genocide Convention**). The Genocide Convention as passed by the UN General Assembly on 9 December 1948, and came into effect in 1951.
24. Australia signed the Genocide Convention on 11 December 1948 and ratified it on 8 July 1949, but did not legislate to make genocide a crime in Australia until 2002.¹⁸

¹⁵ See: Al-Haq (Defending Human Rights), “Legal and human rights groups take UK government to High Court over arms exports to Israel” (6 December 2023). Available: <https://www.alhaq.org/advocacy/22299.html> ; “Press Release: GLAN & Al-Haq continue legal action over government decision to partially restrict arms exports, excluding F-35 programme” (3 September 2024). Available: <https://www.alhaq.org/advocacy/23826.html>

¹⁶ Available: <https://www.hrw.org/news/2023/12/12/letter-uk-government-calling-immediate-halt-uk-arms-transfers-government-israel>

¹⁷ See: <https://www.icc-cpi.int/defendant/netanyahu> and <https://www.icc-cpi.int/defendant/gallant>

¹⁸ Scott, Shirley “Why Wasn't Genocide A Crime in Australia?: Accounting For the Half-century Delay in Australia Implementing the Genocide Convention” [2004] AUJIHRights 22; (2004) 10(2) *Australian Journal of Human Rights* 22. Available: <https://classic.austlii.edu.au/au/journals/AUJIHRights/2004/22.html>

25. In preparation for ratifying the Statute (which it did on 1 July 2002), the Australian Government on 25 June 2002 introduced two pieces of legislation: the [International Criminal Court Act 2002](#) (Cth) and the [International Criminal Court \(Consequential Amendments Act 2002 \(Cth\)](#) (**ICC Acts**) contained provisions allowing Australia to comply with its international obligations on ratification by putting in place procedures to comply with requests for assistance or the enforcement of sentences.
26. The ICC Acts amended the *Criminal Code Act 1995* (Cth) to enact the crimes punishable by the International Criminal Court as crimes in Australian law (genocide, crimes against humanity and war crimes), as well as making consequential amendments to six other acts. [Chapter 8, Division 268 of the Cth Criminal Code](#) provides for “Offences against humanity and related offences” namely “Genocide, crimes against humanity, war crimes, and crimes against the administration of the justice of the International Criminal Court”. Half a century after ratifying the Convention, the Australian Government thereby made genocide a crime in Australia, obviating the need for legislation specifically to implement the Genocide Convention.
27. In accordance with the *1969 Vienna Convention on the Law of Treaties*,¹⁹ to which Australia acceded on 13 June 1974, prior to ratifying an international treaty a prospective Contracting States party must ensure its obligations to the international community as contained in the relevant statute are enshrined in domestic law thereby upholding the principle of “*Pacta Sunt Servanda*” as contained in Article 26 of the Vienna Convention (“*Every treaty in force is binding upon the parties to it and must be performed by them in good faith*”). That good faith bargain constitutes the delicate handshake of international law that provides its efficacy, credibility and the very foundation for the international rules-based order upon which the prospect of international peace and security depend.
28. Article 1 of the Genocide Convention States: “*The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which **they undertake to prevent and to punish.***” It is upon this fundamental principle that the aforementioned cases have been filed against the State of Israel in both the ICJ and the ICC. It is also the basis upon which the Houthi’s have stated they are engaging in attacks upon shipments headed to Israel until Israel’s “crimes in Gaza stop and food, medicines and fuel are allowed to reach its besieged population”.²⁰
29. Australia is a dualist nation where international treaties are not self-executing and require active domestic legislative enactment. The Australian Government’s own treaty ratification policy states:
- Before Australia signs, ratifies or otherwise becomes bound by a treaty, the Australian Government satisfies itself that any legislation necessary to implement the treaty is in place.*²¹

¹⁹ See: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

²⁰ See: https://www.aljazeera.com/news/2023/12/19/yemens-houthis-will-not-stop-red-sea-attacks-until-israel-stops-gaza-war?traffic_source=KeepReading

²¹ CoA, ‘Common Core Document forming part of the reports of States Parties’ (June 2006) [44], [67] (**2006 CCD**); Australian Government, *National Human Rights Action Plan Baseline Study*, (2011) 1 (**NHRAP Baseline Study**), 1.

30. Section 51(xxix) of the Australian Constitution empowers the Parliament ‘to make laws for the peace, order and good government of the Commonwealth with respect to external affairs.’²²

LEGAL OBLIGATIONS OF DANIELLE WOOD, CHAIR, PRODUCTIVITY COMMISSION

31. The website of the Productivity Commission states as follows:

“The Productivity Commission is an advisory body. We contribute by providing quality independent advice and information to governments, and by communicating ideas and analysis. The Commission is an agency of the Australian Government, located in the Treasury portfolio. Our activities cover all levels of government and encompass all sectors of the economy, as well as social and environmental issues. We conduct inquiries and provide advice at the request of the Australian Government on policy or regulatory issues bearing on Australia’s economic performance and community wellbeing. We also undertake research and fulfil ongoing reporting and performance monitoring responsibilities. We act as secretariat to the intergovernmental Review of Government Service Provision and advise on complaints made about the competitive neutrality of Australian Government business activities. We do not administer government programs or exercise executive power.”

32. Notwithstanding, the above, Ms Wood is appointed pursuant to Part 5, Division 1, [section 24](#) of the [Productivity Commission Act 1998 \(Cth\)](#) (**PC Act**), [section 8](#) of which provides for the “General Policy Guidelines for Commission” and includes, inter alia, the following:

General policy guidelines for Commission

(2) In the performance of its functions, the Commission **must** have regard to the need:

[...]

- (i) to ensure that industry develops in a way that is ecologically sustainable; and
- (j) **for Australia to meet its international obligations and commitments.**

(Emphasis added).

AUSTRALIA’S INTERNATIONAL OBLIGATIONS AND COMMITMENTS

33. In addition to your mandatory statutory responsibilities as provided by section 8(1)(j) of the PR Act, as Chair of a statutory body appointed by the Governor-General, you are an agent and representative of the Australian Government.
34. As detailed herein, Australia has numerous binding obligations at international including with regards to international human rights law, various UN treaties and conventions it has ratified (including by enshrining those obligations in Australian domestic law).
35. There would also be numerous relevant binding resolutions of the UN General Assembly and the UN Security Council related to Israel and the OPT and international law, which I have not had time to provide further information on in this advice but can do if required.
36. Australia has been a historic leader in the development of the modern International Human Rights Law (IHRL) architecture,²³ has advocated for human rights regionally and, like most western countries, has

²² *Commonwealth of Australia Constitution Act 1900* (Cth), s 51(xxix) (**Constitution**).

²³ Frank Brennan, Mary Kostakidis, Tammy Williams and Mick Palmer, *National Human Rights Consultation Report* (Commonwealth of Australia (CoA); September 2009) (**NHRC Report**) 5.

ratified the core IHRL treaties.²⁴ The Australian Government's human rights rhetoric consistently glorifies these achievements.

37. During the dawn of the modern human rights era as the world was reeling from Holocaust horrors, Australia co-lead the global community on a promised-land pathway of 'never again' and assisted in designing legal architecture to fulfill this pledge to future generations.²⁵ Australia was one of the first members of the United Nations (UN),²⁶ was among eight members of the UDHR drafting committee²⁷ and an Australian UNGA President oversaw its adoption.²⁸ Australia has led the way on other IHRL developments including being among 26 drafting States of the *1951 International Convention relating to the Status of Refugees*²⁹ and one of the first countries to ratify the CEDAW³⁰ and the CRDP.³¹ It has led in the development of National Human Rights Institutions (NHRI)³² and advocated for human rights in the Asia-Pacific region including via official dialogues with China, Vietnam and Laos,³³ albeit the Asia-Pacific remains the only global region absent a regional human rights framework.³⁴
38. In 2008, during the UDHR's 60th Anniversary the Australian Government stated: 'Australia's commitment to human rights is enduring: we were an original signatory to the [UDHR] sixty years ago. We have been a leading proponent of its consistent and comprehensive implementation.'³⁵ On 10 December 1948, Australia was among 48 UN countries that voted to adopt the UDHR.³⁶ The

²⁴ David Kinley and Christine Ernst, 'Exile on Main Street: Australia's Legislative Agenda for Human Rights' [2012] (1) *EHRLR* 58-59. This includes the: *International Covenant on Civil and Political Rights* (UNGA Resolution 2200A (XXI), 16 December 1966, entry into force 23 March 1976) 999 UNTS 171. Australia signed: 18 December 1972, ratified: 13 August 1980 (**ICCPR**); *International Covenant on Economic, Social and Cultural Rights* (UNGA resolution 2200A (XXI), 16 December 1966, entry into force 3 January 1976) 993 UNTS 3. Australia signed: 18 Dec 1972, ratified: 10 Dec 1975 (**ICESCR**); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNGA resolution 39/46, entry into force 26 June 1987) A/39/51 (1984); *International Convention on the Elimination of All Forms of Racial Discrimination* (UNGA resolution 2106 (XX), entry into force 4 January 1969) 660 UNTS 195 (**ICERD**); *Convention on the Elimination of All Forms of Discrimination against Women* (UNGA resolution 34/180, entry into force 3 September 1981) A/34/46 (**CEDAW**); *Convention on the Rights of the Child* (UNGA resolution 44/25, entry into force 2 September 1990) A/44/49(**CRC**); *Convention on the Rights of Persons with Disabilities* (UNGA resolution 61/106, entry into force 3 May 2008) A/RES/61/106(**CRPD**).

²⁵ UDHR (adopted 10 December 1948) UNGA Res 217 A (III) Preamble; Mary Ann Glendon, *A World Made New; Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2001) Chapter 1.

²⁶ DFAT, 'United Nations' < www.dfat.gov.au/international-relations/international-organisations/un/pages/united-nations-un.aspx > accessed 9 March 2015.

²⁷ Geoffrey Robertson, *The Statute of Liberty* (Random House, 2009) 30; Mary Ann Glendon, *A World Made New; Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2001) pp 38, 46.

²⁸ Glendon, *A World Made New; Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2001), pp163-4,170.

²⁹ Paul Weis, 'The Refugee Convention, 1951, The Travaux Préparatoires Analysed With A Commentary' (1995) 12. Available: www.unhcr.org/4ca34be29.pdf

³⁰ Holly Kendall, 'Australia's Reservations to CEDAW – Irrelevant and Unnecessary', *Right Now Human Rights in Australia E-Journal* (25 September 2012). Available: www.rightnow.org.au

³¹ Attorney General's Department, 'Convention on the Rights of Persons with Disabilities'. Available: www.ag.gov.au/RightsAndProtections/HumanRights/.

³² UNHRC, 'Statement by Australia' (27th Session; 23 September 2014).

³³ DFAT, 'Human Rights and the Asia-Pacific Region'. Available: www.dfat.gov.au/international-relations/themes/human-rights/Pages/human-rights-and-the-asia-pacific-region.aspx.

³⁴ Thomas Serafin, Benedict Coyne, Seranie Gamble, Stephen Keim, 'ASEAN Human Rights Declaration; Inherently Flawed or As Good as It Gets?' (February 2013) *LAWASIA Update* 21.

³⁵ Department of Foreign Affairs and Trade (DFAT) 'Australia; Seeking Human Rights for All' (2008). Available: www.dfat.gov.au/international-relations/themes/human-rights/Documents/udhr_hr_for_all.pdf.

³⁶ Glendon, *A World Made New; Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2001),p170.

government's 2011 *National Human Rights Action Plan Baseline Study* lauds Australia's 'strong human rights record, both internationally and domestically' and 'long tradition of supporting human rights around the world and developing the international human rights system...'³⁷

39. IHRL is a fragile framework of binding obligations³⁸ whose efficacy requires the 'interpenetration of the international and national systems'.³⁹ Alston and Goodman assert that:

Ultimately, effective protection of human rights must come from within the state... either observing national law (constitutional or statutory) that is consistent with the international norms, or making the international norms themselves part of the national legal and political order.⁴⁰

40. By virtue of Article 26 of the [*1969 Vienna Convention on the Law of Treaties*](#)⁴¹ the integrity of IHRL relies on the doctrine of good faith whereby States parties voluntarily implement contractual obligations engaged by them through treaty ratification or accession.⁴² The CESCR has stated that legally binding IHRL norms 'should operate directly and immediately within the domestic legal system of each State party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals.'⁴³ This echoes a founding IHRL principle enunciated in the UN Charter's Preamble: '...to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.'⁴⁴
41. The UN Human Rights Committee has clarified the contractual nature of IHRL stating that every State Party 'has a legal interest in the performance by every other State Party of its obligations' and that 'the contractual dimension of the treaty involves any State Party to a treaty being obligated to every other State Party to comply with its undertakings under the treaty.'⁴⁵ Since the international community's 1993 reaffirmation that 'all human rights are universal, indivisible and interdependent and interrelated' via the *Vienna Declaration and Programme of Action*,⁴⁶ human rights continue to be a meaningful universal standard to measure the performance of parliaments.⁴⁷ In a functional democracy 'human rights are often recognised as legal rights.'⁴⁸ By their advent and emergence in the aftermath of the barbarity of two world wars, universal human rights form a cornerstone of modern civilisation.⁴⁹ They were recognised

³⁷ Australian Government, *National Human Rights Action Plan Baseline Study*, (2011) 1 (**NHRAP Baseline Study**).

³⁸ NHRC Report Chapter 5.

³⁹ Phillip Alston and Ryan Goodman, *International Human Rights* (OUP, 2013) 1047.

⁴⁰ Ibid.

⁴¹ *Vienna Convention on the Law of Treaties* (22 May 1969; entry into force 27 January 1980) 1155 UNTS 331 (**Vienna Convention**).

⁴² UNHR Committee, General Comment 31 (29 March 2004) CCPR/C/21/Rev.1/Add.13 [7] (**GC31**) [3] - [4].

⁴³ CESCR, General Comment 9 (19th session; 1998) E/C12/1998/24 [4], [10].

⁴⁴ UN Charter.

⁴⁵ UNHR Committee, General Comment 31 (29 March 2004) CCPR/C/21/Rev.1/Add.13 [7] (**GC31**), [2].

⁴⁶ Adopted by World Conference on Human Rights, Vienna, 25 June 1993 (**VDPA**), Article 5.

⁴⁷ Carolyn Evans and Simon Evans, 'Evaluating the Human Rights Performance of Australian Legislatures: A Research Agenda and Methodology' (Univ. Melbourne L. School, Research Paper No. 123, 2005) 545, 547-8.

⁴⁸ NHRC Report, 51.

⁴⁹ UN Charter Preamble.

and legally enshrined by the international community precisely to protect marginalised minorities from ‘abuse of power by majorities’.⁵⁰

42. Universal human rights are so fundamental to being human that they must be insulated from incursion by government action and immunised from populist political interference.⁵¹

CONCLUSION – PRODUCTIVE ONGOING CONCERNS...

43. In the premises, where it can be proved that the AICC (and its associated entity, the IACC) are involved in various violations of international law in the OPT, arguably, by appearing at the upcoming AICC event on 13 February 2025 you will be publicly seen as supporting and or tacitly endorsing or otherwise ignoring the many egregious alleged violations of international law and Australia’s international legal obligations as well as your own legislative/statutory policy guidelines (namely subsection 8(1)(j) of the PC Act), and thus showing public support for, promoting and thereby enriching (via non-member ticket sales/ promoting membership purchases, and general notoriety as a powerful business lobby) for the AICC. Concerningly, monies raised by the AICC because of you presenting at the AICC on 13 February 2025 may well end up funding violations of international law whether directly or indirectly.
44. The opaqueness of the AICC, its related entities (i.e. the IACC), its membership and associations with Israeli-based companies, military industries and entities, makes it very difficult, if not impossible, in the context of recent developments in international law detailed herein, to ascertain and ensure that the AICC is not more broadly linked to and/or involved in, the voluminous evidence of very serious violations of international law and international human rights law (and corresponding Australian domestic laws) without further accountability and transparency.
45. In such circumstances, and without transparent assurances from the AICC evidencing it has no connections with violations of international law and Australian laws, it would appear obvious that you should exercise a cautious, circumspect, and indeed, lawful, approach and not be publicly associating yourself, the Productivity Commission with the AICC and its related entities, associates and membership.
46. We request your confirmation that you will uphold your mandatory statutory obligations and neither endorse nor otherwise support the AICC or any of its associated entities involved in gross violations of international law.
47. We await your prompt response.

Yours Faithfully,

⁵⁰ Susan Alberts, Chris Warshaw, and Barry Weingast, ‘Democratization and Countermajoritarian Institutions: The Role of Power and Constitutional Design in Self-Enforcing Democracy’ in Tom Ginsburg, *Comparative Constitutional Design* (CUP, 2012) 73.

⁵¹ See Art 5 ICCPR; UDHR.

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Mr. Greg Barns SC, Barrister-at-Law, Republic Chambers Hobart, Douglas Menzies Chambers Melbourne, Higgins Chambers Brisbane, Albert Wolff Chambers Perth, **National Criminal Justice Spokesman for the Australian Lawyers Alliance**

The Australian Centre for International Justice (ACIJ)⁵² a newly established, independent, not-for-profit and specialist legal centre working to develop Australia's capacity to investigate and prosecute atrocity crimes. The ACIJ aims to provide access to justice to survivors of serious and egregious violations of human rights, in particular the crimes of torture, war crimes, crimes against humanity and genocide. The ACIJ employs strategies to combat the impunity of the perpetrators to seek justice, redress and accountability for the survivors of these crimes.

Mr. Moustafa Kheir, Principal Solicitor, Birchgrove Legal

Ms. Rita Jabra-Maxwell, Solicitor, Birchgrove Legal

Ms. Roba Rayan, Lawyer

⁵² See: <https://acij.org.au/about-us/introduction/>