



Australian
Human Rights
Commission

everyone, everywhere, everyday

Reform of Australian Government Administration

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Australian Human Rights Commission Submission
to the Advisory Group on Reform of Australian
Government Administration

November 2009

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1 Introduction

1. The Australian Human Rights Commission (the Commission) makes this submission to the Advisory Group on Reform of Australian Government Administration in response to the discussion paper *Reform of Australian Government Administration: building the world's best public service* (the discussion paper).
2. The Commission welcomes the consultation regarding reform of Australian Government administration. Australia's national human rights institution, the Commission, is proud to be a part of the Australian Public Service.
3. This submission regarding the reform of Australian Government Administration is based on the Commission submission to the National Human Rights Consultation in June 2009.

2 Summary

4. Respect for human rights is closely aligned with the expectations of the public service as articulated in the discussion paper regarding the reform of Australian Government administration. Particularly relevant are the first three characteristics:
 - having a values-driven culture that retains public trust
 - providing high-quality, forward-looking and creative policy advice
 - delivering high-quality programs and services that put the citizen first.
5. The Commission's submission to the National Human Rights Consultation, observed that a good system of human rights protection involves consideration of human rights at all levels, and by all branches of government, with the aim of preventing human rights violations.
6. One of the key building blocks of such a system is Australian Government decision-makers who respect human rights when implementing laws, developing policy and delivering public services.
7. There are a range of measures that could be adopted that would build a culture of respect for human rights within the public sector. The Australian Government should have in place processes to respect human rights when developing policy, making decisions and delivering services. This would be most easily achieved through the adoption of a national Human Rights Act. However, measures improving the knowledge and consideration of human rights could be adopted whether or not Australia enacts a Human Rights Act.
8. Reform of Australian Government administration would be enhanced by specific consideration of human rights in both law and policy making and the delivery of services.
9. In this submission, the Commission argues that:

- respect for human rights should be at the core of public service
- human rights should be incorporated into public sector practices and procedures.

3 Recommendations

10. **Recommendation 1:** The Australian Public Service Values should articulate the responsibility of the public sector to respect human rights.
11. **Recommendation 2:** All federal government agencies should take steps to ensure they respect human rights by:
 - engaging in human rights training and education programs
 - preparing internal human rights action plans.

4 Respect for human rights should be at the core of public service

12. The discussion paper argues that an essential ingredient for high performance as a public service is:

the paramount principle of focussing on citizens in the formulation of policy advice. This can mean making sure that citizens' or clients' experiences of engaging with the program, service or regulation resulting from the policy intervention is at the forefront of the policy maker's mind. This will involve, where possible, actively engaging citizens and stakeholders in the policy formulation process so that their perspectives and ideas are taken into account. In many cases, it will involve weighing up the benefits for one group of citizens against costs imposed on another group.¹

13. The Commission agrees that a focus on citizens is a key element of a high performing public service. The Commission believes that the human rights of citizens and clients should be a key consideration in policy development.
14. Public authorities such as Centrelink and Medicare make many day-to-day decisions that impact on people's lives.
15. The Commission believes that imposing obligations on public authorities to consider and respect human rights would have a strong and positive impact on the development of policy and the delivery of services. Public authorities would become more conscious of the impact of their decisions might have on the rights of individuals and of their responsibility to ensure that these rights are respected. This greater awareness and understanding could prevent human rights breaches from occurring.

¹ Australian Government, 'Reform of Australian Government Administration: Building the world's best public service', October 2009, p20.

16. The discussion paper also argues that the public service ‘needs to be capable of effectively interacting with citizens with unique or special needs or whose circumstances do not fit what might be considered the norm’.² A human rights framework for decision-making should improve public service delivery by leading to more individualised solutions. This in turn should reduce the level of complaints received and increase the effectiveness of public services.
17. The report of the National Human Rights Consultation (the Brennan report), released on 8 October 2009, reported ‘strong support for the development of a human rights culture in the public sector’ and that ‘it was felt that this would lead to better integration of human rights in the development of legislation of policy, in administrative decision making, and in service delivery’.³
18. The Brennan report stated that ‘in the Committees’ view, regardless of whether a federal Human Rights Act is introduced, measures will be required to better incorporate human rights considerations in the public sector’s practices and procedures’.⁴ The Brennan report considered that public servants should be required to take human rights into account when they make decisions.⁵
19. Measures that the Brennan report recommended included:
 - incorporating human rights compliance in the Australian Public Service Values and Code of Conduct
 - requiring federal government departments and agencies to develop human rights action plans, and report on human rights compliance in their annual reports.⁶

5 Respect for human rights should be required by a federal Human Rights Act

20. The Commission believes that the most appropriate means of ensuring respect for human rights is through a Human Rights Act that would set out the human rights that policy-makers and decision-makers should consider.
21. To ensure that public authorities respect human rights in their actions and properly consider human rights when making decisions, a Human Rights Act could make it unlawful for a public authority to:
 - act in a way that is incompatible with human rights
 - fail to give proper consideration to human rights in decision-making.

² Australian Government, ‘Reform of Australian Government Administration: Building the world’s best public service’, October 2009, p28.

³ Commonwealth of Australia, *National Human Rights Consultation Report*, September 2009, p 180.

⁴ Commonwealth of Australia, *National Human Rights Consultation Report*, September 2009, p 180.

⁵ Commonwealth of Australia, *National Human Rights Consultation Report*, September 2009, pp 180 – 187.

⁶ Commonwealth of Australia, *National Human Rights Consultation Report*, September 2009, pp 359.

22. However, regardless of whether or not Australia adopts a federal Human Rights Act, a range of steps could be taken to ensure that the public service more fully considers the impact of human rights on the lives of people whose daily lives are affected by government decision-making. These measures are outlined in the following sections.

6 Human rights should be incorporated into public sector practice and procedures

23. The Commission believes that the following steps would ensure that the public sector takes human rights into account more explicitly:
- better education of the public sector about human rights (and of their obligations under a Human Rights Act if adopted)
 - the development of human rights action plans by federal government departments and agencies
 - integration of respect for human rights into public sector values and codes of conduct.

6.1 Human rights education for the public sector

24. Public servants, parliamentarians and their staff, courts and tribunals, the legal profession, and any private bodies which perform public functions on behalf of the government should receive specialised human rights education and training, especially if Australia adopts a federal Human Rights Act.
25. The Brennan report recommended that education be the highest priority for improving and promoting human rights in Australia.⁷ In particular, it noted that there is strong public support for better education of public officials who exercise powers of investigation, arrest and detention and perform other duties that are likely to adversely affect the rights and freedoms of ordinary Australians. It also recommended that the Australian Government develop a national plan to implement a comprehensive framework, supported by specific programs of education in human rights and responsibilities, including in the public sector.⁸
26. A good example of public sector human rights education is provided in Victoria, where the newly-established Human Rights Unit of the Department of Justice developed and delivered a whole-of-government human rights education strategy during 2007, including:
- Legal and Legislative Policy Officer training delivered to over 500 participants
 - the Human Rights Implementation Program, a train-the-trainer course delivered to over 300 service delivery staff across government.

⁷ Commonwealth of Australia, *National Human Rights Consultation Report*, September 2009, p 353.

⁸ Commonwealth of Australia, *National Human Rights Consultation Report*, September 2009, p 354.

27. These whole-of-government initiatives were complemented by initiatives at the departmental level, including:
- training courses for staff
 - changes to induction and performance management systems
 - online learning modules and other internal communication strategies such as newsletters, displays and a Human Rights Week.
28. The Commission supports the implementation of similar measures at a federal level.

6.2 Human rights action plans for federal departments and agencies

29. Public sector service delivery would be enhanced by the development of effective human rights action plans.
30. The Brennan report noted strong support for the development of human rights action plans. The Committee supported measures that involve greater human rights planning and compliance reporting by the federal public sector and suggested that periodic human rights audits of specific agencies and their practices would provide a useful measure for ensuring greater transparency and public accountability.⁹
31. Human rights action plans should specify how each department or agency intends to embed the consideration of human rights into their policies, procedures and practice. Human rights action plans could become the assessment and reporting framework for potential audits or annual reports on compliance with human rights.

6.3 The APS Values

32. The APS Values currently incorporate some human rights principles. However, these are limited in effect to internal procedures, for example in the following values:
- the APS provides a workplace that is free from discrimination and recognises and utilise the diversity of the Australian community it serves
 - the APS promotes equity in employment.¹⁰
33. The Commission believes that the responsibility of public servants to respect and promote human rights in the performance of their duties should be articulated in the APS Values. This would greatly assist in integrating respect for human rights into the culture of the Australian public service.

⁹ Commonwealth of Australia, *National Human Rights Consultation Report*, September 2009, p 185.

¹⁰ *Public Service Act 1999* (Cth), s 10.

7 Conclusion

34. The Commission believes that Australia should adopt a federal Human Rights Act that sets out the responsibility of the public sector to respect human rights. However, regardless of whether or not Australia adopts a Human Rights Act, there are a range of measures that could be taken to enhance public sector consideration of human rights. The Commission commends these measures to this consultation regarding the reform of Australian Government administration.