

**Castan Centre for Human Rights Law
Monash University
Melbourne**

**Advisory Group on Reform of Australian Government
Administration**

Discussion Paper

***‘Reform of Australian Government Administration:
Building the world’s best public service’***

**Prepared by
Dr Julie Debeljak and Mr Marius Smith**

The Castan Centre for Human Rights Law seeks to promote and protect human rights through the generation and dissemination of public scholarship in international and domestic human rights law. The centre is making this submission to highlight the need for greater adherence to human rights principles by the Australian Public Service.

For this reason, the centre wishes to address the following two questions outlined in the discussion paper entitled *Reform of Australian Government Administration: Building the world's best public service*.

Question 7: Should the APS Values be Streamlined? What values do you consider should be included in a revised set of APS values?

The Centre believes that the revised APS Values must include compliance with, and protection and promotion of, human rights.

We refer the Advisory Group to the *National Human Rights Consultation Report*, which was handed to the Commonwealth Government on 30 September 2009 and, at the time of this submission, is under consideration by the Attorney-General's Department. The National Human Rights Consultation received over 35,000 submissions, which is more than any other public inquiry in Australian history.¹

The 9th recommendation in the report is that:

“the Federal Government incorporate human rights compliance in the Australian Public Service Values and Code of Conduct.”

The Castan Centre strongly supports this recommendation and notes that the National Human Rights Consultation Committee received 116 submissions specifically supporting “measures that would promote human rights in the public sector”.²

The Centre agrees with the National Human Rights Consultation Committee's assertion that its 9th recommendation should be implemented regardless of whether the Commonwealth Government adopts legislative protection of human rights.³

Suggested amendment to the APS Values

The Victorian Public Sector Values include “human rights” and specify that:

public officials should respect and promote the human rights set out in the Charter of Human Rights and Responsibilities by

- (i) making decisions and providing advice consistent with human rights; and
- (ii) actively implementing, promoting and supporting human rights.

We recommend that similar language be used for the APS Values, but substituting the reference to the “Charter of Human Rights and Responsibilities” (which is Victorian legislation) with a reference to

¹ *National Human Rights Consultation Committee Report* (2009) V.

² *Ibid* p180.

³ *Ibid*.

Commonwealth human rights legislation, if such an Act is passed by the Parliament. If such an Act is not passed, the reference should be made to either Australia's international human rights obligations or the list of human rights proposed in Recommendation 5 of the *National Human Rights Consultation Report*.⁴

Suggested amendment to the APS Values

Similarly, we recommend that the Australian Public Service Code of Conduct be amended along similar lines to the *Code of Conduct for Victorian Public Sector Employees (No. 1), 2007*. Chapter 8 of the Code states in full:

8.1 understanding human rights

Public sector employees understand human rights as these apply to their work.

8.2 making decisions and providing advice consistent with human rights

Public sector employees ensure their own decisions, advice and policy development properly considers the human rights set out in the Charter, and respects the human rights of others.

8.3 implementing human rights

Public sector employees deliver services and programs and act in a manner that is consistent with the Charter.

8.4 protecting human rights

Public sector employees seek to protect the human rights of colleagues, other public officials and members of the Victorian community by raising concerns regarding circumstances that could breach those rights, and reporting any suspected breaches in accordance with procedures established by their public sector employer.

We recommend that the APS Code of Conduct include similar language, but with references to the "Charter" replaced by a reference to Commonwealth human rights legislation, if such an Act is passed by the Parliament. If such an Act is not passed, the reference should be made to either Australia's international human rights obligations or the list of human rights proposed in Recommendation 5 of the *National Human Rights Consultation Report*.

⁴ The centre's preference would be for a reference to Australia's international human rights obligations, which are broader than the proposed list. This preference extends to the other similar recommendations later in this paper.

Question 17: How to we embed a citizen centred philosophy in all aspects of program and service design and delivery?

One key way in which the APS can become more citizen-centred is to ensure that all public services respect, protect and fulfil, human rights. To achieve this, the Castan Centre makes two recommendations.

First, we endorse the 10th recommendation of the National Human Rights Consultation Committee Report, which recommends that:

the Federal Government require federal departments and agencies to develop human rights action plans and report on human rights compliance in their annual reports.

If national human rights legislation is adopted by the Federal Government, then the action plans and reports should be designed to measure and ensure compliance with that legislation. If no such legislation is adopted, the centre recommends that the action plans and reports should be designed to measure and ensure compliance with Australia's international human rights obligations or the list of human rights proposed in Recommendation 5 of the *National Human Rights Consultation Report*.

The adoption of an action plan and annual reporting matrix is vital for ensuring compliance with human rights norms. As Castan Centre Deputy Director Dr Julie Debeljak stated in her submission to the National Human Rights Consultation, in relation to reporting, such mechanisms can ensure that:

Human rights will no longer automatically be trumped by other factors, such as cost or efficiency. Moreover, to require annual reporting should also ensure that human rights become a tool to enhance public administration. Human rights, rather than being a separate add on or an additional regulatory burden, will become the (or at least part of an) operational framework for public administration, enhancing its quality, and giving expression to values that were once intuitive, but are now clearly defined.⁵

Second, we recommend that a comprehensive education and training plan be implemented for public servants. The plan could prioritise training for departments and agencies with the most immediate needs, but exposure across the APS will be necessary to develop and cultivate a human rights culture. Education and training should fit into the action plan developed by each department and agency and will help to ensure that human rights are truly respected, protected and fulfilled by the Australian Public Service.

⁵ Julie Debeljak, *Submission to the National Human Rights Consultation*, 15 June 2009, p 86 < <http://www.law.monash.edu.au/castancentre/publications/bill-of-rights-jd.pdf> > .