

Mr Harry Jenkins MP

LAUNCH OF 'HUMAN RIGHTS ARE IN OUR HANDS'

HUMAN RIGHTS AT YOUR FINGERTIPS, ONLINE AND IN PRACTICE

MONDAY 29 OCTOBER 2012, 12:30PM

Professor Triggs, Mark Ney, Ladies and Gentlemen.

I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.

And before I forget, can you please send a box of those pocketbooks to my Committee?

[Introduction]

It is a pleasure to be here today at this meeting of the APS Human Rights Network. It is good to see Commonwealth public servants regularly coming together to think about how human rights relate to their work.

I have two distinct roles here today.

The first is to launch a human rights e-learning package on behalf of the Attorney-General, the Hon Nicola Roxon MP. In performing this role I have been asked to represent the executive government as a Member of the Party of Government.

My second role is to give you some insights to the work of the Parliamentary Joint Committee on Human Rights of which I am Chair. I

perform this role as a representative of the parliament and specifically of a committee charged with undertaking objective scrutiny of legislation, the majority of which is brought before the parliament by the executive government.

The distinction between these two roles is important. It is equally important to note that they are complementary. Both the e-learning package and the Parliamentary Joint Committee on human rights are tangible expressions of the Government's commitment to elevating the consideration of human rights in all areas of public policy.

[Educating the public sector about human rights]

The Government wants public sector officials to act consistently with human rights. That means ensuring everyone is given a fair go.

For example, it means that the Government expects officers of the Commonwealth to treat people with dignity and respect when they approach the counter in places like Medicare and Centrelink. It means that if your job is to advise the Government on its policies or programs, the Government wants you to make sure you include human rights considerations in that advice.

Doing so sits comfortably with the public service's tradition of giving frank and fearless advice.

The Government believes the public service has a strong history of protecting the rights of Australians. However, the Government wants to build on that legacy in a more concerted way.

To that end, human rights education for public servants is a major component of Australia's Human Rights Framework. The Framework, launched in 2010, seeks to protect and promote human rights in our country, to make ours a fairer and a more just society. Human rights education is the centrepiece of the Framework.

The Government wants to make information about human rights more readily available across our community; information about what rights are, why they matter and how they are protected.

When it launched the Framework, the Government committed \$3.8 million over four years to developing an education and training program for the Commonwealth public sector. Since then, the Government has been putting that funding to good use.

As part of this, and in support of the launch of the pocketbook by Professor Triggs, the Attorney-General's Department has provided funding towards the development of the pocketbook to ensure that public sector officers have easy access to Australia's human rights obligations.

Over 700 officers have received face-to-face training on what human rights are, their origins in international law, and how they can inform work of public servants.

You can find specific guidance sheets on each of the key rights in the seven core human rights treaties, along with practical tools to help you identify when a right might be engaged.

The Government wanted to make human rights awareness training available to all Commonwealth public sector officials, no matter where they are located.

[E-Learning Module]

Accordingly, today I am pleased to launch the latest component in the suite of resources and training - an e-learning package. Given my role as Chair of the Parliamentary Joint Committee is partly an educative one, I am particularly pleased to be able to launch the package. The package is entitled 'Human rights are in our hands'. It provides information about the international human rights system.

It demonstrates how human rights can be considered in your day-to-day work and provides some tools to assist you with this task. It gives you an overview of Australia's Human Rights Framework, and how this affects your responsibilities as a public sector official.

It takes you through human rights principles that should be considered whenever you are developing policy and legislation. Importantly, the module includes a detailed hypothetical case study that will take you through the steps required to prepare a Statement of Compatibility.

Changing hats and turning to the work of the committee I chair, I am sure many of you know that all new Bills and legislative instruments must now be accompanied by a statement of compatibility with Australia's international human rights obligations. The introduction of this requirement and the formation of the Parliamentary Joint Committee on Human Rights represents a clear intention to elevate the

consideration of human rights throughout the policy development and legislative process.

Since 4 January 2012, when the *Human Rights (Parliamentary Scrutiny) Act 2011* came into effect, public servants and parliamentarians have embarked on a process of cultural change. We are both having to come to grips with Australia's human rights obligations and apply them through our work in a far more rigorous way than we may have done in the past. This is an evolutionary process for both of us, and I would like to take a few moments to share some of my perspectives on the committee's journey to date, in the hope that this may assist each of you in the work that you do.

The committee was formed in March this year and has responsibility for examining and reporting to the Parliament on the compatibility of bills and legislative instruments with Australia's human rights obligations. It can also examine existing legislation and conduct broad inquiries into matters relating to human rights as referred to it by the Attorney General.

Human rights are defined in the Act to mean the rights and freedoms recognised or declared by the seven key international human rights instruments on civil and political rights, economic, social and cultural rights, racial discrimination, torture and other cruel inhuman or degrading treatment, including the conventions on women, children and persons with disabilities.

If some of you are finding the task of analysing the human rights implications of policies and legislation you develop a daunting one, I can

empathise with you. The committee's initial reaction to the task it has been set was very similar.

To begin with, the committee found the apparent enormity of its workload overwhelming. We were concerned that we did not possess the expertise to deal with the complexity of the human rights issues that would come before us. Within the broad range of skills and experience represented on the ten member committee, expertise in international human rights law does not figure prominently. I hold a BSC from ANU. Surely the examination of international human rights issues requires very specific legal expertise we thought.

We were very fortunate early in our journey to receive advice from a number of individuals and organisations with expertise and experience in international human rights law and the scrutiny of legislation. Through our discussions with them we were emboldened to recognise a clear and legitimate role for parliamentarians in this process.

The first thing we needed to do was to recognise that, just like the public service, the parliament has a long history of considering human rights. Admittedly, it has not always approached this task with a high degree of rigour or sophistication and it has certainly not always employed the language of human rights law, but these are issues that have been debated by parliament time and again. As a committee we have been charged with assisting the parliament to consider human rights in a more systematic, rigorous and consistent way.

Secondly, we recognised that the committee was not intended to be some quasi judicial body. There is clearly a need for the committee's

deliberations to be underpinned by appropriate legal advice to assist with the accurate identification of the rights engaged by legislation and the appropriate interpretation of Australia's human rights obligations as expressed in the seven human rights covenants. The committee will shortly appoint its first specialist legal adviser to meet this need.

However, the question of compatibility invariably turns on the extent to which a proposed limitation on rights is justifiable: that is whether it addresses some compelling social purpose and whether the limitation is rationally connected to this objective; and is reasonable, necessary and proportionate. These are judgements that we as parliamentarians are very well equipped to make. I would like to encourage you to think that they are judgements that you, as policy officers, are also very well equipped to make.

Finally, the committee recognises that if it is to encourage our fellow parliamentarians to become engaged in human rights discussions and through this contribute to the wider understanding of human rights, we need to approach our work in a manner that is not narrow and legalistic. It has been suggested to us that we should approach the interpretation of rights in a manner that is generous and purposeful and that interprets rights in a way that makes them real and effective, rather than theoretical and illusory. We must discuss rights in clear language that is meaningful to both lawyers and non-lawyers alike. Again, I would encourage you to strive for this in the preparation of statements of compatibility.

Statements of compatibility have a central place in the committee's deliberations. They are the starting point for the committee's

consideration of bills and legislative instruments and the committee has very clear expectations of them. The committee approaches its consideration of statements of compatibility in the same way that it hopes you approach the drafting of them.

It prefers them to read as succinct stand-alone documents capable of informing debate within the parliament. The committee looks to see if the statement of compatibility contains an assessment of the extent to which the legislation engages human rights. Where there are limitations on rights proposed, the committee looks for adequate justification for such limitations and the extent to which there is a rational connection between the limitation and a legitimate policy objective. The committee then considers whether and how the limitation is proportionate to that objective.

While statements of compatibility provide a starting point for the committee's work, the committee does not accept statements at face value. The committee looks beyond the stated intention of the legislation to consider the likely effect of the legislation. The committee seeks to understand whether decisions to limit rights are evidence based. Where the committee considers that further information is required to assist its consideration of a bill or instrument it will write to the relevant Minister requesting this. Ideally, in time, the committee will be able to rely on the justification and analysis provided in the statement of compatibility in most cases, without seeking further information from Ministers. However, the committee accepts that this is an evolutionary process and is committed to working with Ministers and their departments to achieve this.

To date the committee has considered 63 bills and 292 legislative instruments and tabled five reports. The reports indicate that the rights most commonly engaged to date include: the right to privacy; the right to be free from self-incrimination; the presumption of innocence; the right to a fair hearing and criminal process rights; the right to work and rights in work and the right to equality and non-discrimination.

The committee has considered the concepts of progressive realisation and the non-retrogression.

I would encourage you to treat the committee's reports as reference documents that can assist you to understand the committee's approach to legislation that engages these and other human rights and concepts. I encourage you to refer to the committee's Practice Note 1 which sets out briefly the committee's approach to human rights scrutiny and its expectations for statements of compatibility.

The committee hopes that these publications, which are available on the committee's website, will complement the excellent training materials developed to date by the Attorney-General's department, including the e-learning package that I am launching today.

Part of the e-learning package incorporates elements of specific face-to-face training that has already been delivered to many people working on Bills and legislative instruments and of course the Statements of Compatibility that go with them.

[Conclusion]

I want to thank you again for having me here today to address the meeting of the APS Human Rights Network. It is excellent to see the significant interest that you as public sector officials have in human rights and how they relate to your work.

I strongly encourage you to complete the e-learning module, 'Human rights are in our hands', the link to which will be sent via the Network mailing list, and send it to your colleagues to do the same. Armed with this knowledge, you can have a positive impact on the policies we design, the way we treat the people we serve and the decisions we make.

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