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Speaking Truth to Power - the Highs, Lows and Challenges of Dealing with Government

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The title of this presentation *Speaking Truth to Power - the highs, lows and challenges of dealing with government*, poses interesting challenges and is layered with complexity.

It fuses morality, ethics and principles with politics, pragmatism and compromise. It also draws on the centrality of effective communication and understanding the importance of relationships in all that we do.

The challenge of speaking truth to power is amplified in an environment where there are competing needs, where the alleviation of suffering across those needs is acute and where they are all worthy of greater investment by government.

Speaking truth to power necessitates those doing so to examine all information rigorously and with an open mind. It requires discipline, demands us to be honest in our engagement and necessitates being ready to listen and consider outcomes that are meritorious, which have integrity and attempt to deal with the full complexity of the challenges at hand. It also helps if they are implementable and capable of working.

The other part to this topic relates to what is the definition of truth but I doubt I have time to go anywhere near that one today.

Of greatest importance, however, is the reality that speaking truth to power alone is not what counts most. What counts most is engaging with power in a genuine and strategic manner and finding ways to make it an instrument of good, to better the lives of all, including the most vulnerable amongst us. That is the yardstick by which effectiveness should be measured.

Speaking to power is easy, attacking it is easier still, but trying to redirect it for the purposes I have just described is where the greatest challenge resides. This challenge is at its most difficult and confronting when the social policy issue fits the definition of a "wicked" problem.



In a paper developed by the Australian Public Service Commission designed to assist public servants dealing with issues such as climate change and indigenous disadvantage, a "wicked" problem is described as one (amongst other things);

- that is highly resistant to resolution,
- that is often characterised by disagreement about the causes of the problems and the best way to tackle them,
- where attempts to address it often lead to unforeseen consequences,
- that usually have no clear solution, may never be completely solved and the challenge is to find the best way to manage them instead,
- are socially complex and involve coordinated action by a range of governmental and civil society stakeholders.

What does this mean in terms of how we engage?

The first place to start when contemplating how to deal with speaking to people in power is not by focussing on those who hold it. The first point of focus has to be yourself.

In preparing to speak to people in power, one needs to be completely honest about the purpose and nature of one's own personal investment and motivations. We need to be confident in what our ethical position is, and the scope for engaging without compromising those ethics, and we need to be prepared with clear and robust information to support our case.

An ability to balance off competing demands and accommodate compromises as we pursue our primary objective is dependent on this.

It is something we need to be comfortable with because in reality we rarely get everything we want. In particular, our own personal political allegiances should remain private. They should not unduly influence the genuineness of our engagement.

It is advancing the interests of those we represent that should drive the encounter, regardless of who is in government. It is dangerous to assume that



a person from one particular side of politics would be more supportive of your agenda than a person from the other. I could offer several examples of this later.

Having sorted this out the next most crucial thing is to shift focus to understanding the motivations of the people you are trying to engage.

Understanding this and establishing a basis for building an effective relationship is vital. It might sound obvious but how often have you studied the people you are meeting with in order to understand them better and therefore how to communicate with them better?

Think about it for a moment. Talking purely from my own perspective:

- if I am honest with myself about my intent and focused on who I represent,
- if I am clear about my ethical position and obligations, and
- if I am confident that the position I bring to the table is grounded in reality and supported by the facts,

Then I know I am ready to speak to and influence power. That doesn't in any way guarantee success but in reaching this point and engaging accordingly it situates me in the best place I can be, and gives me the right to expect the same from others engaged in the dialogue also.

It legitimises holding on to what I believe to be true and in the best interests of those I aim to represent. Hold this thought for later in the presentation.

The challenge of talking truth to or influencing power has never been sharper for me than it was last year when I was appointed to be a member of the Prime Minister's Expert Panel on Asylum Seekers.

I'd like to reflect on the issue and some aspects of that process as a means of putting this discussion in a real context.

The principle focus in the terms of reference for the panel was;



The panel will provide advice and recommendations to the government on policy options available and the efficacy of such options to prevent asylum seekers risking their lives on dangerous boat journeys to Australia.

I was of course aware of the considerable scepticism about the government's motives for establishing the Panel. The impasse within the Parliament was entrenched in shallow rhetoric, political opportunism and a deep lack of trust.

In spite of my scepticism I accepted the invitation because I had come to the view that from a moral point of view the increasing rate of deaths at sea had reached a point, and was on a trajectory, that I personally could no longer accept;

- I could no longer accept it when an increasing number of our clients became grief stricken, on top of their pre-existing trauma, by the news that family members had perished,
- I could not continue to accept it when the casualties increasingly included children,
- I could not continue to accept it when the rate of exploitation for profit by smugglers was ramping up to levels destined to cause more suffering,
- I could not continue to accept the distorting impact of this on the humanitarian program, in particular the devastating effect of virtually wiping out hope of family reunion for refugees, and
- most of all I could no longer accept it when I knew we had the ability to do more and better - to protect thousands more people each year and to do so without them having to die on their way to Australia.

The Panel's work was not just about government though. It was about the Parliament as a whole, the sector, the wider Australian community and how we might dislodge ourselves from the atrophied debate in which we had been stuck for so long.

So taking on these introductory comments, how did the Panel go about preparing its case to present to the government and the Parliament?



Establishing the basis for a credible case

Firstly, we established that we were comfortable with the purpose, parameters and importance of the issue from a humanitarian and public policy perspective. Then we set about building the evidence by seeking and analysing a vast base of material and information.

We received input from hundreds of people of diverse backgrounds in writing and in person. We met with every relevant government agency and were provided with detailed reports and analysis, some of which was not easily accessible in the public domain.

Through all of this we established an enormous depth of information to consider and guide our thinking.

One written submission which in some ways sustained me throughout said simply: "*experts my arse*".

Perhaps the author had in mind the cartoon of Scott Adams, creator of the Dilbert character, who asks: "How can you tell someone is an expert?" And the answer is that their business card says 'expert' on it.

A more generous interpretation of the author's intent is that we were tasked with a subject of extraordinary complexity and we should be suitably modest about what could be accomplished.

There was no risk of us underestimating the magnitude and difficulty of the job. It was in this context that I was introduced to the term 'wicked problem'—how appropriate.

The amount of information we had to absorb was formidable.

In the first week we held discussions with all of the leaders and key representatives of each party within the Parliament, with a Cross-Party Parliamentary Group and with some Independents.



We did not go back to them again until the morning of the report's launch and did not brief the government about the report's contents at any stage prior to the launch.

The Panel was determined to insulate the objectivity of the group and independence of the report from undue influence by any source or party.

This was of vital importance as we sort to preserve the ability for us to present a report and seek acceptance of it as truly independent. This was both a point of integrity for the Panel and strategically important if the recommendations were to be accepted.

In the following weeks we met with a wide range of practitioners, academics, non-government agencies, specialists in refugee law, mental health experts and other distinguished Australians.

Importantly, we met with representatives of refugee communities themselves whom were both generous and dignified in their engagement and contribution.

We listened to the views of people and organisations who all came to speak their version of the truth to us ... and they did.

On reflection however, we were not only dealing with a wicked problem but we were also operating in a pretty wicked environment.

The tenor of discussion about issues relating to refugees and asylum seekers can generate a destructive level of antagonism and distort the truth.

Inflammatory language is used to misrepresent the motivations and lived experiences of refugees and asylum seekers.

There is a reluctance by people on all sides of this debate to analyse information objectively and to allow new information and trends to be considered with the depth and honesty that is required.

7

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Critically, there is a deep, cavernous lack of trust between the key players, (Government, Coalition, Greens and the sector) making engagement and genuine dialogue fraught.

I think such approaches are unhelpful, at best. They get in the way of robust analysis and the dialogue and cooperative action we need between key governmental and non-governmental stakeholders. They diminish our ability to speak with a clarion voice or to maintain a clear eyed view of the issues needing to be addressed.

Let me pluck out a few points to illustrate the scale and complexity of the issues that shape this area:

- The UNHCR estimates that there are 42.5 million forcibly displaced persons worldwide.
- Of these, approximately 15.2 million are refugees (people outside of their country of origin) in need of protection, and
- Of the more than 800,000 refugees from this group that UNHCR identified for resettlement in 2012, only about 80,000 places were available.
- In the early 1990s the average time frame for a protracted refugee situation was 9 years (protracted defined as more than 5 years) - today the average protracted situation has leapt to 20 years.
- According to UNHCR there are 900,000 asylum seekers in industrialised countries. In 2011, 441,000 new applications for asylum were lodged which is the highest numbers since 2003.
- Afghans represent one of every four refugees in the world with 95 percent of them living in Pakistan and Iran.
- In 2014 allied troops will depart from Afghanistan and there is a widely held view that the ability of the Afghanistan government to maintain stability will be seriously compromised.
- Of the 1.6 million Iraqi refugees around 1 million live in Syria, 500,000 in Jordan and 50,000 in Iran.
- The UNHCR reports that the Syrian conflict has generated over 1,000,000 refugees. Imagine the double jeopardy confronting the



1,000,000 Iraqis who fled to Syria and who are yet again in danger due to the conflict.

- South Africa and Kenya host hundreds of thousands of refugees with the Dadaab refugee camp housing more than 559,000 refugees on its own.
- In Malaysia there are currently over 100,000 people registered with UNHCR and in the coming months it is estimated that a further 30,000 will be added to that figure.

This is but a glimpse of the myriad of challenges present in this field of work and provides some insight into why this global humanitarian issue fits the definition of a truly wicked problem.

I have talked about the importance of preparing yourself, of understanding your own motivation and of understanding the people you seek to influence. I have also talked about the importance of understanding your own ethical position and being able to hold onto that.

I want to explain here (which links to another element from my introductory comments), the ethical conundrum that we grappled with as an example of what I mean by this. I hope to use it not to suggest that there is an absolute right or an absolute wrong, but more so to demonstrate the depth and complexity of tackling such a wicked problem.

To highlight how hard it can and should be to confront not just government power but the power within our own selves; to go to places that we have not been before or where we have felt unable to go. How hard it can be to confront power and not only talk to it but influence it for the greater good without diminishing your morality, ethics or objectives.

The ethical considerations contained within this issue frankly have the capacity to cave your head in. For example, there is a genuine ethical conundrum about preventing people risking their lives in search of protection.



The case against intervening has sound ethical arguments to support its position such as the right of people whom fear persecution or death to do or risk whatever they must to find safety.

That is a position I have argued and many others continue to argue. Some critics of the report argue that the starting premise and therefore the recommendations are wrong. They argue that using the prevention of loss of life at sea as the basis for recommendations in support of regional processing on Nauru, Manus Island, Malaysia or anywhere is emotive and ignores important legal and other issues.

In particular, they challenge the ethics because they argue that we should not do anything that we know will cause harm to others and that the transfer of people to processing centres such as Nauru and Manus Island, as was done last time, will and has caused harm.

I agree with all of this. In particular, I acknowledge that the way in which the RPCs have been established to date has not been in accordance with the recommendations of the Panel - a source of immense frustration!

I believe that as a consequence it has caused harm to some people and I believe that every measure must be taken to remedy this and apply the policy recommendations as was intended by the Panel. Doing so and building greater co-operation between non-government and government agencies would help to prevent such harm from occurring again.

Critics also reason that: "Refugees die all over the world" (as one Parliamentarian and some advocates suggested to me) "so why is this any different – they will die taking risks going elsewhere".

The points made in this case are valid but the question we also must ask is: does it make it right? Are there other valid issues that need to be considered? Is it justifiable not to prevent the loss of life if we have the ability to do so?



On the other side of that ethical conundrum is the case that we should intervene to prevent people from risking their lives, and in this case, dying at sea. That if we could do more to prevent people dying within our sphere of influence then we should do so.

While I agree whole heartedly that we should never implement policies that deliberately set out to do harm, I also believe that we should not allow harm or death to occur through inaction when we know it exists and is within our remit to respond. The mere fact that it is beyond our immediate gaze, and that allowing people to continue to die on unnecessary and perilous boat journeys, is difficult to justify on ethical grounds.

Importantly for me was the reality that the considerable numbers of women, children and babies who often have very little choice in the decision but who have significantly higher chances of dying when a boat sinks, weighed heavily in my thoughts.

The Panel came down on the side that it was more ethical to do whatever we could to prevent people from dying unnecessarily - that the current and likely future numbers of deaths at sea were too great to just accept. It was from this ethical position that we needed therefore to construct a package of recommendations.

In response the major emphasis of our report was the development of a regional protection and processing framework.

The primary goal, as stated in the foreword, was to create strategies that "*shift the balance of Australian policies and regional arrangements to give greater hope and confidence to asylum seekers that regional arrangements will work more effectively...and rather than denying asylum seekers the 'right' to take terrible risks, there is a responsibility to create opportunities that would enable their claims to be processed more fairly and effectively in ways that make those risks unnecessary*".



This was the backbone of the report but you would hardly know that from the reaction and focus of the media and the response of the Government, Opposition and the Greens.

Critical to achieving this were recommendations such as;

- Increasing the Humanitarian program to 20,000 places immediately (the largest in 30 years) and then to 27,000 places over the next five years,
- Adding a further 4,000 places to the family reunion stream of the general migration program to be held exclusively for families of people who had arrived in Australia as irregular maritime arrivals, (thereby unclogging the special humanitarian program and enabling many more families from Africa, Iraq and Burma to be reunited),
- Providing an additional \$70 million dollars per annum for UNHCR to register and process applications more quickly and for civil society groups to provide assistance to asylum seekers across the region so that they would not have to keep moving and risk their lives.

These are all things that we (as a sector) have hoped and called for over the past twenty five years but never really expected to achieve.

However, if this attempt at creating a new fairer regional system was to be "effective" at preventing people from drowning then there would also need to be measures that discouraged people from going around it.

This is where the wicked nature of the problem really played out for me. In order to emphasise the fairness and equity of the proposed system and to preserve the political and financial support it requires, there needed to be measures that would create disincentives for anyone to undermine it.

Here I am not talking about asylum seekers *per se*, I am referring to systemic undermining by people smuggling organisations. To prevent this we felt it necessary to have the capacity to put people who had sought an advantage by going around this system back into it.



Therefore, in addition to all of the measures designed to create incentives for staying with the proposed regional system we also recommended measures, not to punish, but to discourage people from risking their lives while that system is created. Importantly, none of these recommendations were designed or sought to prevent people from seeking asylum or from obtaining protection.

They included;

- reintroducing processing on Nauru and Manus Island;
- building on and implementing the 'Malaysia Arrangement'; and
- increased co-operation with Indonesia that would lead to their participation also.

To achieve this, the Panel recommended that a principle of "no advantage" be established to guide the policy. I would like to take a few minutes to describe what this principle is about because to date it has been poorly explained and in some instances misused.

As an underpinning component of the regional processing and protection framework the 'no advantage principle' was conceived as a basis for greater fairness in the processing of a person's refugee application and for the provision of resettlement to those found to be in need of protection.

It is not a test but a guiding principle that aims to achieve greater fairness for asylum seekers, regardless of their capacity to engage people smugglers, by making the necessity and any subsequent advantage obtained through people smuggling redundant. For example, a mother and child in Indonesia.

Importantly, the no advantage principle does not require an asylum seeker to be subject to extended periods of stay in a Regional Processing Centre (RPC) beyond that which would apply to others in a similar situation being processed within regional arrangements.

In this context, while removing the advantage one asylum seeker may achieve by engaging a people smuggler, it is equally important to ensure that any



asylum seeker transferred back into regional processing arrangements is not disadvantaged.

The principle must not be utilised as a form of punishment or for the purpose of deterring asylum seekers from seeking protection. Its only credible objectives should be to create greater fairness in who gets access to protection and resettlement and to discourage people from risking their lives through smugglers to obtain it.

Claims that it will take five years or that a person should be automatically held in such centres for five years are wrong and were never contemplated as necessary by the Panel. Claims that the no advantage principle would mean people would be locked up for 65 years or even forever are simply ridiculous.

However, in understanding the risks associated with these measures and having a clear desire to prevent harm, the panel recommended these arrangements and the application of the no advantage principle must occur in the context of other protective measures including;

- Treatment consistent with human rights standards (including no arbitrary detention);
- Appropriate accommodation;
- Appropriate physical and mental health services;
- Access to educational and vocational training programs;
- Application assistance during the preparation of asylum claims;
- An appeal mechanism against negative decisions on asylum applications that would enable merits review by more senior officials and NGO representatives with specific expertise;
- Monitoring of care and protection arrangements by a representative group drawn from government and civil society in Australia and Nauru/Papua New Guinea;
- Providing case management assistance to individual applicants being processed in Nauru and on Manus Island;



- Provision for transferees who are determined to have special needs or to be highly vulnerable, or who need to be moved for other particular reason, to be transferred to Australia.

Safeguards of this nature were never considered or applied last time around. To compare what was recommended and what occurred last time is misleading at best.

However, I need to say that at present these preconditions and safeguards set out by the Panel and agreed to by the government as policy have not been secured and as a consequence immediate action is required to remedy this.

If, for example, remedial action does not occur and transferred asylum seekers, including children, continue to be detained arbitrarily and processing is further delayed then nobody should be transferred until all of the Panel's preconditions can be satisfied.

Manus Island is unambiguously failing to operate in accordance with the safeguards. In my view all children and their families should be returned to Australia and if processing does not begin soon and open centre arrangements cannot be established then the ongoing use of Manus Island should be stopped.

As I have said publicly, to the Minister for Immigration and to the Prime Minister, the safeguards and integrated nature of the recommendations were not optional extras or simply nice ideas to consider.

They were essential preconditions for the implementation of a regional processing system to protect the wellbeing of transferees and prevent harm being done. Given the government's acceptance of the recommendations, if preconditions are not in place then the government is in violation of its own policy.

I would encourage you all to use the report to hold them to account. I am and I will continue to do so.



If I may I would also like to point out that the denial of work rights to people released into the community on bridging visas was never a recommendation or consideration of the panel.

I believe that people on bridging visas should be able to access work rights. It is fair and sensible and will not only help to prevent families and individuals sliding into destitution but will save the Commonwealth some money.

Since the completion of the panel's report many more people have died while the parliament quibbles about whether it should or shouldn't support the full implementation of the panel's recommendations.

In one tragedy over 100 people died, in another 60 perished and in another 33 lost their lives. In one incident a 13 year-old boy watched his father, brother and uncle perish, at least one person died from a shark attack.

Another boat carrying 34 people sank, killing all but one. In March and April this year several boats sank after having departed Indonesia. One boat said to have been carrying approximately 80 people sank with only a few survivors - one of them was a 14 year-old boy.

On another over ninety died after their engine was reported to have been deliberately damaged and they were set adrift for weeks on the open ocean.

As people perished from hunger and dehydration they were turned overboard and left to be buried at sea. There are unconfirmed reports of many others all carrying similar numbers of people.

What I do know is that if some of these tragedies had occurred in the full view of a television camera or were recorded on an iPhone and loaded onto YouTube, if the terror on the people's faces was public, if the cries of children were heard and the vision of them being crushed by waves or mauled by sharks flooded our LED screens, then it would be impossible for our parliament



to ignore or avoid uniting to find a better way to manage this - there would be no way we could either.

However, the sad reality is that because they and we don't have to look at it and because the distress and outrage of the wider public is not drawn into the debate running up to an election, they are not compelled to rethink and invest properly in a better way. Dare I say it, but by and large we are not compelled either.

As a consequence one thing is for sure, many more children, young people, women and men will die a terrifying lonely death and those that survive will be devastated and traumatised, suffering from loss and grief for the rest of their lives.

So while I acknowledge the absolute legitimacy of the ethical concern not to do any harm and the complete genuineness of concerns that critics raise, I also believe that it would be well within our collective capabilities to ensure no harm is done if the recommendations of the panel were applied in full.

I would prefer to tackle this challenge rather than to simply accept that further loss of life at sea was more acceptable, even though none of the people I know who argue the alternate position would ever want to see a single person die.

I believe we should and can do better. If those who disagree with the package have a better, more effective, more humane, completely implementable plan that addresses the full complexity of the issue then please, please, please, present it and I for one will support it. I will argue it with any government.

Two weeks ago my staff had to support two young people who had been in search of their family. They had received a call late one night in the beginning of April from two members of their family to say they were boarding a boat in Indonesia.



They have not heard from them since and after asking the Department of Immigration and Citizenship search the centres across Australia we had to tell them that they were not here.

In all likelihood they have not survived. Their boat was not reported as having been in distress and we are not sure how many others boarded that night. One of the men was a father of five, all of whom are left vulnerable in Pakistan. Our clients are shattered but they cling to some hope that they may yet find them and we will support them for as long as they need and want us to.

I want to speak truth to power about this; I want to confront not just the government but the Parliament as a whole. I want to do it with honesty and integrity and in acknowledgement of all of the complex issues that require consideration. I want to help find the goodness that we are capable of delivering and embed that in our response.

But I also want to speak to your power, to the power that resides within this room, I want us to engage each other with open minds and hearts and climb out of the trenches to see if we can't just find a way to make it better.

If we cannot then what makes us think our Parliament will ever be able to do so - what would be the point of speaking truth to power be anyway?

