

## **REPORT TO THE ROBODEBT ROYAL COMMISSION**

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This report<sup>1</sup> has been prepared at the request of the Royal Commission into the Robodebt Scheme (see letter of engagement at Attachment A). It addresses each of the matters the Royal Commission identified in its request, and sets out the recommendations that, in my professional opinion, would address the concerns I identify which appear to be systemic or critical points in the Robodebt scheme.

The report draws on my experience in the Australian Public Service (APS) from 1968 to 2005 and my subsequent academic work on public policy and public administration. Of particular relevance to addressing the matters raised by the Royal Commission are:

- My experience as Public Service Commissioner for three years (2002-2004);
- My experience as a Departmental Secretary for nine years (Administrative Services 1993-94, Housing and Regional Development 1994-1996 and Health and Aged Care 1996-2002);
- My long experience in social policy, commencing with work for the Henderson Poverty Inquiry in the early 1970s and including periods in the Departments of Social Security, Prime Minister and Cabinet and Finance as well as when Secretary of the Housing and Regional Development and Health and Aged Care Departments;
- My role as National President of the Institute of Public Administration Australia from 2005 to 2010;
- My academic role at the Australian National University where I am now Honorary Professor of Public Policy, including publications on the role of departmental secretaries, public sector financial and budgetary management, human resources management and retirement incomes policy;
- Submissions to and public commentaries on major inquiries into the Australian Public Service over the last 15 years.

A short biography is at Attachment B.

This report also refers extensively to recent inquiries into the APS and to my submissions to and commentaries on those inquiries. A list of references is at the end of the report.

While I have been following the Royal Commission's hearings, I have not studied the transcripts in detail nor is it my role to draw firm conclusions from the evidence presented. Instead, this report has drawn on the information presented that I have read to assist my understanding of the specific issues the Royal Commission has asked me to consider.

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<sup>1</sup> In preparing this report, I have consulted Helen Williams AC, another former Public Service Commissioner and Departmental Secretary, and David Stanton AM, a former senior public servant with long experience in social security policy and administration and more recently a respected academic in the field. Responsibility for the content of the report lies solely with me.

**A. How would you describe the role of the Australian Public Service (APS) and the professional relationship that exists/ed between APS leaders and their Agency Minister/s and their respective responsibilities for the Relevant Period?**

The role of the APS is set out in the *Public Service Act 1999* (PS Act). The first main object of the legislation in s 3(a) is:

‘to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public’.

The legislation effectively defines the role in its articulation of the APS Values (s 10) and Employment Principles (s 11) which together describe the core elements of a Westminster-style public service that is professional, merit-based, apolitical, impartial, accountable (within the framework of ministerial responsibility), committed to serve the public and the Government and highly ethical.

This role has been found by the High Court to have a Constitutional basis, as most recently stated by Justices Kiefel, Keane and Nettle in their joint judgement in the 2019 Banerji case<sup>2</sup>:

‘There can be no doubt that the maintenance and protection of an apolitical and professional public service is a significant purpose consistent with the system of representative and responsible government mandated by the Constitution.’ (As cited in Podger 2019).

While the role involves serving the elected Government and being responsive to Ministers, it also requires a degree of independence. This is implicit in its Values and Employment Principles of professionalism, merit-based employment, impartiality and non-partisanship etc., and in the objective to serve the Parliament and the Australian public as well as the Government.

The appropriate degree of independence of the civil service is the subject of perennial public and academic debate both in Australia and internationally. In Australia, the Coombs Royal Commission in 1976 considered that the Commonwealth Public Service (as it was called then) was not sufficiently responsive to the elected government. Subsequent developments have, arguably, shifted the pendulum too far in the opposite direction. Certainly, over the last 35 years, there has been a significant shift towards closer Government (political) control through for example:

- The more limited role of the Australian Public Service Commissioner following the abolition of the Public Service Board (in 1987);
- The loss of tenure of Secretaries and the firmer control by the Prime Minister over appointments and terminations (particularly since 1994);
- The steadily increasing role and number of ministerial staff;
- The increased reliance of governments on non-APS sources of advice and non-APS service delivery.

Concerns about the extent of this shift have been raised in many forums. These concerns include whether it has led to excessive responsiveness by APS leaders (both Secretaries and the SES who report to them) to the wishes of ministers, undermining ‘frank and fearless advice’ and public confidence in the non-partisanship of the APS; concerns have also been raised as to whether the shift has contributed to a loss of capability in the APS.

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<sup>2</sup> Comcare v Banerji (2019) HCA 25, 267 CLR 373

I raised some of these concerns publicly myself after my retirement from the APS (Podger 2007), drawing attention in particular to Secretaries' appointment and contract arrangements, and the then Government's use of performance pay determined by the Prime Minister. I recommended a firmer role for the Public Service Commissioner in appointments, making five years rather than three the standard appointment period and abolishing performance pay for Secretaries. Following an 'alternative view' presented by Peter Shergold, then Secretary of the Department of Prime Minister and Cabinet (Shergold 2007), I challenged his view that frank and fearless advice is a matter of character, not tenure (Podger 2007a). People can be, and are, affected by tenure. That is not to deny the importance of character and integrity more generally.

The Rudd Government abolished Secretaries' performance pay arrangements in 2008 and established a new review of Australian Government administration (the Moran Review). In 2010, the Moran Review lent its support to some of these concerns and recommended amendments to the PS Act to involve the APS Commissioner in advising on Secretaries' appointments, set 5-year terms as the standard for appointments and to simplify the APS Values to make them more memorable amongst the APS. These recommendations were taken up in the 2013 changes to the PS Act. However, they do not appear to have had a significant material impact on Secretaries' tenure or on appointments and terminations, particularly given the decisions on Secretaries' terminations and appointments in 2014 and subsequently. Hence, the incentives for Secretaries to be overly responsive to Ministers remained. Concerns were also raised about whether the revised APS Values might be more memorable but less substantial in reflecting Westminster principles (a central concern being the apparent downgrading of merit).

The 2019 Thodey Report recommended further changes including:

- The inclusion of new 'principles' in the PS Act to clarify the role of the APS, along with the APS Values, and the development of 'an inspiring purpose and vision to unite the APS in serving the nation';
- A legislated code of conduct for ministerial staff to help clarify their role and accountability;
- Clarifying the respective roles of the Secretary of the Department of Prime Minister and Cabinet (as 'Head of Service') and the APS Commissioner (as 'Head of People');
- Further strengthening the role of the APS Commissioner in advising on Secretary appointments and terminations;
- Making the processes for such advice more transparent;
- Requiring the Prime Minister to consult the Leader of the Opposition on the proposed appointment of APS Commissioners.

I made several submissions to the Thodey Review (Podger 2018 and Podger and Williams 2019) and gave a Parliamentary Library Lecture shortly before the Report was released (Podger 2019). These (with some exceptions) supported the general directions subsequently recommended by Thodey, but suggested strongly that they needed to be taken further (particularly regarding the role of the APS Commissioner and revisiting the APS Values and Employment Principles).

While the Morrison Government rejected almost all of these Thodey Report recommendations, the Albanese Government has since committed to reconsider them. Hopefully, particularly in the light of the Royal Commission, reforms can be identified which can gain the support of all sides of the Parliament, an important goal for any change to the apolitical institutional framework of the public service.

In a very different context, the proposal for a legislated code of conduct for ministerial staff was renewed in the Jenkins Report on Parliamentary Workplaces which recommended a broader review of the *Members of Parliament (Staff) Act 1984* (MOP(S) Act) and the development of a code (or codes) of conduct for all those working in the Parliament. These recommendations were accepted by the then Government (and the other parties in the Parliament) and a review of the MOP(S) Act conducted by PM&C. I made submissions to both the Jenkins Review and the PM&C review, as well as a written (mostly positive) commentary on the PM&C report sent to the Parliamentary Leadership Group responsible for implementation of the Jenkins Report recommendations (Podger 2021, Podger 2022, Maley and Podger 2022). The Government has yet to announce any decisions on amending the MOP(S) Act.

I believe the APS must be regarded as a significant institution in its own right as part of responsible government under the Constitution. It plays a critical democratic role in serving the elected Government and administering its policies and programs. The partnership between Secretaries and Agency Ministers is therefore critical: it requires trust and mutual respect, and confidence in the confidentiality of communications between the two. Equally, the degree of independence of the APS, and hence of Secretaries, must be recognised. The relationship should be along the lines of trustees, each respecting the other's role and responsibilities; not quite equals (as the APS does 'serve the Government') but not the 'principal-agent' relationship which has emerged since the 1980s let alone the 'master-servant' relationship which I have detected in more recent times.

Failure to appreciate this degree of independence may inhibit the provision of 'frank and fearless' advice, endanger perceptions (or the reality) of non-partisanship and impartiality, and undermine the role of the APS in serving the Parliament and the Australian public as well as the Government. I consider there has been such a failure over at least the last two decades and most particularly over the Relevant Period for the Robodebt scheme, and that this systemic problem may well have contributed to the 'fiasco' (the term used by Peter Whiteford (Whiteford 2021)).

If this systemic problem is to be lessened significantly, Secretaries need some assurance that providing 'frank and fearless' advice will not jeopardise their tenure. Such assurance is only possible if they know that when facing a particularly difficult situation they can seek support from the APS Commissioner and if the Commissioner has the necessary powers and independence to provide some protection. Relying on the Secretary of PM&C would be insufficient, particularly given the common practice over recent decades of Prime Ministers ensuring that the Secretary of their own department is someone they have had a personal connection with (on occasion raising questions of partisanship). The Commissioner's role and powers need to be strengthened if adequate protection is to be provided, though there must also be some limit to the protection the Commissioner can provide. In the event a Secretary and Minister are unable to form the partnership required, notwithstanding the efforts of the Commissioner, it is the Secretary who must be moved; but the Commissioner should have considerable influence in finding an alternative suitable role for the Secretary affected.

I also consider it essential to revisit the APS Values and Employment Principles to make much more clear the unique role of the APS reflecting Westminster principles. As mentioned, Thodey recommended a new (additional) set of principles and a statement of purpose and vision. The current Minister for the Public Service has suggested adding 'stewardship' to the APS Values and requiring non-APS Commonwealth organisations to be subject to the APS Values. Neither approach in my view would help to clarify the role of the APS: indeed, they would be likely to further confuse roles and responsibilities.

A much better approach would be to continue to rely upon the overall objective set out in s 3(a) of the PS Act quoted above and then have a single set of APS Values that closely align with Westminster principles, based upon the key relationships the APS has with the Government and the Parliament, the Australian public and in the workplace. Such core values would include:

- Non-partisanship or being apolitical;
- Responsiveness to the elected Government;
- Accountability, within the framework of Ministerial responsibility;
- Impartiality;
- Commitment to serving the public;
- Merit-based employment;
- High ethical standards (given taxpayer funding and the exercise of public power).

Such a framework could be used to clarify the slightly different values required of many non-APS Commonwealth employees. For example, ministerial staff are not required to be apolitical and Parliamentary Service employees are not accountable within the framework of Ministerial responsibility.

Consistent with such core values, the PS Act could continue to set employment principles and the APS Commissioner could give Directions and offer guidance on other aspects of good behaviour.

I recognise that there may be some misgivings amongst some Ministers, and some Members of Parliament looking to be Ministers in the future, about my recommendations for placing more emphasis on the degree of independence of the APS, but surely a key message from Robodebt is that failures to provide 'frank and fearless' advice have serious political consequences for Ministers; in addition, excessive emphasis on 'responsiveness' has contributed to the loss of capability within the APS to offer advice and to implement government policies and programs, a loss that has not helped Governments politically. Importantly, my recommendations should not adversely impact the partnership necessary between Secretaries and Ministers: indeed, they should cement the professional relationship our Westminster system relies upon.

My recommendations to address the systemic problems in this area are:

**Recommendation A1:** That the APS Commissioner have the lead role in advising on Secretaries' appointments and terminations and that, in the event the Prime Minister does not accept the Commissioner's advice, the PM table in the Parliament the reasons, based on merit, for the person recommended to the Governor-General.

**Recommendation A2:** That the APS Commissioner be recognised in the PS Act as the 'professional head of the APS' and the Secretary of PM&C as the 'operational head' responsible for marshalling the resources of the APS to meet the requirements of the PM and Cabinet; and that the PM must consult the Leader of the Opposition on the appointment of the APS Commissioner.

**Recommendation A3:** That the APS Values and Employment Principles be recast to clarify the distinctive role of the APS consistent with longstanding Westminster principles; and that the APS Commissioner's Directions and guidance clarify both the need for responsiveness to the elected Government and the degree of independence required including to serve the Parliament and the Australian public as well as the Government.

**Recommendation A4:** That the MOP(S) Act be amended to include a legislated code of conduct for ministerial staff and a statement of values that clarifies their distinct role from that of the APS (and the Parliamentary Service); and that the code clarify that such staff do not have authority to direct the APS.

**B. How would you describe the responsibilities of individual public servants, particularly Secretaries, SES and ELs including their statutory obligations under the PS Act, the PGPA Act, the PID Act and administrative law for the Relevant Period?**

The systemic problem discussed in Section A does not excuse Secretaries or APS employees more generally if they do not meet their statutory responsibilities or ensure that they and the Government comply with the law.

Secretaries' main generic responsibilities are set out in the PS Act and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Under s 57 of the PS Act, the roles of Secretaries include:

- the principal official policy adviser to the Agency Minister,
- manager, ensuring delivery of Government programs, and
- leader, providing stewardship within the department and across the APS (in partnership with the Secretaries Board).

The responsibilities set out in s 57 that are particularly relevant to the establishment, design and implementation of the Robodebt scheme include:

- 'managing the affairs of the Department efficiently, effectively, economically and ethically';
- 'to implement measures directed at ensuring that the Department complies with the law';
- 'to maintain clear lines of communication within the Agency Minister's portfolio, as negotiated between the Secretary and the other Agency Heads in the portfolio';
- 'to engage with stakeholders, particularly in relation to core activities in the Department'; and
- 'to assist the Agency Minister to fulfil the Agency Minister's accountability obligations to the Parliament to provide factual information, as required by the Parliament, in relation to the operation and administration of the Department'.

Under s 12 of the PS Act, Secretaries (and other Agency Heads) must uphold *and promote* (my emphasis) the APS Values and Employment Principles.

Secretaries are 'accountable authorities' under the PGPA Act and these have specified duties under sections 15, 16, 17, 18 and 19. These include: the duty to govern the entity (the Department) in a way that promotes the proper use of public resources and promotes the achievement of the purposes of the entity; the duty to establish and maintain systems relating to risk and control; the duty to encourage cooperation with others; the duty in relation to requirements imposed on others (including associated risks and the effects of imposing the requirements); and the duty to keep the responsible Minister and Finance Minister informed.

Secretaries also have specified responsibilities, as Agency Heads or Principal Officers etc., under the *Public Interest Disclosure Act 2013* (PID Act) and various administrative laws such as the *Freedom of Information Act 1982* (FOI Act), including about ensuring effective processes within their Departments for applying these laws.

In addition, Secretaries commonly have specified responsibilities under the portfolio's own legislation. In the case of both DSS and DHS (now SA), this includes the Social Security Act and the Social Security (Administration) Act.

The role of SES officers is set out in s 35 of the PS Act. Each SES officer:

- provides one or more of several contributions at a high level (e.g. policy advice, program or service delivery);
- promotes cooperation within and between Agencies; and
- 'by personal example and other appropriate means, promotes the APS Values, the APS Employment Principles and compliance with the Code of Conduct'.

Consistent with the application of the merit principle and the APS Value of accountability, and to support performance management, all APS employees (including the SES) have specified duties based on the position they hold. In exercising these, they must uphold the Code of Conduct (s 13 of the PS Act).

Provisions in the Code of particular relevance to the establishment, design and implementation of the Robodebt scheme would seem to be that APS employees must:

- Behave honestly and with integrity;
- Act with care and diligence;
- Treat everyone with respect and courtesy, and without harassment;
- Comply with all applicable Australian laws; and
- At all times behave in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of the employee's Agency and the APS.

These Code of Conduct provisions are particularly relevant to the Secretaries, the SES and EL officers exercising delegations from the Secretary or with other specific responsibilities, and those managing teams: all have responsibilities that require particular care and diligence, compliance with the law etc.

Breaches of the Code of Conduct are subject to processes under s 15 of the PS Act managed by Agency Heads. In the case of alleged breaches by an Agency Head, under s 41A the APS Commissioner is responsible for inquiries and, in the case of a Secretary, reports to the PM. Under s 41B, the APS Commissioner may also inquire into alleged breaches of the Code by a current or former APS employee at the request of an Agency Head or the PM. Where a breach of the Code is found, sanctions may be imposed on an APS employee as set out in s 15(1) of the Act; there is no provision for sanctions on a former APS employee.

In the event the Royal Commission recommends that there should be an investigation into whether any current or former Secretaries or APS employees have breached the APS Code of Conduct, I believe the best course of action would be for the Prime Minister to request the APS Commissioner to inquire into the alleged breaches. It would not be appropriate in my view for Agency Heads to inquire into alleged breaches by those who are still APS employees, leaving any current or former Secretaries or former APS employees to be investigated through a separate process. I also suggest that, notwithstanding the absence of sanctions available for any former Secretaries or APS employees found to have breached the Code, the APS Commissioner should be asked to inquire into alleged breaches by such former public servants not only for completeness and fairness in determining accountability (a core APS Value) but also to ensure the lessons from Robodebt for the APS are firmly understood.

Under the APS Employment Principles, s 10A(1)(d) requires effective performance from each employee. In line with their responsibility to promote the Employment Principles, Agency Heads establish performance management systems through which the performance of every APS employee is regularly reviewed. The APS Commission provides guidance on such systems. Under s 61A, an annual review of the performance of Secretaries must be carried out in accordance with a framework established by the Secretary of PM&C and the APS Commissioner.

Concerns about leadership and leadership responsibilities within the APS have been raised regularly over the last two decades, leading to some strengthening of requirements and expectations, and improvements in training and development. A Senior Executive Leadership Capability Framework was introduced for the SES around 2000 and used for SES promotion criteria and for development purposes; this was extended into the Integrated Leadership System for both SES and EL officers in 2004. Following the Moran Report, the responsibilities of Secretaries were spelled out more fully in the PS Act, including for 'stewardship', a Secretaries' Board replaced the former Management Advisory Committee and new processes were introduced for appraising the performance of Secretaries. The Thodey Review recommended further strengthening of the Secretaries Board, a firmer approach to performance management of the SES and to talent development and succession planning, and the introduction of induction training for Secretaries along with firmer performance appraisal of Secretaries.

My submissions to the Thodey Review and my Parliamentary Library Lecture (Podger 2018, Podger and Williams 2019 and Podger 2019) touched on these issues, generally providing support for the directions outlined by Thodey. My book, *The Role of Departmental Secretaries*, has much more detail on Secretaries' responsibilities though this was based on the legislation at the time, before the PS Act was amended in 2013 and the PGPA Act replaced the FMA Act in 2013 (Podger 2009).

While the Thodey recommendations on these matters were generally agreed by the Morrison Government in 2019, the current state of implementation of them is not entirely clear.

My own impression is that more needs to be done to ensure Secretaries, the SES and EL officers in particular appreciate their statutory and other responsibilities, and not focus exclusively on achieving specific performance results and serving Ministers.

My recommendations to address systemic problems in this area are:

**Recommendation B1:** That induction training for new Secretaries, as agreed by the previous Government following the Thodey Report, include details of Secretaries' statutory and other responsibilities and be supported by updated guidance from the APS Commission.

**Recommendation B2:** That orientation training for new appointees to SES and EL positions be strengthened to include details of statutory and other responsibilities.

**Recommendation B3:** That the APS Commissioner have the lead role in reviewing the performance of Secretaries and that the process include evidence of how each Secretary is meeting their statutory and other responsibilities, as well as achieving results and serving their Agency Minister.

**Recommendation B4:** That performance management of SES and EL officers be strengthened, giving more weight to their responsibilities regarding the APS Values, Employment Principles and Code of Conduct.

**Recommendation B5:** That ethics training be provided more systematically for all APS employees, particularly new employees and newly promoted employees, tailored to the relevant Agency's responsibilities, and supported by Australian Public Service Commission (APSC) guidance.

The following recommendation is relevant only to concerns arising from the Robodebt scheme:

**Recommendation B6:** That, in the event the Royal Commission recommends that there should be an investigation whether current or former Secretaries or APS employees have breached the Code of Conduct, the Prime Minister be asked to refer the matter to the APS Commissioner for investigation under s 41A or s 41B of the PS Act.

**C. For the Relevant Period, please describe and comment upon the relationship between policy advising and administration as well as the structure of the social security portfolio i.e., the respective roles of and relationships between DSS and Services Australia.**

Closely linking policy and administration is essential to both good policy and good administration. Ideally, the link should be seamless and continuous, with policy informed by ongoing feedback of direct administrative experience and administration always focused on achieving the outcomes intended by policy.

Ensuring such links is challenging even when both policy advising and administration responsibilities lie within the one organisation. It is more challenging when the responsibilities are held in separate organisations.

Separating responsibilities for policy and administration is not new, such separation being seen to facilitate professional expertise in each field. It occurs even when both responsibilities lie in the one organisation, but the benefits of the separation have long been seen also to justify, for example, having the Australian Tax Office separate from the Treasury and the former Health Insurance Commission separate from the Health Department (in 1941, DSS itself emerged from the Treasury and until 1973 it was the Treasurer who had responsibility for taking social security policy proposals to Cabinet).

Over the 1980s and 1990s, 'agencification' was one of the common developments under New Public Management (NPM) across Anglophone and some other OECD countries, seen to be a way of increasing efficiency through the specification of firmer performance targets set through ministerial department policy processes and imposed on service delivery agencies. In some cases, service delivery was provided under purchaser-provider arrangements and in some of these cases competition was also introduced. These developments have been the subject of an extensive literature including much criticism. While agencification was not widely employed in Australia, purchaser-provider arrangements were.

The most significant agencification initiative in Australia was in the social security field, driven in part by the potential efficiency gains but also by the desire to offer more integrated services across portfolios. Until 1996, responsibility for social security policy and administration lay within the one ministerial department (DSS). Centrelink, established formally as a statutory authority in 1997, became responsible not only for administration of social security payments but also for employment services (though these were later privatised) and later for some other social support payments such as housing assistance. Originally, Centrelink had an executive board including the Secretaries of the

relevant policy departments and an almost purchaser/provider relationship imposed. Later, this board arrangement was abolished.

In 2004, a new very small Department of Human Services was created as part of the Finance and Administration portfolio. The Minister for Human Services was given responsibility also for Centrelink, the Health Insurance Commission and the Child Support Agency (and some smaller agencies). While these agencies retained direct responsibility for delivery of the relevant services, the arrangement was intended to facilitate over time greater integration of services. Responsibility for social security policy still rested primarily with DSS (at the time named the Department of Family and Community Services), responsibility for income support for those of working age rested with the Employment Department and responsibility for health policy rested with the Health Department.

In 2007, a new Human Services portfolio was created, the Department then assuming direct responsibility for the service delivery functions previously managed by Centrelink, the HIC (later renamed Medicare Australia) and the Child Support Agency. The Department retained responsibility for 'service delivery policy', but the relevant functional policy responsibilities continued to lie with the relevant policy departments (primarily DSS – then called Family and Community Services and Indigenous Affairs – and Health).

In 2020, DHS was restructured as an Executive Agency, Services Australia, and placed within the Social Services portfolio. Functional policy responsibilities continued to lie with the relevant policy department (primarily DSS and Health).

The Thodey Report recommended further steps to exploit digital technology developments to enhance integrated service delivery and responsiveness to citizens. It also recommended further reviewing of organisational structures, drawing specifically on the submissions I made about the varying degree of independence from ministers appropriate for different functions, service delivery being one that warrants greater independence than a ministerial department. Apart from my submissions to the Thodey Review and my Parliamentary Library Lecture (Podger 2018, Podger and Williams 2019, Podger 2019), a chapter in my edited book, *Designing Governance Structures for Performance and Accountability*, explored in more detail the issues involved in determining appropriate structures for different functions (Podger 2020).

My own view is that the benefits of service integration have been exaggerated and could mostly be achieved by data linkages rather than amalgamation of service delivery functions with its increased separation from policy. It would be better if social security administration was undertaken within the social security portfolio and Medicare administration within the Health portfolio, making the linking of policy and administration easier in both cases.

However, I accept that it is now simply too hard to return to that model, and that there are good reasons for some separation of policy from administration, including the need for impartial service delivery independent of close political control as well as increased capacity to offer integrated services. Allocating responsibility for service delivery to its own ministerial department would in my view be inconsistent with the first of these advantages. Allocating it to an Executive Agency (the current SA model) would be better, but still risks excessive political involvement: for example, the CEO of an executive agency is appointed without the merit-based constraints that even apply to Secretaries. My firm view is that a statutory authority is the most appropriate structure, and I note the generally positive assessment of the performance of Centrelink when it was a statutory authority (see for example, Halligan and Wills, 2008).

Such an arrangement requires other processes, such as firm protocols and collaborative leadership, to ensure adequate links between policy and administration. I recall that, when DSS was responsible for both policy advising and administration, there were fortnightly meetings at the national level between the policy and research staff and the benefits administration staff, each keeping the other fully informed of developments. The protocols between DSS and SA (and between SA and its other policy department partners) need to foster such close, ongoing interaction, and the Secretaries and senior managers need to demonstrate and support this interaction by their personal behaviour.

Such protocols can also be enhanced by reintroducing the practice used by DSS in the 1980s and 1990s of requiring all SES officers to gain some firsthand experience working directly with clients in regional offices or call centres etc. This helped to ensure those in senior policy or management positions had at least some understanding of the client interface.

Ministerial oversight of service delivery reform can be retained by having an Assistant Minister responsible, under a Portfolio Minister. Alternatively, a separate Cabinet Minister might have responsibility for service delivery, noting the additional challenges this may impose in defining the respective responsibilities for 'service delivery policy' and the functional policy responsibilities of portfolio Ministers.

My recommendations to address systemic problems in this area are:

**Recommendation C1:** That Services Australia be established as a statutory authority, its CEO appointed on the basis of merit through similar processes recommended above for Secretaries; that it have an advisory board of the relevant portfolio Secretaries; and that it also have a consultative committee of stakeholders including representatives of major client groups.

**Recommendation C2:** That the SA statutory authority remain within the Social Services portfolio with a Minister assisting the portfolio Minister, or with a second Cabinet Minister within the portfolio, responsible for 'service delivery policy' across government but not for any functional policy which should remain with the relevant portfolio Ministers.

**Recommendation C3:** That explicit protocols be established between SA and each relevant policy department to ensure that: any policy proposal is checked with SA before being sent to a Minister; any administrative policy change (requiring legislative change or ministerial consideration) is checked with the relevant policy department(s) and agencies before going to a Minister; ongoing interaction at EL, SES and Secretary/Agency Head levels including feedback to policy departments on administrative issues including from AAT cases, and involvement of SA staff in policy departments' research activities.

**Recommendation C4:** That DSS and SA SES be required to spend some time experiencing first hand front-line service delivery.

**D. For the Relevant Period, please describe and comment upon the annual budget process and the MYEFO process including arrangements for ensuring Cabinet had/s sufficient information (including on legal and other risks) to make proper decisions.**

The budget process is designed to ensure Cabinet decisions are properly informed and assist Ministers to carefully assess priorities. Final decisions, of course, are the responsibility of Ministers, not officials.

While the process has been refined from time to time over the years, the key elements remain:

- Typically, line departments are reviewing policies constantly and working with their Ministers on possible proposals well ahead of the formal budget process which commences around November/December.
- Following MYEFO in the pre-budget year, senior Ministers meet to determine high level budget strategies informed by advice from the central departments (Treasury, Finance and PM&C). This leads to letters from the PM to each portfolio Minister around Christmas setting out what that Minister is expected to include in the portfolio Budget Submission. Typically these letters set portfolio budget ceilings within which any New Policy Proposals (NPPs) must fit, an indication of what the NPPs might cover (e.g., election commitments only) and guidance that any NPP that leads to the budget ceiling being exceeded must be offset in full by genuine savings measures.
- Budget Submissions consistent with these letters from the PM are submitted by early February. An exposure draft of each NPP is circulated in advance to relevant agencies (the central agencies and other agencies with a particular interest in the NPP). Each NPP must meet Cabinet requirements including those set out in a checklist from the Cabinet Office. During the Relevant Period, these included that financial costings have been agreed with Finance (and revenue estimates with Treasury) and that the AGD has agreed with any legal advice included and has been consulted on the Constitutional basis of the NPP and on legislative risk. Each NPP also includes coordination comments from agencies with an interest in the proposal.
- Budget Submissions are considered by the Expenditure Review Committee (ERC) between February and April, the responsible Ministers participating and, usually, the relevant Secretaries and Ministers' Chiefs of Staff (or another adviser) also attend along with some senior officials from Finance, Treasury and PM&C as well as Cabinet note-takers (on occasions, other departmental experts attend). ERC is also informed by Finance Green Briefs on each NPP, these having been revealed to the sponsoring Minister and Department at least in draft ahead of the relevant ERC meeting (though I understand this does not always occur).
- ERC Decisions are referred to Cabinet towards the end of April, and the Revenue Committee also meets to determine revenue matters.
- The Treasurer presents the Budget Speech along with the budget documentation including Portfolio Budget Statements (PBSs) in early May.
- Senate Estimates Committees review the PBSs in May and June as the Parliament considers the Appropriation Bills, which are passed by end June.
- Budget implementation begins on 1 July (new measures may not come fully into operation until later), and this is regularly monitored during the year.
- MYEFO in November represents the main mid-year opportunity to review budget implementation, and may lead to a mid-year re-assessment including opportunities for further NPPs and requests for 'Additional Estimates' through new Appropriation Bills presented to Parliament in February or March (the NPPs are subject to similar scrutiny by ERC as normal Budget NPPs, and the Appropriation Bills to similar scrutiny by the Parliament including Senate Estimates Committees).

From time to time, this process is supplemented by separate consideration of major new policy proposals including cross-portfolio proposals but the discipline of portfolio budget ceilings still normally applies.

The process described above also supports the broader budgetary cycle aimed to ensure accountability for performance:

- PBSs set out for each portfolio, and for each agency within the portfolio, the Government's proposed allocation of resources, the objectives of the programs (or 'outcomes') to which resources are allocated, and the performance results expected;
- Agency corporate plans must be prepared early in the budget year, identifying the strategies for ensuring organisational capability to deliver the performance results expected (and capability for future requirements) and strategies for managing risk;
- Agency annual reports after the end of the budget year set out how the resources were spent and what performance results were achieved against the PBSs, and progress on the strategies set out in corporate plans.

Aspects of this process were reviewed as part of the Commonwealth Financial Accountability Review (CFAR) conducted by the Department of Finance between 2012 and 2014 which led to the introduction of the PGPA Act replacing the former *Financial Management and Accountability Act 1997* (FMA Act) and *Commonwealth Authorities and Companies Act 1997* (CAC Act). I served on CFAR's expert advisory panel and also wrote a chapter on the potential impact of the PGPA Act in a book, *Value for Money*, published in 2018 (Podger 2018a). A review of the implementation of the PGPA Act was conducted for the Finance Minister in 2017-18 by Alexander and Thodey; I provided three submissions in total to this Review (Wanna and Podger 2017, Wanna and Podger 2017a and Podger 2018b).

The Budget process, if applied properly, provides an excellent basis for well-informed decision-making by Ministers. There are however several aspects that need particular attention:

- Senior Ministers' focus at the start of the process on portfolio targets can inappropriately constrain the options open to Ministers to make priorities. It is important that advice to senior Ministers by the central agencies is well informed by the line agencies and not overly influenced by central agencies' 'bottom drawer' ideas, and that there is room for portfolio Ministers to challenge the targets they have been given.
- This portfolio focus, while useful in pressing for portfolio discipline on priorities, may also limit opportunities for cross-portfolio measures, for example social security and tax measures, and constrain consideration of longer-term policy issues with its frequent demand for fully offsetting savings from within the portfolio.
- The Cabinet Office checklist needs to be clarified, particularly regarding AGD advice and Finance agreement on costing. AGD should be required to confirm advice that a NPP does not require legislation; and Finance must agree costings (from what I have read, I am uncertain whether Finance did indeed agree the costings of the original Robodebt proposal while nonetheless opposing the proposal). In the rare cases where Finance agreement is not reached, the Finance figures should take primacy but the differences also identified in the NPP and the Finance Green Brief.
- The extent to which the portfolio department is responsible for the quality of documentation for NPPs including those originating from outside the department.

My recommendations to address systemic problems in this area are:

**Recommendation D1:** That line portfolio departments (and relevant agencies) be consulted by central agencies before they advise senior ministers about portfolio budget targets.

**Recommendation D2:** That the budget processes allow capacity for line Ministers to challenge the targets through responses to the Prime Minister's letter and/or when submitting their NPPs.

**Recommendation D3:** That portfolio departments be responsible for the quality of NPP documentation for all NPPs from the portfolio wherever the NPP originates, including on costings, legality, stakeholder consultation and policy coherence.

**Recommendation D4:** That the Cabinet Office checklist for new policy proposals include a requirement that AGD has confirmed advice as to whether a NPP requires legislative change or not.

**Recommendation D5:** That Finance agree any costing that comes before Cabinet, and in doing so ensures close testing of assumptions and appreciation of the administrative processes involved, with provision for exceptions when Cabinet should be informed of the different views of Finance and the sponsoring department on cost estimates (the Finance view still having primacy).

**E. For the Relevant Period, please describe and comment upon the relationship and level of engagement between Services Australia and DSS and each agencies' clients and stakeholders.**

The importance of the public service engaging with clients and stakeholders has been a theme of public administration since the 1970s along with expectations of more open government under administrative law reforms and through engagement with external experts. The theme was taken further from the late 1990s with strategies aimed to deliver more 'citizens-centred services' including through 'co-design' and 'co-production' and in some areas offering choices over specific services and amongst (competing) service providers. While choice (and competition) has not been a feature of social security and other programs managed by SA, the concept of 'co-design' was pursued by the early 2010s as illustrated in an article by Colin Bridge (then a senior manager in DHS) published in a symposium on 'citizens engagement' from a workshop I helped to organise in 2011 (Bridge 2012).

Government procedures require a considerable level of engagement with clients and stakeholders. For example, the Cabinet Office checklist mentioned earlier includes checking whether NPPs need to have an attachment identifying a communications and stakeholder engagement plan, and NPPs typically include advice on likely stakeholder reactions, advice which relies on ongoing engagement. It has been common practice also to test new administrative procedures with samples of clients. A new APS Framework for Engagement and Participation was agreed by the Morrison Government in 2019, aimed 'to enhance engagement with community expertise, to improve policy, program and services, and to deliver better outcomes for citizens'. The Framework provides guidance, setting out principles for engagement, ways to engage, standards of behaviour by public servants when engaging, how to choose the appropriate form of engagement and a 'roadmap' that promotes deliberative engagement and informed participation.

Over recent decades, however, there have been other developments constraining external engagement. These relate in large part to the relationship between the APS and Ministers discussed in Section A. Communications by departments have become increasingly under the control of Ministers and their Offices (even to the extent of the wording of forms). While Ministers need to be kept informed of communications that might attract media or other politically sensitive attention,

this control seems to have led to fewer publications by departments, closer control of those publications that do appear and more limited and more cautious engagement with clients, stakeholders and external experts. This seems to be the case in particular in the social security portfolio, based upon such evidence as the closure of DSS's former *Social Security Journal* and its former series of Occasional Papers and the decline in participation by DSS officers in relevant academic forums such as the annual conferences of the Centre of Excellence in Population Ageing Research.

The Thodey Report was critical of current processes of engagement, reporting that it too often occurred too late and on terms set by the APS. It recommended the Secretaries Board develop a new accountable Charter of Partnerships to be embedded in agencies' corporate plans and in agency heads' and other individuals' performance management arrangements. The aim was to 'harness external perspectives and capability by working openly and meaningfully with people, communities and organisations'. In my submissions to the Thodey Review and in my Parliamentary Library Lecture (Podger 2018, Podger and Williams 2019, Podger 2019) I touched on these issues, supporting a more open approach by the APS and increased external engagement.

While the Morrison Government did not fully accept the Thodey Report recommendation, it highlighted the then new APS Framework for Engagement and Participation which was to be monitored in agency and individual performance processes. I am not aware, however, of any reports on how this Framework has been applied.

My recommendations to address systemic problems in this area are:

**Recommendation E1:** That SA involve clients and stakeholders in proposed changes in management practice, utilising the concept of 'co-design' to maximise opportunities for shared benefits including greater efficiency, less fraud, greater accuracy, easier access and increased responsiveness to client needs and preferences.

**Recommendation E2:** That DSS management promote closer engagement with stakeholders, consulting as far as Cabinet confidentiality allows on NPPs and ensuring any advice to Ministers is well-informed as to the likely impact on clients and the (likely) views of clients and stakeholders.

**Recommendation E3:** That DSS management encourage staff to engage with external experts, to undertake policy research and to publish that research.

**Recommendation E4:** That Agency corporate plans reveal how the Framework for Engagement and Participation is to be applied and Agency Annual Reports include information on the Agency's application of the Framework.

**F. For the Relevant Period, please describe and comment upon the use of technology in the administration of social security payments, including data matching and automated decision making.**

Australia has long made good use of technology in the administration of the social security system in particular, beginning in the 1960s and extended in the 1970s and 1980s under 'Stratplan', and further extended in the following decades including through the use of data-matching with other Government systems.

The Thodey Report gives considerable emphasis to the potential benefits from further improvements in the use of technology, particularly to deliver more integrated and responsive services to citizens as well as to achieve increased efficiency. The Report recommends a major transformation in the use of digital technology and data across the APS with SA playing a key role along with the Digital Transformation Agency. While the Report refers to governance issues and privacy protection, it does not go into detail about the constraints needed to protect the rights of those affected. Similarly, while my submissions and Parliamentary Library Lecture touch on the case for greater investment in technology to enhance citizens-centred services (somewhat more cautiously than the Thodey Report), I did not canvass in any detail issues of governance (Podger 2018, Podger and Williams 2019, Podger 2019).

This is not a field in which I claim to be an expert, though I did help to organise a workshop in 2019 on 'Taking advantage of New Technology' which led to a symposium of articles in the *Asia Pacific Journal of Public Administration* including one by Paul Henman on artificial intelligence (AI) which discusses the pitfalls and governance issues as well as the possibilities (Henman 2020).

Some of the concerns identified with the Robodebt scheme appear to relate to possible failures to abide by existing governance requirements (for example, under the *Data-matching Program (Assistance and Tax) Act 1990* (Data-matching Act), the secrecy provisions in tax and social security legislation and the *Privacy Act 1998* (Privacy Act)), but there is also a case for revisiting the governance arrangements and updating them, particularly relating to the rights of clients, rights Henman suggests should include access to a human decision-maker when use is made of artificial intelligence to make or support decision-making. Robodebt's reliance on automatic processes to calculate alleged debts makes Herman's suggestion particularly important. Another issue that has arisen in the Royal Commission's investigations that needs to be considered when updating the governance arrangements is when and how 'public interest' can justify the release of clients' data held by SA or ATO.

Another concern is how technology can become not just an enabler but a driver of change itself, independently of the broader policy context in which programs are being administered. This danger reinforces the importance of retaining close links between policy and administration as discussed in Section C.

One example of how technology might enhance the effectiveness of the social security system would be if data-matching were used not only to identify overpayments but also to identify underpayments and where people eligible for assistance miss out, and to make it easier to apply for social security and fulfil eligibility conditions. In the early 1990s, DSS reported publicly on the estimated accuracy of payments made, identifying underpayments as well as overpayments, drawing on data-matching and compliance activity (see DSS Annual Reports for 1990-91, 1991-92 and 1992-93). DSS also used data-matching to seek to improve take-up, particularly of the Family Allowance Supplement. (DSS and SA these days use Random Sample Surveys to estimate payment accuracy the results of which are published in their PBSs and Annual Reports. The reports are at a broad level but suggest accuracy – at 98.5% overall in 2020-21 – that does not seem consistent with the order of magnitude of overpayments DHS assumed in 2014-15.)

More broadly, there is a need to constantly review the modes of interaction with clients, whether on-line, via call centres or through direct personal contact in regional offices (or a mixture of these), not only to ensure efficiency but also to address the needs, capabilities and preferences of clients. In complex cases, such as where eligibility conditions require significant action or where clients are offered non-monetary support such as training and employment advice, personal advisory services

or case management may be required. This type of approach is, I understand, being pursued under the National Disability Insurance Scheme (NDIS), and has been used in the past, for example in the administration of the Jobs, Education and Training (JET) scheme for sole parent pensioners in the 1980s and 1990s.

My recommendations to address systemic problems in this area are:

**Recommendation F1:** That governance arrangements for technology, including for data matching, be reviewed including to clarify the rights of those affected including the rights of clients to access a human decision-maker and to clarify when release of clients' data may be justified in the public interest.

**Recommendation F2:** That care be taken to place proposed technological changes to service delivery arrangements within the context of the overall policy objectives of the relevant social security programs including to assist Australians when in financial need.

**Recommendation F3:** That SA and DSS explore how data matching might enhance the effectiveness of the social security system, not just address overpayments.

**Recommendation F4:** That the Government regularly review the range of modes of interaction with SA clients – face-to-face through offices, call centres, on-line and via personal case management – to ensure the most effective service delivery taking into account clients' needs, capabilities and preferences, not just efficiency.

**G. In your opinion what is the role of compliance and the appropriate balance between compliance and the proper administration of beneficial legislation such as the Social Security Laws?**

Compliance and concern for payment accuracy has been a major issue for DSS (and its service delivery arms) for many decades. There is legitimate concern about fraud and the consequences of overpayments for taxpayers. At the same time, according to the Australian Government's Social Security Guide:

'When interpreting the SS Act it is necessary to consider the fact that it is 'beneficial' legislation. This characterisation arises from the fact that many provisions in the Act provides benefits to people. The relevance of the characterisation is that it is a principle of statutory interpretation that if there is an ambiguity in a piece of legislation which is beneficial in character, then the ambiguity should be resolved in a way that is most favourable to the people the Act is intended to benefit.'

By implication, administration of the Social Security Act requires compassion as well as compliance, appreciation that the purpose of the legislation is to assist people in need (to be 'beneficial' for them) and to recognise their circumstances which may limit their understanding of their entitlements and obligations.

Over the years there have been swings back and forth in the balance between compassion and compliance, partly in response to prevailing political views (within as well as between both sides of politics).

Such differences in political views are entirely legitimate in a democracy but the balance pursued by the Government must of course be lawful. For those who would emphasise compassion, compliance is nonetheless essential not only to meet the legal requirements but also to retain community

support for the system and willingness to invest in it; for those who would emphasise compliance, it is essential nonetheless to recognise the beneficial nature of the system and its objective to help those genuinely in need when they need assistance.

Since the 1970s, compliance has become a critical and distinct part of the system drawing on professional expertise and supporting management systems. This separation can present a challenge in ensuring compliance is pursued in a way consistent with the beneficial nature of the legislation. Importantly, compliance is not just about reviewing entitlements but also about systems for assessing eligibility in the first place and getting the necessary information at the time. It is also important that compliance is managed in a sufficiently compassionate way, recognising the vulnerable nature of many social security clients. Compliance staff need to be conscious that in the event of appeals to the courts (including the AAT), those courts will take into account the beneficial nature of the legislation.

It also seems that, in the Relevant Period, compliance activity in DHS may not have drawn upon any analysis by DSS policy staff such as of clients' fluctuating incomes or evidence from Random Sample Surveys to estimate payment accuracy. Such analysis is likely to have revealed to both DHS and DSS staff that DHS views of likely overpayments were exaggerated. This demonstrates again inadequate collaboration between the two departments and a lack of effective links between policy and administration.

The fact that the legislation is 'beneficial' is not to deny that clients also have obligations under the law and that some do not meet them and must repay any moneys paid to which they were not entitled.

My recommendations to address systemic problems in this area are:

**Recommendation G1:** That SA senior management ensure that social security compliance is managed professionally consistent with the legislation's beneficial nature, including in the way any overpayments are recovered.

**Recommendation G2:** That SA's compliance activity should focus primarily at the front end – getting eligibility right and getting the information needed to adjust payments in a timely way – and with less reliance on reviews of past payments.

**Recommendation G3:** That SA's compliance activity draw upon DSS policy analysis including estimates of payment accuracy.

**H. For the Relevant Period, please describe and comment upon the level of APS capabilities within the social security portfolio, including with regard to policy advice, administrative experience, understanding of social security and administrative law, and project management.**

Concerns about the capability of the APS have been central to the Moran and Thodey Reviews and other inquiries over the last decade and more. The Moran Report drew attention to emerging skills shortages as well as to particular weaknesses in strategic policy advising, policy implementation and strategic workforce planning. It recommended a stronger role for the APSC including in workforce planning, making Secretaries responsible for 'stewardship' of their departments and the APS more generally, the establishment of the Secretaries Board (relacing the former Management Advisory Committee), greater investments into training and development and the introduction of agency capability reviews. The capability reviews subsequently undertaken between 2012 and 2014

confirmed common weaknesses across the APS in strategic policy advising, HRM and project management in particular.

The 2013 capability review of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), as DSS was then known, was wide-ranging and contained many criticisms and suggestions. The following comments on its social policy capability continue to be relevant today:

“The review found that FaHCSIA is well positioned to lead critical thinking in social policy... if it can make full and best use of its datasets and program evaluations....There is a perception within the department and the social policy sector that technical expertise is diminishing. Inaction will erode what has traditionally been a departmental core strength.... For the department to improve its capability it would need to:

- give priority in strategic workforce planning to the development and retention of appropriately skilled technical and policy staff
- give greater department-wide support for evidence-based policy development skills, including the development of appropriate evaluation models
- strengthen effective structures to capitalise on the grassroots work of the state and territory-based network to better inform the policy feedback loop from conception to evaluation.

Evaluation needs to be given greater priority and prominence to embed feedback into the policy development process. It needs to be a key aspect of policy design and evaluation outcomes should be used in policy redesign or continuous improvement.....”

The capability review of DHS in 2012 recognised the challenges facing the then new organisation and was generally positive about the actions being taken to address them while identifying a number of areas requiring ‘development’. These included aspects of ‘leadership, teamwork and communication’, workforce skills to achieve the Department’s integrated services vision, ICT and associated risk management (including management of political and reputational risks), and engagement, particularly ‘in policy processes with partner agencies and government’. The last, the review team suggested, requires the department to ‘actively develop the depth and breadth of its skills, expertise, knowledge and evidence’ and ‘creating processes that share knowledge horizontally across the organisation’.

Following the Moran Report, the PS Act was amended to strengthen the role of the APS Commission, to include ‘stewardship’ amongst Secretaries’ responsibilities and to establish the Secretaries Board. Around the same time, the PGPA Act was introduced, amongst its initiatives being the mandating of Agency corporate plans aimed to address Agencies’ capabilities. The subsequent Alexander and Thodey Review of the implementation of the PGPA Act found the quality of corporate plans so far to be mixed, and some confusion as to the respective roles of corporate plans and PBSs. I made several submissions to that Review addressing these specific issues (Wanna and Podger 2017, Wanna and Podger 2018 and Podger 2018b).

The Thodey Review also highlighted capability problems including in HRM and strategic policy advising, and also referred to the need to build new capabilities particularly in digital technology and data. It recommended a whole-of-APS workforce planning framework, the introduction of a ‘professions model’ starting with HRM, digital and data professions, the reintroduction of agency capability reviews, and associated measures including the removal of staffing caps and a reduction in reliance on consultants and contractors. It also recommended a much more systematic approach to

the evaluation of Government policies and programs. This last recommendation was supported by ANZSOG research papers commissioned by the Review (Gray and Bray 2019; Bray, Gray and t'Hart 2019) which highlighted the need to re-establish analytical capacity across the APS including in DSS, linked to systematic evaluations.

In my submissions to the Thodey Review and my Parliamentary Library Lecture, I drew attention to the capability problems and supported most of the directions eventually recommended by Thodey (Podger 2018, Podger and Williams 2019, Podger 2019); I also have a book chapter on the potential impact of the PGPA Act (Podger 2018a) and a chapter on the capability of the APS in a forthcoming book (Podger and Halligan 2023).

The main area where I differed from the Thodey view related to mobility. Thodey recommended increased mobility particularly for the SES, though he also recognised the need to balance mobility with depth of expertise and corporate knowledge. I remain uneasy that overuse of mobility may be undermining essential expertise in some fields and in some agencies, and that perhaps too much weight is being placed on generalist management skills. The APSC's 2004 Integrated Leadership System was intended to promote careful consideration of the balance between leadership, management and technical skills for executives at different levels and with different responsibilities. Agencies need to carefully assess the balance appropriate to their functions between mobility and corporate knowledge and expertise. Also, when executives do move, it is important that they quickly learn about their new responsibilities and the expertise they need to draw upon. This seems to have been a factor in DHS capability weaknesses amongst its senior managers in the Relevant Period, many of whom had been recruited from outside the portfolio and may not have developed sufficient understanding of social security policy, legislation and administration.

While it rejected Thodey's recommendations about abolishing staff ceilings, reducing the use of consultants and contractors and introducing more systematic evaluations, the Morrison Government accepted most of the other proposals by Thodey on enhancing capability. The Albanese Government has since agreed to remove staff ceilings and started action to reduce reliance on consultants, contractors and labour hire but has yet to announce its position on systematic evaluation.

My firm impression is that there is still a long way to go to rebuild APS capability in several areas such as strategic policy advising and policy implementation (particularly project and program management), and to respond to the increasing demand for skills in digital technology and data. These weaknesses are still apparent in DSS and SA. As the 2013 DSS capability review noted, policy advising capability had been a departmental core strength in the past – rebuilding it remains an important goal. The Finance Department also has not yet fully recovered from its loss of policy capability in the late 1990s and early 2000s. I also note that one of the innovative actions taken by Centrelink in its early days was the establishment of an internal 'virtual' TAFE college headed by a former TAFE CEO, providing training and development linked directly to career advancement and ensuring staff at all levels had the necessary skills and knowledge to undertake their duties: I am not aware that such a resource, related to SA's current range of responsibilities, operates within SA today.

My recommendations to address systemic problems in this area are:

**Recommendation H1:** That corporate plans, particularly for DSS and SA, identify more clearly the capabilities each department and agency needs to enhance and the strategies being taken to meet these needs (including the desired balance between mobility and specialist skills development), with annual reports identifying progress on the strategies.

**Recommendation H2:** That the DSS corporate plan focus in particular on rebuilding its policy research and development capacity and the SA corporate plan focus on strengthening project and program management, IT and data analysis and HRM capacity.

**Recommendation H3:** That, in both cases, one of the strategies for increasing capability be to introduce systematic evaluations of current policies and administrative practices.

**Recommendation H4:** That every EL and SES position have clear statements of the skills and knowledge the position requires (and the skills and knowledge required in the relevant section or branch etc.), and that all recruits into EL and SES positions be required to ensure they develop the skills and knowledge the relevant position needs within a reasonable timeframe.

**Recommendation H5:** That, in their first three months and first year of appointment, Secretaries (and other Agency Heads) invest heavily in their own understanding of their department's specific legislative and other responsibilities and associated major policy and management issues, and in building relations with key stakeholders, as well as with their Agency Ministers.

**I. For the Relevant Period please describe and comment upon the culture of Services Australia and DSS and the levels of communication between the two Agencies.**

Evidence so far presented to the Royal Commission suggests a number of serious cultural issues in DHS and DSS in the Relevant Period. These include that DHS in particular operated with a firm hierarchical culture that disempowered non-SES staff (and some SES), that both agencies exhibited a 'defensive' culture that reinforced 'silos' and constrained collaboration both within each agency and between the two, and that the culture inhibited the 'independence' expected of in-house lawyers in particular.

The Thodey Report expressed concern about the hierarchical culture that typically applies across the APS. It advocated empowering teams, reducing hierarchical approaches and greater across-APS collaboration, and recommended updating guidance on optimal structures and a review of SES and non-SES structures and classifications. These recommendations were agreed by the Morrison Government and the subsequent Review of APS Hierarchy and Classification presented its report in 2022. While Thodey is correct to suggest that the current emphasis on hierarchies and command-and-control underutilises the capabilities within the APS (and also constrains engagement externally beyond the APS), I am not convinced of the merits of the proposals from the Hierarchy and Classification Review to restructure the current classification arrangements (these have not so far been agreed by the Albanese Government). There is, however, reason to suggest the APS now has too many deputy secretary level officers and a culture that undervalues the knowledge, experience and expertise of its middle managers (EL staff) and even its SES Band 1 staff. This is particularly apparent in both DSS and DHS in the Relevant Period.

The hierarchical culture Thodey was concerned about was particularly evident in DHS in the Relevant Period suggesting that insufficient attention has been paid by the APS leadership (and by Prime Ministers recommending Secretary appointments) to the leadership models long espoused by the APSC and ANZSOG. Following the APS Hierarchy and Classification Review, the current Secretaries Board issued a new Secretaries Charter of Leadership Behaviours in August 2022 that sets out the behaviours Secretaries expect of themselves and the SES, including with regard to integrity and

empowerment. The Charter states that the behaviours build on the existing frameworks (including the Integrated Leadership System initiated in 2004 and the APS Leadership Capability Framework first developed around 2000). The challenge for the APS, including the APS Commissioner, the Secretary of PM&C and the Secretaries Board, is to ensure that such a charter is taken seriously, affecting performance appraisal and appointments including Prime Ministerial determined appointments. As discussed further above, confidence that this will occur and be sustained depends significantly on changes to legislation governing Secretaries' appointments.

Addressing excessive hierarchical practices requires in particular empowering middle managers. My own experience is that most departments rely heavily on their EL2s in particular for corporate knowledge and specialist expertise even if they underutilise them. I have described them as the organisation's 'fulcrum', the majority of staff seeing them as their team leaders while top management relies on them to carry through corporate strategies. This only works effectively, however, if the EL2s are given considerable discretion and are listened to.

Empowering middle managers is also essential to countering the 'defensive' culture evident in both DHS and DSS in the Relevant Period. Staff need to be encouraged to appreciate how their specific responsibilities align with those of others, and with the organisation's overall purpose and strategic direction, and not confine themselves to a narrow interpretation of their specific responsibilities. This was always the intention of the performance management framework promoted by the APSC and the then Management Advisory Committee (MAC) around 2000, and the subsequent MAC report, *Connected Government*, published by the APSC in 2004 which promoted collaboration across and beyond the APS. It does not mean that everyone must toe a single line (with all the dangers of 'group think'), but that different roles and perspectives are properly considered and coordinated.

Making more use of the expertise and experience of staff requires the reintroduction of other common practices in the past, including:

- the facilitation of networks of middle level (EL) managers in DHS (regional office managers, call centre managers, compliance managers) and forums of these with senior management;
- encouraging engagement between such staff in DHS and EL staff in DSS;
- inviting staff at all levels to come forward with views on possible policy reform or effectiveness of administration (particularly in the early stages of the budget new policy process);
- encouraging written briefs to Ministers to identify the relevant expert (usually an EL officer but sometimes a Band 1 SES officer) as the contact officer should the Minister or Office have questions;
- ensuring relevant experts attend meetings with Ministers, not just senior management; and
- promoting engagement by non-SES staff with external stakeholders and academia (as discussed in Section E).

Shifting the culture also requires more attention to leadership development activity by the APSC and agencies towards the SES and ELs, and appropriate monitoring of the performance of Secretaries.

It seems that communication between the two Agencies in the Relevant Period was adversely affected by these cultures. Effective communication needs to occur not only at the top but all the way down (particularly amongst SES and EL staff), staff being encouraged to develop horizontal networks that do not require approval up the line; continuing vertical communication also needs to be facilitated in both directions.

The other cultural issue concerns in-house lawyers. There appears to have been a passive approach at best to the provision of legal advice by in-house lawyers in the Relevant Period, not the independence that should be expected. The attachment of legal professional privilege to the advice of government lawyers is based upon their independence, but such independence was not often displayed in the Relevant Period. The strict hierarchical control in DHS seems to have presented serious obstacles to the provision of independent legal advice, and even the less hierarchical structure in DSS seems also to have inhibited such advice. An appropriate level of independence might be achieved by requiring an Agency's senior in-house counsel to be a seconded lawyer from AGD or by having some other form of accountability of in-house lawyers separate from that to the agency head.

My recommendations to address systemic problems in this area are:

**Recommendation I1:** That DSS and SA (and other Departments and Agencies) review the number of top managers (particularly Band 3 SES) and draw more heavily on the expertise and experience of other SES and EL officers.

**Recommendation I2:** That the APSC strengthen its training and development activities for EL and SES staff in particular, including in cooperation with ANZSOG, to foster a less hierarchical structure and to promote teamwork.

**Recommendation I3:** That the APS Commissioner and PM&C Secretary include in the performance management of Secretaries assessment of their management practices and the cultures they foster.

**Recommendation I4:** That SA strengthen the role of its middle-level (EL) managers (including regional office managers, call centre managers, compliance managers), facilitating networks of such managers and regular forums with senior management (including the CEO).

**Recommendation I5:** That DSS (and other departments and agencies) also strengthen the role of EL staff, encouraging them to develop networks across their agencies and across the APS and beyond.

**Recommendation I6:** That DSS and SA encourage networking of EL and SES officers across the two agencies.

**Recommendation I7:** That written briefs to Ministers identify the relevant expert (usually an EL or SES Band 1 officer) as the contact officer and that relevant experts attend meetings with Ministers.

**Recommendation I8:** That Agencies' senior in-house counsel be lawyers seconded from AGD or to establish some other form of accountability of in-house lawyers separate from their accountability to their Agency Head.

**J. For the Relevant Period, please describe and comment upon the quality of recordkeeping in the APS.**

This is a perennial issue raised regularly in Auditor-General reports since at least the 1990s. It also received priority attention in Peter Shergold's 2015 report, *Learning from Failure*, following the Royal Commission into the Home Insulation Program.

Shergold recommended, *inter alia*, that the APS Commissioner should issue a Direction that significant advice to Ministers be in writing, that Ministers should insist on receiving frank written advice, and that an APS-wide policy on record keeping provide practical guidance about when and how records must be created, including that records of deliberative discussions in all forms, including digital, should be retained. Shergold also emphasised the importance of the APS providing advice in confidence and recommended that the FOI Act be amended to ensure that advice and opinion provided to support the deliberative processes of government policy formulation remain confidential. While Shergold's recommendations were referred to the Secretaries Board by the Turnbull Government in February 2016, I do not believe the Board has ever responded to the recommendations on record keeping.

Time pressures on public servants mean it is not feasible to keep formal records of all meetings and conversations. While the *Archives Act 1983* prohibits the destruction of records (with identified exceptions), there is no explicit requirement to create a record though the PS Act and PGPA Act could be interpreted as implying such a requirement. That might be made clearer if, as Shergold recommended, there was a Direction from the APS Commissioner, perhaps related to the Direction regarding the APS Value of 'accountability', or if the Commissioner issued guidance on the matter.

There are particular instances where records ought to be mandated: significant public service advice to Ministers, decisions by Ministers, inter-agency meetings, senior management meetings.

Shergold is correct to emphasise the importance of confidentiality (as discussed in Section A), but I am not sure of the need to amend the FOI Act to exempt APS advice and opinion provided to support the deliberative processes of government. There are exemptions now under the Act if release would not be in the public interest and the courts have from time to time agreed not to release documents on this basis. But a blanket exemption may, in my view, go too far. In my submission to the Thodey Review (Podger 2018), I suggested the Review seek more detailed information on current legal practice before coming to a view on whether exemptions of APS advice should be introduced. That suggestion was not taken up by Thodey. The Government should now commission an independent review of how the FOI Act currently treats such public service advice and whether it would be in the public interest to extend current exemptions.

A related issue concerns the role of ministerial staff. I understand that on occasions public service advice is returned from the Minister's office marked 'not seen by Minister' or similar. My firm view is that it is not appropriate for ministerial staff not to provide to the Minister departmental advice addressed to the Minister, nor for a Minister to fail to consider advice that is provided (though a Minister may simply note advice without indicating a view). Where the Minister's response is conveyed orally to an adviser, this should be recorded accordingly and the record provided back to the department. I also understand that some departments provide 'draft advice', only finalising it after views are expressed by ministerial staff. My firm view is that that also is inappropriate: advice should not be provided in draft though departments may indicate advice is preliminary in the absence of full information; departments may wish to provide supplementary advice (a common practice as policy proposals are developed) including in light of substantial matters raised by a Minister or ministerial staff. But all advice must be on the basis of the department's professional expertise and any preliminary advice, as well as final advice, should be properly recorded.

During the Relevant Period (and possibly still), there seems to have been excessive reliance on personal notebooks and diaries rather than formal records, and acceptance that these may be destroyed. Clarification is needed as to whether such notebooks and diaries are in fact records for the purposes of the Archives Act and the FOI Act, and how they should be used and treated.

A specific issue concerns the responsibilities of in-house lawyers to keep records of their advice. As discussed earlier in the section on cultural issues, there is a need for action to enhance the independence of in-house lawyers and such action could be expected to lead to improvements in their record keeping. I doubt the need, in addition to such action, for mandating written legal advice and fear such mandating could inhibit requests for advice. But there is room for AGD to set standards and to promote best practice which would include that advice of any moment should be provided in writing, the initial paragraph specifying the matter(s) on which the advice is being given. Best practice should generally preclude the provision of draft advice, though there may be circumstances where the matter on which advice is being sought is yet to be fully clarified and preliminary legal advice might help to define the facts and the issue to be considered.

My recommendations to address systemic problems in this area are:

**Recommendation J1:** That requirements to create written records be made explicit either in Directions or guidance from the APS Commissioner, to include significant advice to ministers (including oral advice), decisions by ministers (including decisions conveyed orally), and inter-agency meetings and senior management meetings.

**Recommendation J2:** That legal advice be sought as to the circumstances (if any) when personal notebooks and diaries may be destroyed.

**Recommendation J3:** That legal advice be sought as to whether and under what circumstances personal notebook records or diary records may be accessed under FOI.

**Recommendation J4:** That the Government commission an independent review of how, according to judgments by the courts, significant advice provided to support the deliberative processes of government is currently treated under the FOI Act, and whether it would be in the public interest to extend current exemptions to include such advice.

**Recommendation J5:** That clear protocols be established about ministerial adviser roles and recordkeeping consistent with all advice from a department addressed to a Minister being conveyed to the Minister and all advice being based upon the department's professional expertise and experience.

**Recommendation J5:** That AGD set some standards for in-house lawyers in providing advice and provide guidance on best practice, including with regard to recordkeeping.

**K. Any other matter of substance you consider relevant to the terms of reference.**

There are two additional matters of substance I consider are relevant to the terms of reference:

- The overall complexity of the income security system; and
- The recent establishment of an APS Integrity Taskforce.

**(a) Overall complexity of the income security system**

It is hard not to conclude that, to some extent, the level of overall complexity of the income security system has contributed to Robodebt. Some DHS officers could well have been looking for a simple way of assessing eligibility when the legislation demands a much more complex assessment.

Despite many reviews of particular aspects of the income security system, the system as a whole has not really been reviewed since the Poverty Inquiry in the 1970s (though the Henry Tax and Transfers Review in 2010 went some way to do so). Since the 1970s, the system has become steadily more complex with continual incremental adjustments each adding to its complexity. This presents challenges not only for government administration but also, more importantly, for public understanding and in particular for those trying to engage with the system. The Royal Commission may wish to draw attention to this issue and suggest that the Government commission a fundamental review of the system, both policy and administration, with a view to clarifying objectives and principles, reducing complexity and improving understanding by both clients and the public.

**Recommendation K1:** That the Government commission a fundamental review of the income security system, with a focus on clarifying objectives and principles, reducing complexity and improving understanding by both clients and the public.

#### **(b) The APS Integrity Taskforce**

The Royal Commission has also asked me, in preparing my report, to consider the terms of reference for the APS Integrity Taskforce established by the Secretaries Board on 8 February 2023 (see letter at Attachment C).

With some hesitation, I welcome the Secretaries Board's initiative. I hope it indicates that the APS leadership will now begin to address issues being raised by the Royal Commission (and other recent reviews) and not hold off any consideration until the Royal Commission's final report is delivered. I have been concerned for some time that the APS leadership has been complacent about the magnitude of the failures of public administration that have been revealed progressively, particularly since 2019.

This assumes, of course, that the full range of findings and recommendations from the Royal Commission will receive proper and comprehensive attention when its report is delivered. Importantly, if the Royal Commission follows my advice, there are matters for the Government and the Parliament to consider, not just the APS leadership. This Taskforce and the Secretaries Board must not constrain that wider consideration, but help to facilitate it. In particular, in the absence of legislative change, there would be high risk that any improvements pursued by the Secretaries Board will not be sustained even if supported by the current Government.

The following provides an initial mapping of the items listed in the Scope set out in the Terms of Reference for the Taskforce (listed first) and the matters covered in this report (identified under each item):

- 'Cultural and behavioural practices, values and leadership capabilities that support (or undermine) integrity (e.g. frank and fearless advice, engaging with risk)':
  - See Section I in particular, but also Sections A, B and D in this report;
- 'Governance and leadership (including the roles and responsibilities of oversight bodies, Secretaries and Public Service Agency Heads and the APS Commissioner)':
  - See Section A in particular, but also Sections B, C and D;
- 'Escalation systems and processes (e.g. pathways for raising issues or concerns) together with protections for those who report matters':
  - See Sections A and I in particular;
- 'APS capability and conduct':
  - See Section H in particular, but also Sections B, C and F;

- 'Handling of legal advice':
  - See Sections D, I and J;
- 'Record-keeping':
  - See Section J.

The Terms of Reference do not cover the issues in Sections E and G of this report, nor many of the issues within Sections B, C, D and F. At the same time, aspects of the items included in the Terms of Reference may go beyond the matters in this report as the Task Force considers other recent inquiries and developments.

I also note the proposed August 2023 timeframe for the Taskforce which will almost certainly need to be adjusted given the recent extension to the Royal Commission's reporting deadline.

**Recommendation K2:** That the APS Integrity Taskforce and the Secretaries Board facilitate comprehensive consideration by the Government and, through the Government, by the Parliament, of the Royal Commission's findings and recommendations.

## CONCLUSION

I believe my recommendations above, if endorsed by the Royal Commission and taken up by the Government and the Parliament, would greatly limit the risk of a future Robodebt-type failure and substantially improve Commonwealth public administration. I note the broad consistency of these recommendations with the public sector reforms now being pursued by the current Government and suggest they would in fact greatly enhance that reform agenda and should receive support from across the Parliament.

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<sup>4</sup> Other than those identified in the Royal Commission's letter of engagement.

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3 February 2023

Mr Andrew Podger AO

[REDACTED]

Dear Mr Podger

### **Royal Commission into the Robodebt Scheme (the Commission)**

Thank you for agreeing to assist the Commission with its enquiries by providing an expert report (the **Report**).

As you are aware, the Commission was established on 18 August 2022.

The [Letters Patent](#) set out the Royal Commissioner's terms of reference. Under the Letters Patent, the Royal Commissioner, Ms Catherine Holmes AC SC is required to produce a final report by 18 April 2023.

Section D below sets out the basis upon which you are engaged to provide the Report.

#### *A. Materials briefed*

Annexure A to this letter lists the documents briefed to you for the purposes of provision of the Report.

#### *B. Background*

The Letters Patent relevantly require the Commission to inquire into the establishment, design and implementation of the Robodebt Scheme (the **Scheme**).<sup>1</sup>

The Commission's terms of reference<sup>2</sup> relate to the part of the Scheme which comprises the PAYG Manual Compliance Intervention program including associated pilot programs from early 2015 to 1 July 2016, and the following iterations of this program:

- a. Online Compliance Intervention (OCI), which applied to assessments initiated in the period from on or around 1 July 2016 to on or around 10 February 2017;
- b. Employment Income Confirmation (EIC), which applied to assessments initiated in the period from on or around 11 February 2017 to on or around 30 September 2018;

<sup>1</sup> Refer to paragraph g of the Letters Patent.

<sup>2</sup> Refer to the preamble to the Letters Patent.

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- c. Check and Update Past Income (**CUPI**), which applied to assessments initiated after on or around 30 September 2018.

The Scheme was implemented by way of a budget measure titled 'Strengthening the Integrity of Welfare Payments', which was approved by the Expenditure Review Committee on 25 March 2015 and introduced by way of the 2015/16 Budget.

On 27 November 2019, Justice Davies in the Federal Court of Australia in *Amato v the*

*Commonwealth of Australia* (VID611/2019) made orders by consent that the demand for payment of the alleged debt (which was a Robodebt debt) was not validly made because the information before the decision-maker was not capable of satisfying them that a debt was owed.<sup>5</sup>

A class action was commenced on 19 November 2019 against the Commonwealth of Australia by people affected by the Scheme.<sup>4</sup>

The Scheme was formally discontinued in May 2020.

On 16 November 2020, the Applicants to the class action and the Commonwealth agreed to a settlement of \$112 million, without admission of liability by the Commonwealth.

On 11 June 2021, Justice Murphy of the Federal Court of Australia in *Prygodicz v Commonwealth of Australia (No 2)* [2021] FCA 634 (the class action) found that the Scheme was unlawful.

### **C. Assumptions of Fact**

For the purposes of this brief you can assume:

- a. you may refer to publicly available exhibits and or transcripts published on the Commission's website;

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<sup>5</sup> Refer to paragraphs d to f of the Letters Patent. <sup>4</sup>

Refer to paragraph i.v of the Letters Patent.

- b. you are not required to reference specific individuals or evidence in responding to each of the questions identified at section D, below;
- c. where you are being asked to respond to the questions with reference to a particular period of time (for example the 'Relevant Period'), you can assume this limitation will not prevent you from referencing studies, academic articles, cases or reports outside this period if they are relevant to issues arising for your consideration; and
- d. in writing your report, you should adopt the expressions set out in the definitions in section E.

*D. Terms of engagement*

- a) You are engaged to provide a report which addresses the following which arise for consideration from the Commission's terms of reference and the evidence in the Commission's proceedings, to date:
  - a. How would you describe the role of the Australian Public Service (APS) and the professional relationship that exists/ed between APS leaders and their Agency Minister/s and their respective responsibilities for the Relevant Period?
  - b. How would you describe the responsibilities of individual public servants, particularly Secretaries, SES and ELs including their statutory obligations under the PS Act, the PGPA Act, the PID Act and administrative law for the Relevant Period?
  - c. For the Relevant Period, please describe and comment upon the relationship between policy advising and administration as well as the structure of the social security portfolio ie, the respective roles of and relationships between DSS and Services Australia;
  - d. For the Relevant Period, please describe and comment upon the annual budget process and the MYEFO process including arrangements for ensuring Cabinet had/s sufficient information (including on legal and other risks) to make proper decisions;
  - e. For the Relevant Period, please describe and comment upon the relationship and level of engagement between Services Australia and DSS and each agency's clients and stakeholders;
  - f. For the Relevant Period, please describe and comment upon the use of technology in the administration of social security payments, including data matching and automated decision making;
  - g. In your opinion what is the role of compliance and the appropriate balance between compliance and the proper administration of beneficial legislation such as the Social Security Laws?
  - h. For the Relevant Period, please describe and comment upon the level of APS capabilities within the social security portfolio, including with regard to policy advice, administrative experience, understanding of social security and administrative law, and project management;
  - i. For the Relevant Period please describe and comment upon the culture of Services Australia and DSS and the levels of communication between the two Agencies;
  - j. For the Relevant Period, please describe and comment upon the quality of recordkeeping in the APS; and
  - k. Any other matter of substance you consider relevant to the terms of reference.

- b) In light of your answers to these questions, in your professional opinion, what recommendations if any do you consider may address:
- a. Any concerns identified in your answers which appear to be systemic; and
  - b. Any concerns identified in your answer which appear to be critical points in the Robodebt scheme.

#### *E. Definitions*

For the purposes of preparation of the Report, the following terms have the following meanings and should be used consistently:

<b>TERM</b>	<b>MEANING</b>
The Agencies	collectively, means Services Australia and DSS.
Agency Head	as defined in s 7 of the PS Act.

<b>TERM</b>	<b>MEANING</b>
Agency Minister	as defined in s 7 of the PS Act.
APS	as defined in s 7 and as established by s 9 of the PS Act.
APS Code of Conduct	means the rules in s 13 of the PS Act.
APS Employee	as defined in s 7 of the PS Act.
APS Employment Principles	means the principles in s 11 of the PS Act.
APS Leaders	Collectively means ELs and the SES, including the Secretary and/or head of Agency.
APS Values	means the values in s 10 of the PS Act.
Budget Process	the decision-making process for allocating public resources to the Australian Government's priorities as described by the Department of Finance <a href="#">here</a> .
Commonwealth Record	has the meaning provided in s 3 of the <i>Archives Act 1983</i> .

Data matching	means the bringing together of at least two data sets that contain personal information, and that come from different sources, and the comparison of those data sets with the intention of producing a match.
Data matching program	means the conduct of data matching to assist one or more agencies to achieve a specific objective. A data matching program may involve more than one data matching cycle.
DSS	means the Department of Social Security.
DHS	means the Department of Human Services, currently referred to as Services Australia.
A document for the purposes of the <i>Freedom of Information Act 1983</i> (FOI Act)	has the meaning provided in s 4 of the FOI Act.
ELs	means Executive Level Officers (EL1 and EL2) engaged under s 22 of the PS Act.
MYEFO	Mid-Year Economic and Fiscal Outlook.

<b>TERM</b>	<b>MEANING</b>
NPP	New Policy Proposal - refers to any proposal that requires a government decision as described by the Department of Finance <a href="#">here</a> .
PGPA Act	refers to the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
PID	refers to a public interest disclosure as defined by s 8 the <i>Public Interest Disclosure Act 2013</i> (Cth) (the <b>PID Act</b> ).
PS Act	refers to the <i>Public Service Act 1999</i> (Cth)
PSC	means the Public Service Commissioner as established by Part 5 of the PS Act.
Relevant Period	means the period from 1 January 2014 to the date of this letter.
The Royal Commission (the Commission)	refers to the Royal Commission into the Robodebt Scheme.

Secretary	means the Secretary of a Department eg DSS.
SES	means the Senior Executive Service as defined by s 7 of the PS Act and as established by s 34 of that Act.
Services Australia	means the Agency known as Services Australia, and includes any predecessor Agency or Department.
The Moran Review	a review of Australian Government Administration commissioned by then Prime Minister Kevin Rudd in September 2009. In March 2010, the Advisory Panel chaired by Mr Terry Moran AO presented the paper <i>Ahead of the Game: Blueprint for the Reform of Australian Government Administration</i> which can be found <a href="#">here</a> .
The Scheme	the Robodebt Scheme - the debt assessment and recovery scheme described in the preamble to the Letters Patent.
<b>TERM</b>	<b>MEANING</b>
The Shergold Review	following the Royal Commission into the Home Insulation Scheme Program, the Australian Government asked Professor Peter Shergold AC to lead an independent review of Government processes for the development and implementation of large public programmes and projects. In 2015, Professor Shergold presented his report titled <i>Learning from Failure: Why large government policy initiatives have gone so badly wrong in the past and how the chances of success in the future can be improved</i> to the Australian Government. A copy of the report can be found <a href="#">here</a> .
The Thodey Review	independent Review of the APS commissioned by the Australian Government in May 2018. The Review's Final Report was delivered in 2019 by David Thodey AO, of the independent panel. A copy of the final report can be accessed <a href="#">here</a> .

#### F. Timeframes

You will provide the Report to the Commission by no later than 20 February 2023.

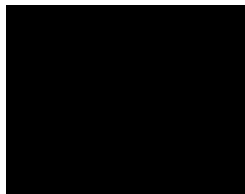
You have agreed the Report can be disclosed to third parties (including the Commonwealth) for comment ahead of a three-week hearing block which is due to commence on 20 February 2023 (**hearing block 4**).

If required, you will appear in hearing block 4 to give evidence about the Report.

You will be notified by the Commission **prior to 20 February 2023** if you are required to appear.

We thank you for your assistance with this engagement. Please contact us should you have any questions.

Regards



**Jane Lye**  
**Official Secretary**

## ATTACHMENT B

### ANDREW PODGER AO

Andrew Podger is Honorary Professor of Public Policy at the Australian National University.

He spent 37 years in the Australian Public Service in a range of portfolios, specializing mostly in social policy and public management. He was Secretary of the Australian Department of Health and Aged Care from 1996 to 2002, and previously headed the Departments of Housing and Regional Development (1994-95) and Administrative Services (1993-94). He was Public Service Commissioner from 2002 to 2004. He also held senior executive positions in Social Security, Finance and Defence between 1978 and 1993.

From 2005 to 2010, he was National President of the Institute of Public Administration Australia.

Since joining ANU in 2005, initially as an adjunct professor, he has coordinated and contributed to many workshops of academic experts and practitioners on issues of contemporary relevance to government, including through the Australia and New Zealand School of Government, the Institute of Public Administration Australia and the Academy of Social Sciences in Australia. For several years he also provided advice on aspects of public administration to various Asian countries through AusAID and UNDP. Since 2011, he has coordinated the work of the Greater China Australia Dialogue on Public Administration including annual workshops of scholars and practitioners from the PRC, Taiwan and Australia leading to several books and symposiums of articles in academic journals.

He has published widely on retirement incomes policy, health and health insurance policy, the relationship between politics and administration, public finance management and public personnel management. This includes his 2009 book, *The Role of Departmental Secretaries*, published by ANU Press.

He has made substantial submissions to Parliamentary and other inquiries into various aspects of public administration. Over the last five years, these include submissions on financial management, public sector remuneration, the capability of the public service, the management of the Parliament and the role and accountability of ministerial staff.

His current main interests are:

- Issues relating to the role and capability of the civil service and its relationship with ministers and the parliament, reflecting on the lessons learned from New Public Management and New Public Governance and on emerging developments such as technological change;
- Retirement incomes policy, particularly the opportunities and challenges of hybrid systems of public pensions and private superannuation (with a particular focus on the efficiency and effectiveness of the system in delivering adequate and reliable incomes in retirement);
- Health insurance, including the opportunities and challenges of hybrid systems of public and private insurance and of public and private health service providers (with a particular focus on improving the efficiency and effectiveness of health care and health outcomes).

He holds a Bachelor of Science in pure mathematics from Sydney University, is a Fellow of the Academy of Social Sciences in Australia, a National Fellow of the Institute of Public Administration Australia, a Fellow of the Australia and New Zealand School of Government and a Fellow of the National (US) Academy of Public Administration.

He was made an Officer in the Order of Australia in 2004.



17 February 2023

Mr Andrew Podger AO

By email: [REDACTED]

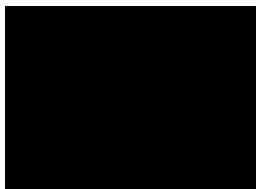
Dear Mr Podger

## **Royal Commission into the Robodebt Scheme - Report**

We refer to the **attached** correspondence dated 3 February 2023.

We write to ask that in preparing the Report, you consider the **attached** Terms of Reference for the APS Integrity Taskforce (Terms of Reference). Please feel free to identify any of the matters which form part of your opinion and/or recommendations in the Report, which in your opinion would fall within the scope of those Terms of Reference.

Regards



**Jane Lye**  
**Official Secretary**

**Phone: 1800 317 022 | Email: [RRC.enquiries@royalcommission.gov.au](mailto:RRC.enquiries@royalcommission.gov.au) | GPO Box 546, Brisbane QLD 4001**



Australian Government

# APS Integrity Taskforce

## Terms of Reference

### Context

The Government has an ambitious agenda to strengthen integrity across the Australian public sector. Important reforms underway include the establishment of the National AntiCorruption Commission, strengthening whistleblower protections, measures to enhance the integrity of administrative decision making (including grants processes), and arrangements to increase transparent and merit-based appointments to government boards and other public sector roles.

It is vital the Australian Public Service (APS) is a leader in integrity, always looking to improve processes and culture. The Attorney-General's Department, the APS Reform Office and the Australian Public Service Commission (APSC) are already leading a significant program of work on integrity. A number of recent events, including the Hon Virginia Bell AC's Inquiry into the Appointment of the Former Prime Minister to Administer Multiple Departments, reflect on the integrity of the APS. The Taskforce offers the opportunity to ensure that all possible measures and options for improvement are being explored. This work is necessary to ensure high standards of integrity, deliver on government's expectations around integrity, frame a comprehensive response to the themes emerging from the Royal Commission into the Robodebt Scheme and operate in the interests of the Australian community.

Collectively, APS integrity reforms must align to effectively deliver clear, cohesive and measurable improvements in integrity across the system.

### Objectives

- A Taskforce will be established to ensure the APS is focused upon and delivering a prointegrity culture at all levels of the service. The Taskforce will bring together information about initiatives underway across agencies, consider how they intersect, and identify gaps and opportunities to deliver system wide integrity improvements.

### Scope

- The Taskforce will work with agencies to develop a comprehensive plan for Government consideration to enhance APS integrity and provide a clear picture of how these efforts collectively strengthen the APS. In addition to larger reforms like the National AntiCorruption Commission, whistleblowing and grant reforms, these could include measures relating to:
  - Cultural and behavioural practices, values and leadership capabilities that support (or undermine) integrity (e.g. frank and fearless advice, engaging with risk)
  - Governance and leadership (including the roles and responsibilities of oversight bodies, Secretaries and Public Service Agency Heads and the APS Commissioner)

- Escalation systems and processes (e.g. pathways for raising issues or concerns) together with protections for those who report matters

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- APS capability and conduct ○ Handling of legal advice ○ Record-keeping.
- A key focus for the Taskforce will be identifying gaps and developing recommendations for actions to ensure the APS is responding in a coordinated and comprehensive manner.
- Depending on the nature of the issues identified the Taskforce may recommend enhancements to work already underway, scope and design new initiatives and identify and work with responsible agencies to take forward particular pieces of work.

## **Governance**

- The Taskforce will be based in the Department of the Prime Minister and Cabinet (PM&C) and report to a Deputy (SES Band 3) level Steering Group to provide progress updates and seek guidance. The Steering Group will comprise of:
  - Deputy Secretary, Integrity and International Group, Attorney-General's Department (AGD) ○ Deputy Commissioner, APSC ○ Deputy Secretary & COO, Governance & Corporate Group, PM&C ○ Deputy Secretary, Public Sector Reform, PM&C ○ Deputy Secretary from other agencies
- The Taskforce will deliver an interim report to the Secretaries Board within three months of commencement.

## **Timeframe and Resources**

- The taskforce will commence immediately and run for approximately 6 months (until August 2023).
- It will be led by an SES Band 2 from AGD. The Taskforce will be staffed by officers from the APSC, AGD and PM&C and other agencies. Secondees will be selected depending on the work plan developed and the expertise required.

## **Deliverables**

- The Taskforce will deliver in partnership with relevant agencies:
  - A comprehensive action plan for APS wide integrity that outlines current work, identifies any gaps or opportunities for advancement, and develops options and solutions to be implemented by the Taskforce or by other agencies as appropriate.
  - Proposals should aim to bolster expectations across the APS of the behaviours and actions required to meet integrity standards set out in legislation, policy and codes of conduct, together with strong leadership on integrity matters across the system.

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