



Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

20 December 2024

Phone: +61 2 6277 3560
legcon.sen@aph.gov.au

Dear Committee Secretary

Oversight Legislation Amendment (Robodebt Royal Commission Response and Other Measures) Bill 2024

I write in relation to this Bill, to provide my strong support for its purpose and content.

The nature of problems revealed by Robodebt

The Royal Commission into Robodebt revealed many systemic problems, of a scope and complexity that require an equally wide ranging and layered official response. When this Bill is viewed as one aspect of the wider official response to the Royal Commission, it is a small and sensible step. The more wide-ranging responses to Robodebt include replacement of the Administrative Appeals Tribunal with the Administrative Review Tribunal and the revival of the Administrative Review Council. While each of those reforms mark an important addition to our framework of governance and oversight, smaller more refined reforms are also required. The *Oversight Legislation Amendment Bill* is one and when viewed against the wider framework of changes, it is not piecemeal. It is one part of coherent and integrated reforms.

The Royal Commission revealed weaknesses in our framework for oversight but these are not unique to Robodebt. For example, the recent Royal Commission into Defence and Veterans' Suicide, that was published on 9 September 2024, lamented the many difficulties it encountered when seeking timely production of relevant information. That Commission also decried the lack of impact that successive inquiries have had on the problems identified many times in our defence forces. The Defence Royal Commission confirmed that many problems identified in Robodebt have parallels in other areas of public administration. The vigour with which the consequences of Robodebt have been addressed is commendable and should provide a template for all other royal commissions.

It does not strain logic to suggest that one common theme in the royal commissions on Robodebt and Defence and Veteran Suicides is the resistance that many government agencies present to oversight, whether an ombudsman inquiry, parliamentary questions or a royal commission. If the changes signalled by the *Oversight Legislation Amendment (Robodebt Royal*

Commission Response and Other Measures) Bill 2024 help to make such resistance less likely, this is reason enough to support the Bill.

The Bill makes important changes to the *Ombudsman Act 1976* (Cth)

The Bill strengthens and clarifies the Ombudsman's powers to obtain material in two key ways. One is the new power enabling the Ombudsman to obtain materials remotely (the proposed s14A(1) of the *Ombudsman Act*), which is bolstered by the creation of an offence (the proposed s14A(5)(c) of the *Ombudsman Act*) if a relevant officer "does not provide the authorised [ombudsman officer] with reasonable facilities and assistance for the effective exercise of the power." This power is desirable and will surely help the efficient conduct of inquiries by the Ombudsman. The proposed offence can only be fully understood in conjunction with the proposed new s32, which obliges principal officers and officers of Departments and prescribed authorities to ensure the Department or agency uses it best endeavours to assist the work of the Ombudsman. A similar requirement to assist was contained in the now repealed *Administrative Appeals Tribunal Act 1975* (Cth) s31AA and is reproduced in s56(1) of the *Administrative Review Tribunal Act 2024* (Cth).

While these duties to assist long applied in many statutes governing merits review tribunals, it is odd that they were not replicated in other parts of our accountability regime. It is arguable that restricting this type of duty to assist to merits review tribunals tacitly encouraged public officials to take a narrow view of these obligations. In other words, officials might have thought the duty to assist applied when a merits review case was on foot, but did not arise more generally. The inclusion of such a duty for the Ombudsman and Private Health Insurance Ombudsman goes some way to helping create a standing obligation for public officials to assist the work of independent bodies, whether in a particular merits review claim or a wider inquiry. Such a shift, spurred along by specific statutory duties, deserves strong support.

These duties to assist are qualified by a requirement of reasonableness. Assistance need not be endless or to an extent that might see an agency or its officials do the work of the Ombudsman. They must provide "reasonable facilities and assistance". The balanced nature of that duty is fair and workable.

The Bill also adopts some key recommendations of the Royal Commission for the Inspector-General of Taxation

Another key part of the Bill is its amendments to the *Inspector-General of Taxation Act 2003*. This change was contained in recommendations 21.1 and 21.2 of the Royal Commission, which clearly sought to expand and strengthen the Inspector-General's powers and the independence of that office. In my view, that sensible change is overdue though I stress that comment is no reflection on the work of the Inspector-General. That office, like any other statutory oversight body such as the Ombudsman, must work within the limits of the powers conferred upon it and the Inspector has arguably been limited in many ways by the nature of many of its powers.

The Bill will extend the proposed s32 of the *Ombudsman Act* by adding that new clause to those in the ombudsman legislation picked up by operation of s15 of the *Inspector-General of Taxation Act*. This duty is as valuable for the Inspector-General as it is the Ombudsman.

The duties to assist address the Donald Rumsfeld question

The former Vice President of the United States, Donald Rumsfeld noted the problems of "known unknowns". While that somewhat strange statement was widely criticised, there is value in the notion that when facing problems, sometimes we know what the problem is but often we cannot predict what might be found. The relevance of this point to duties to assist and oversight bodies

is that most queries, whether a large royal commission or a very confined administrative review, will be able to specify what information is sought. The investigator *usually* knows what to look and ask for. That is not always the case. Sometimes an agency will hold information, records or knowledge that the investigator cannot know about or predict. In these cases, the oversight body must rely on the good faith of the agency it is working with. The duties to assist may go some way to making agencies and their officers understand that proper co-operation includes a responsibility to consider requests for assistance beyond their technical scope. The duties to assist contained in the Bill have the potential to foster a culture in departments and agencies that they should move beyond the literal words used in an inquiry by an oversight agency to ask “is there anything more we should draw to their attention?”. The potential of the Bill to help this sort of cultural change is commendable.

The duty to assist works in tandem with the *Public Service Act 1999* (Cth)

The duties to assist contained in the Bill do not operate in isolation. The many duties contained in s13 of the *Public Service Act* include one that APS employees must comply with all applicable Australian laws (s13(4)). This will include the duty to assist, which means that a failure to provide appropriate assistance is a breach of the APS Code of Conduct *Public Service Act*. That will reinforce the importance of the Bill’s duties to assist.

I hope that my comments about the Bill are useful. If the Committee has any questions about any part of my submission, I would be pleased to speak further about them.

Yours sincerely,

Professor Matthew Groves
Deakin University Law School

