

**Home Affairs Portfolio
Department of Home Affairs
Supplementary Estimates Hearing – October 2023**

DSE BACK POCKET BRIEF

Topic: Commonwealth Royal Commissions

Group: Executive

Division: Executive Coordination

Key Points

Royal Commission into the Robodebt Scheme (Robodebt Royal Commission)

Handling Note: *Questions on the Government's response to the final report and its recommendations should be referred to the Taskforce established within Department of the Prime Minister and Cabinet (PM&C).*

- On 7 July 2023, the Robodebt Royal Commission publicly released its final report and 57 recommendations for Government consideration.
- Whilst the development of the government response is underway, the Department of Home Affairs (the Department) has continued to undertake efforts to internally assess and improve its current practices, processes and culture.
- While the final report and recommendations made no direct attributions towards the Department or the broader Home Affairs Portfolio (the Portfolio), there were multiple recommendations that will apply across all Commonwealth departments and agencies (*refer **Table One** for 33 recommendations of relevance, as self-identified by the Department*).
- In March 2023, the Department undertook an internal analysis of key themes and issues emerging from evidence raised from the Commission at the time, which were mapped against the Department's current practices, processes and culture.
 - The analysis also aligned to the APS Integrity Taskforce's areas of focus, including integrity, culture, leadership, governance, risk identification and handling and assurance of legal advice, record keeping, and capability.
 - The Department remains an active participant of the APS Integrity Taskforce and is contributing to the development of an APS wide action plan.
- The March 2023 analysis found that the Department had a broad range of robust policies, frameworks and practices in place to address these types of issues.
- It was acknowledged that the effectiveness of these policies, frameworks and practices could always be improved.
 - For example, while the Department has effective risk management processes, action is currently underway to support managers and individuals to understand – and meet – their responsibilities and accountabilities when it comes to encouraging a positive risk culture.

Table One: Summary of Relevant Recommendations
(as self-identified by the Department)

Robodebt Royal Commission – Relevant Recommendations	
The effects of Robodebt on individuals	Recommendation 10.1: Design policies and processes with emphasis on the people they are meant to serve Services Australia design its policies and processes with a primary emphasis on the recipients it is meant to serve. That should entail: • avoiding language and conduct which reinforces feelings of stigma and shame associated with the receipt of government support when it is needed. • facilitating easy and efficient engagement with options of online, in person and telephone communication which is sensitive to the particular circumstances of the customer cohort, including itinerant lifestyles, lack of access to technology, lack of digital literacy and the particular difficulties rural and remote living. • explaining processes in clear terms and plain language in communication to customers, and acting with sensitivity to financial and other forms of stress experienced by the customer cohort and taking all practicable steps to avoid the possibility that interactions with the government might exacerbate those stresses or introduce new ones.
The concept of vulnerability	Recommendation 11.1: Clear documentation of exclusion criteria Services Australia should ensure that for any cohort of recipients that is intended to be excluded from a compliance process or activity, there is clear documentation of the exclusion criteria, and, unless there is a technical reason it cannot be, the mechanism by which that is to occur should be reflected in the relevant technical specification documents. Recommendation 11.2: Identification of circumstances affecting the capacity to engage with compliance activity Services Australia should ensure that its processes and policies in relation to the identification of potential vulnerabilities extend to the identification of circumstances affecting a recipient's capacity to engage with any form of compliance activity. To this end, circumstances likely to affect a recipient's capacity to engage with compliance activities should be recorded on their file regardless of whether they are in receipt of a payment that gives rise to mutual obligations. Recommendation 11.3: Engagement prior to removing a vulnerability indicator from a file Services Australia should ensure that its processes and policies in relation to the identification of potential vulnerabilities require staff to engage with a recipient prior to the removal of an indicator on their file. For this purpose, Services Australia should remove any feature that would allow for the automatic expiry of a vulnerability indicator (or equivalent flagging tool). An indicator should only be removed where a recipient, or evidence provided to the Agency in relation to the recipient, confirms that they are no longer suffering from the vulnerability to which the indicator relates. Recommendation 11.4: Consideration of vulnerabilities affected by each compliance program, including consultation with advocacy bodies Services Australia should incorporate a process in the design of compliance programs to consider and document the categories of vulnerable recipients who may be affected by the program, and how those recipients will be dealt with. Services Australia should consult stakeholders (including peak advocacy bodies) as part of this process to ensure that adequate provision is made to accommodate vulnerable recipients who may encounter particular difficulties engaging with the program.

The roles of advocacy groups and legal services	Recommendation 12.2: Customer experience reference group The government should consider establishing a customer experience reference group, which would provide streamlined insight to government regarding the experiences of people accessing income support.
Experiences of Human Services employees	Recommendation 13.2: Feedback processes Better feedback processes should be put in place so that frontline staff can communicate their feedback in an open and consultative environment. Management should have constructive processes in place to review and respond to staff feedback. Recommendation 13.3: "Face-to-face" support More "face-to-face" customer service support options should be available for vulnerable recipients needing support.
Failures in the Budget process	Recommendation 15.1: Legislative change better defined in New Policy Proposals The Budget Process Operational Rules should include a requirement that all New Policy Proposals contain a statement as to whether the proposal requires legislative change in order to be lawfully implemented, as distinct from legislative change to authorise expenditure. Recommendation 15.2: Include legal advices with New Policy Proposals The Budget Process Operational Rules should include a requirement that any legal advice (either internal or external) relating to whether the proposal requires legislative change in order to be implemented be included with the New Policy Proposal in any versions of the Portfolio Budget Submission circulated to other agencies or Cabinet ministers. Recommendation 15.3: Australian Government Solicitor statement in the NPP The Budget Process Operational Rules should include a requirement that where legal advice has been given in relation to whether the proposal requires legislative change in order to be implemented, the New Policy Proposal includes a statement as to whether the Australian Government Solicitor has reviewed and agreed with the advice. Recommendation 15.4: Standard, specific language on legal risks in the NPP The standard language used in the NPP Checklist should be sufficiently specific to make it obvious on the face of the document what advice is being provided, in respect of what legal risks and by whom it is being provided.
Automated decision-making	Recommendation 17.1: Reform of legislation and implementation of regulation The Commonwealth should consider legislative reform to introduce a consistent legal framework in which automation in government services can operate. Where automated decision-making is implemented: • There should be a clear path for those affected by decisions to seek review. • Departmental websites should contain information advising that automated decision-making is used and explaining in plain language how the process works. • Business rules and algorithms should be made available, to enable independent expert scrutiny. Recommendation 17.2: Establishment of a body to monitor and audit automated decision-making The Commonwealth should consider establishing a body, or expanding an existing body, with the power to monitor and audit automate decision-making processes with regard to their technical aspects and their impact in respect of fairness, the avoiding of bias, and client usability.
Lawyers and legal services	Recommendation 19.7: The Directions 1 The Legal Services Directions 2017 should be reviewed and simplified. Recommendation 19.8: Office of Legal Services Coordination to assist agencies with significant issues reporting The OLSC should provide more extensive information and feedback to assist agencies with the significant legal issues process.

	Recommendation 19.9: Recording of reporting obligations The OLSC should ensure a documentary record is made of substantive inquiries made with and responses given by agencies concerning their obligations to report significant issues pursuant to para 3.1 of the Directions. Recommendation 19.10: The Directions 2 The OLSC should issue guidance material on the obligations to consult on and disclose advice in clause 10 of the Legal Services Directions 2017
Administrative Appeals Tribunal	Recommendation 20.1 AAT cases with significant legal and policy issues Services Australia should put in place a system for identifying AAT1 cases which raise significant legal and policy issues and ensuring that they are brought to the attention of senior DSS and Services Australia officers. Recommendation 20.3: Identifying significant AAT decisions DSS should establish, or if it is established, maintain, a system for identifying all significant AAT decisions and bringing them to the attention of its secretary.
The Commonwealth Ombudsman	Recommendation 21.1: Statutory duty to assist A statutory duty be imposed on departmental secretaries and agency chief executive officers to ensure that their department or agency use its best endeavours to assist the Ombudsman in any investigation concerning it, with a corresponding statutory duty on the part of Commonwealth public servants within a department or agency being investigated to use their best endeavours to assist the Ombudsman in the investigation. Recommendation 21.2: Another power to obtain information The Ombudsman Act be amended to confer on the Ombudsman a power in equivalent terms to that in s 33(3) of the Auditor-General Act. Recommendation 21.3: Oversight of the legal services division Departmental and agency responses to own motion investigations by the Ombudsman should be overseen by the legal services division of the relevant department or agency. Recommendation 21.4: Log of communications The Ombudsman maintain a log, recording communications with a department or agency for the purposes of an own motion investigation. Recommendation 21.5: Powers of referral The AAT is soon to be replaced by a new administrative review body. S 10A and s 11 of the Ombudsman Act should be amended so as to ensure the Ombudsman has the powers of referral and recommendation of referral in respect of that new administrative review body.
Improving the Australian Public Service	Recommendation 23.2: Obligations of public servants The APSC should, as recommended by the Thodey Review, deliver whole-of-service induction on essential knowledge required for public servants. Recommendation 23.3: Fresh focus on “customer service” Services Australia and DSS should introduce mechanisms to ensure that all new programs and schemes are developed with a customer centric focus, and that specific testing is done to ensure that recipients are at the forefront of each new initiative. Recommendation 23.4: Administrative Review Council The reinstated Administrative Review Council (or similar body) should provide training and develop resources to inform APS members about the Commonwealth administrative law system. (see Automated Decision-Making and the Administrative Appeals Tribunal chapters). Recommendation 23.6: Front-line Service SES staff at Services Australia should spend some time in a front-line service delivery role and with other community partnerships. Recommendation 23.7: Agency heads being held to account The Public Service Act should be amended to make it clear that the Australian Public Service Commissioner can inquire into the conduct of former Agency Heads.

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	Also, the Public Service Act should be amended to allow for a disciplinary declaration to be made against former APS employees and former Agency Heads. Recommendation 23.8: Documenting decisions and discussions The Australian Public Service Commission should develop standards for documenting important decisions and discussions, and the delivery of training on those standards. Recommendation 23.8: Documenting decisions and discussions The Australian Public Service Commission should develop standards for documenting important decisions and discussions, and the delivery of training on those standards.
Closing Observations: Section 34 of the Cth FOI Act should be repealed	The Commonwealth Cabinet Handbook should be amended so that the description of a document as a Cabinet document is no longer itself justification for maintaining the confidentiality of the document. The amendment should make clear that confidentiality should only be maintained over any Cabinet documents or parts of Cabinet documents where it is reasonably justified for an identifiable public interest reason.

s. 22(1)(a)(ii)

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