

**From:** [Macdonald, Alison](#)  
**To:** s 47E(d)  
**Cc:** s 22(1)(a)(ii) s 47E(d)  
**Subject:** FYI AND PAPER FOR AC/NM FORUM - 7/12/23 - ROBODEBT PAPER - : Strategy and Performance Board [SEC=OFFICIAL]  
**Date:** Thursday, 7 December 2023 2:30:32 PM  
**Attachments:** [2.2a SPB 20231204 ATTACH A Robodebt Report and Government Response OFFICIAL.pdf](#)  
[2.2b SPB 20231204 ATTACH B Robodebt Report - Recommendations Legal.pdf](#)  
[2.2c SPB 20231204 ATTACH C DRAFT - revised Charter of Independence OFFICIAL.pdf](#)  
[2.2 SPB 20231204 Robodebt OFFICIAL.pdf](#)

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**OFFICIAL**

Dear All,

Ahead of the AC /NM forum this afternoon and Item #2, please find **attached** the paper on Robodebt (plus attachments) as presented to the Strategy and Performance Board earlier this week.

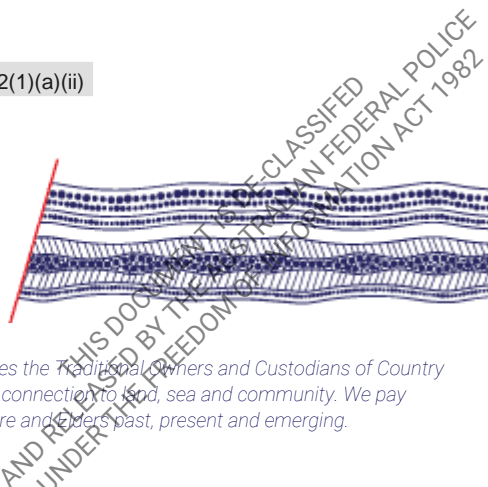
Look forward to answering any questions,

Regards  
Alison

**ALISON MACDONALD**

ACTING CHIEF COUNSEL  
CHIEF COUNSEL PORTFOLIO

Tel: s 22(1)(a)(ii) Ext: s 22(1)(a)(ii)  
Mob: s 22(1)(a)(ii)



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## Robodebt Royal Commission

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### Key Points

- The Report of the Royal Commission into the Robodebt Scheme (the Report) included 56<sup>1</sup> recommendations and 1 observation, of which 24 related to legal services.
- As a Commonwealth Agency we take these recommendations very seriously and **are proactively** reviewing the **recommendations and findings** to identify any improvements the AFP can make.
- Our Chief Counsel Portfolio has undertaken number of steps in anticipation of, or in response to the Report including:
  - an audit of legal advices and taken steps to finalise the small number (less than 20 over three years) of advices that were still in draft form.
  - Developing a revised and updated set of legal practice standards, which incorporates the Attorney-General's Department's guidance on the use of draft legal advice within government.
- Chief Counsel Portfolio have a Charter of Independence, and will review the Charter this year, to be signed by the current Commissioner, to reinforce the importance of this document to the AFP more broadly.
- We are also reviewing the AFP's record keeping and processes for documenting decisions and discussions. Once the APSC updates their recommended standards, we will ensure the AFP's procedures align with those recommendations.

### AFP current practices and position in relation to Recommendations

#### Recommendations relating to lawyers and legal services

- The Report includes recommendations about training for lawyers, legal practice standards, treatment of draft advices, the *Legal Services Directions* 2017 and associated reporting obligations.
- While none of the recommendations were targeted at the AFP, the AFP considers there are some valuable recommendations for all Commonwealth government legal practices.

#### AFP Charter of Independence

- The AFP implemented a Charter of Independence in relation to the provision of legal services in 2004.
- The Charter was signed by the then Commissioner (Mick Keelty) and has been adopted by subsequent Commissioners. The current Charter was signed by (then) Commissioner (Andrew Colvin) in 2016.
- The Charter outlines the ethical and professional responsibilities of AFP lawyers, and confirms the independence of AFP lawyers and the legal services they provide the AFP.
- **The principles underpinning the Charter remain current and fit for purpose. However, the release of the Report presents an opportunity for the AFP to update the Charter to include specific directions from the OLSC in the Attorney General's Department.**

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<sup>1</sup> General reporting refers to 57 recommendations. However, the Government considers the Commissioner made 56 recommendations and one closing observation.

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## Draft Advices

- The Attorney-General's initial guidance on 'use of draft legal advice within government' has been distributed to everyone within the Chief Counsel Portfolio (CCP) and will form part of the AFP CCP legal practice standards.
- Prior to the Attorney-General's Department issuing guidance on the treatment of legal advices in draft format, the CCP (within the AFP) undertook an audit of legal advices and found that less than 20 legal advices (over a three-year period) had not been finalised and/or were still draft form.
- Since this audit, the CCP has either finalised these legal advices or included a file note explaining why the advice was not finalised (e.g. matter settled or proceedings not commenced and advice no longer relevant).
- The CCP is developing a revised and updated set of legal practice standards which will incorporate any additional guidance provided by the Attorney-General's Department.

## Practising Certificates and training

- All lawyers within the CCP hold a practising certificate in the jurisdiction in which they practice. As such, they have additional training, professional development and integrity obligations in accordance with the rules imposed by the law society in the relevant jurisdiction.
- The AFP conducts internal Continuous Legal Education (CLE) programs, with presentations on the topic of ethics and professional responsibilities conducted (at least) annually. Both AFP Legal and Criminal Assets Litigation (CAL) hold annual conferences focussed on training and professional development for the internal lawyers and ensure there are sessions on ethics and professional skills.
- AFP and the CCP comply with the *Legal Services Directions* and liaise with the Office of Legal Services Coordination (OLSC) within the Attorney-General's Department in relation to any queries about significant issues reporting or potential legal risk.
- The Chief Counsel is a member of the Australian Government Legal Services Legal Risk Committee (coordinated by the Attorney-General's Department) which meets each quarter. The Chief Counsel ensures relevant information from the meetings is disseminated to lawyers within the AFP.

## Recommendations relating to the Commonwealth Ombudsman

- The Report makes a number of recommendations in relation to the Commonwealth Ombudsman and imposing a statutory obligation on agencies to assist the Ombudsman.
- The Commonwealth Ombudsman has oversight of the AFP and the AFP has always cooperated fully with any Ombudsman investigations, including by providing access to relevant systems and sharing of legal advices.

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## Recommendations relating to documenting decisions and discussions, and record keeping

- The Report makes a recommendation the Australian Public Service Commission develop standards for documenting important decisions and discussions, and the delivery of training on those standards, and the government has indicated this recommendation will be accepted and implemented. The AFP will look to implement any changes to align with these standards.
- The Royal Commission noted, amongst other things, that there were issues with record-keeping. This related both to record-keeping of the basis on which decisions were made, as well as the absence of file notes from OLSC when they enquired and raised concerns with, Services Australia. Ombudsman record-keeping was also criticised. Accordingly, recommendations were made that records of communications and decisions be made and maintained.

s 47E(d)

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## Background

s 47E(d)

- The Report of the Royal Commission into the Robodebt Scheme (the Report) included 56 recommendations.
- A taskforce led by the Department of the Prime Minister and Cabinet, the Attorney-General's Department, and the Australian Public Service Commission was established to inform and support the Government's response to the Report. In November 2023, the government announced that it was either accepting, or accepting in principle, all 56 recommendations of the Royal Commission (while not accepting the Commissioner's observations regarding section 34 of the Freedom of Information Act, which relates to cabinet documents).

### ACTION OFFICER

**Name:** Emily Caldwell – General Counsel Operations

**Phone:** s 47E(d)

<sup>2</sup> The ANAO Statutory Powers Audit.

**From:** s 22(1)(a)(ii) on behalf of s 47E(d)  
**To:** [Macdonald, Alison](#)  
**Cc:** s 47E(d) s 22(1)(a)(ii)  
**Subject:** Strategy and Performance Board | December 2023 Action Item | Circulation of Board Paper [SEC=OFFICIAL]  
**Date:** Wednesday, 6 December 2023 8:20:18 AM  
**Attachments:** [2.2a SPB\\_20231204\\_ATTACH A\\_Robodebt Report and Government Response OFFICIAL.pdf](#)  
[2.2b SPB\\_20231204\\_ATTACH B\\_Robodebt Report - Recommendations Legal.pdf](#)  
[2.2c SPB\\_20231204\\_ATTACH C\\_DRAFT - revised Charter of Independence OFFICIAL.pdf](#)  
[2.2 SPB\\_20231204\\_Robodebt OFFICIAL.pdf](#)

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**OFFICIAL**

a/CC

Good Morning Alison,

Following yesterday's Strategy and Performance Board Meeting, please find **attached** the Final (PDF'd) version of the **Robodebt Recommendations Paper** you presented to the Board.

As agreed by the Board, the Secretariat would be most grateful if you could **circulate the attached paper to the SES Band 2 (ACNM cohort) for their visibility and information** – noting the key matters and learnings for the AFP leadership to consider.

We would appreciate our [team inbox](#) being copied on this email for visibility and to enable us to maintain a record of the completion of the Action Item.

Please do not hesitate to contact the [CSU](#) should you have queries.  
Kind regards

s 22(1)(a)(ii)

A/COORDINATOR | CENTRAL SECRETARIAT UNIT  
STRATEGY & PERFORMANCE OFFICE

**AUSTRALIAN FEDERAL POLICE**

Tel: s 22(1)(a)(ii)

[www.afp.gov.au](http://www.afp.gov.au)

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# Assistant Commissioner & National Manager Forum

## AGENDA

<b>Date / time</b>	7 December 2023, 1500-1600hrs
<b>Location</b>	MS Teams Online
<b>Chair</b>	aNMSP
<b>Invitees</b>	<b>Members:</b> All AC / NMs
<b>Secretariat</b>	Office of NMSP

No.	AGENDA ITEM
1	Welcome and Apologies
<b>STRATEGIC ISSUE FOR THE MEETING</b>	
2	<div style="background-color: #cccccc; padding: 2px; text-align: center;">s 22(1)(a)(ii)</div> <ul style="list-style-type: none"> <li>• Strategy and Performance Board – Robodebt Brief (a/CC)</li> </ul>
<b>STANDING ITEMS</b>	
3	<div style="background-color: #cccccc; padding: 2px; text-align: center;">s 22(1)(a)(ii)</div>
4	<div style="background-color: #cccccc; padding: 2px; text-align: center;">s 22(1)(a)(ii)</div>
5	<div style="background-color: #cccccc; padding: 2px; text-align: center;">s 22(1)(a)(ii)</div>
6	<div style="background-color: #cccccc; padding: 2px; text-align: center;">s 22(1)(a)(ii)</div>
<b>GENERAL BUSINESS</b>	
7	<div style="background-color: #cccccc; padding: 2px; text-align: center;">s 22(1)(a)(ii)</div>
8	Confirm Next Meeting Strategic Issue(s)

# Record of Meeting

<b>Date / time</b>	7 December 2023
<b>Location</b>	MS Teams Online
<b>Chair</b>	NMSP
<b>Invitees</b>	Members: All AC / NMs
<b>Attendees</b>	a/NM Rak (a/Chair), CoS Black, NM Jerga, AC Harvey, NM Heeney AC Crozier, AC Lee, AC Wegg, CS Walsh, AC Dametto, AC Sirec, a/CC MacDonald, a/NM Duffy and a/CoS Cameron.
<b>Apologies</b>	NM Van Gurp, AC Boudry, AC Ryan, NM Everett, CFO Wood, AC Barrett, AC Pannett, AC Schofield, AC Koenderink, AC Gough and aNM Robinson.
<b>Secretariat</b>	Office of NMSP
<b>Next meeting</b>	4 January 2024

**WELCOME AND APOLOGIES**

**Item 1 – Welcome and Apologies**

The Chair:

- Opened the meeting and noted formal apologies.

**STRATEGIC ISSUE FOR THE MEETING**

**Item 2**



s 22(1)(a)(ii)

**Strategy and Performance Board paper Robodebt (aCC)**

- a/CC MacDonald gave a high level overview of the Strategy and Performance Board paper on Robodebt. Of interest, there were 56 recommendations coming out of the royal commission. A number of the recommendations relate directly to Social Services / Health Services, with 27 recommendations will impact the provision of legal services.

STANDING ITEMS

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**GENERAL BUSINESS**

s 22(1)(a)(ii)

**Item 8 – Confirm next strategic Item**

- Next meeting will be in January 2024.

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**From:** s 22(1)(a)(ii)  
**To:** s 47E(d)  
**Cc:** [Macdonald, Alison](#); [Caldwell, Emily](#) s 22(1)(a)(ii)  
**Subject:** FW: FOR URGENT INPUT | Due by 12pm Wed 6 Dec - Robodebt update at NDC [SEC=PROTECTED]  
**Date:** Wednesday, 6 December 2023 12:00:45 PM  
**Attachments:** [NDC 7 December 2023 - Robodebt.docx](#)  
[image001.gif](#)  
**Importance:** High

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**PROTECTED**

Good morning

Please find **attached** the Robodebt paper, with one comment from AFP Legal (on page three). This comment has been reviewed and cleared by a/Chief Counsel, Alison Macdonald.

Kind regards

s 22(1)(a)(ii)

s 22(1)(a)(ii)

EA TO GENERAL COUNSEL – CORPORATE & A/GENERAL COUNSEL - OPERATIONS  
CHIEF COUNSEL PORTFOLIO

Tel: s 22(1)(a)(ii)

[www.afp.gov.au](http://www.afp.gov.au)

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**From:** s 47E(d)

s 47E(d)

**Sent:** Tuesday, 5 December 2023 12:52 PM

**To:** s 22(1)(a)(ii) [@afp.gov.au](mailto:); s 47E(d)

**Cc:** s 47E(d)

**Subject:** FOR URGENT INPUT | Due by 12pm Wed 6 Dec - Robodebt update at NDC  
[SEC=PROTECTED]

**Importance:** High

**PROTECTED**

Good afternoon Office of NMPCC and Office of Chief Counsel,

**For input: NDC Agenda Item – Robodebt verbal update  
Due to IC&C by 1200hrs Wednesday 6 December 2023**

Deputy Commissioner Gale will be attending the NIC Deputies Committee (NDC) on Thursday 7 December. Included on the agenda is a verbal update on Robodebt.

The attached paper was prepared in consultation with your areas when this was discussed at the September NDC. We'd be very grateful for your review and provision of any updates for inclusion.

Apologies for the tight turnaround, but would be grateful for your input by 1200hrs tomorrow, Wednesday 6 December 2023.

Many thanks,

s 22(1)(a)(ii)

s 22(1)(a)(ii)

*Writing to you from Ngunnawal Country*  
INTELLIGENCE CAPABILITY AND COORDINATION  
INTELLIGENCE & COVERT SERVICES

Tel: s 22(1)(a)(ii)

[Australian Federal Police](#)



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<b>Date/Time</b>	Thursday 7 December 2023, 1400 – 1600h
<b>Location</b>	s 47E(d)
<b>Deputy Commissioner International &amp; Specialist Capabilities' Role</b>	Attendee
<b>Attendees</b>	Equivalents from other NIC agencies

### DESIRED OUTCOME

- Note updates and recommendations from other agencies.

### AFP POSITION

- The Chief Counsel Portfolio (CCP) in AFP have been considering the Robodebt recommendations and are undertaking work to improve practices in line with the recommendations. The main focus for CCP has and will be in relation to the recommendations around "lawyers and legal services" and in this context (Recommendations 19.2 to 19.12). The below sets out the work being undertaken.
- Other NIC agencies are welcome to request further information or copies of documents which may be of assistance.
- The AFP is a non-APS ROPA agency but our approaches are overall consistent with and informed by the APS Reform (and broader APSC) agendas and directions.

s 47E(d)

s 47E(d)

- Nil.

### BACKGROUND

## **Charter of Independence**

- The AFP implemented a Charter of Independence in relation to the provision of legal services in 2004. The Charter was signed by the then Commissioner (Mick Keelty) and has been adopted by subsequent Commissioners. The current Charter was signed by (then) Commissioner (Andrew Colvin) in 2016.
- The Charter outlines the ethical and professional responsibilities of AFP lawyers, and confirms the independence of AFP lawyers and the legal services they provide the AFP.
- The AFP is reviewing the Charter of Independence to ensure it remains fit for purpose and relevant in the current environment.

## **Draft Advices**

- The Chief Counsel Portfolio is developing a revised and updated set of legal practice standards which will incorporate relevant guidance provided by the Attorney-General's Department.
- The Attorney-General's Department initial guidance on 'use of draft legal advice within government' has been distributed to everyone within the CCP and when finalised will form part of the abovementioned CCP legal practice standards.
- Prior to the Attorney-General's Department issuing guidance on the treatment of legal advices in draft format, the CCP undertook an audit of legal advices and found that less than 20 legal advices (over a three-year period) had not been finalised and/or were still draft form.
- Since this audit, the CCP has either finalised these legal advices or included a file note explaining why the advice was not finalised (eg. matter settled or proceedings not commenced and advice no longer relevant).

## **Practising Certificates and training**

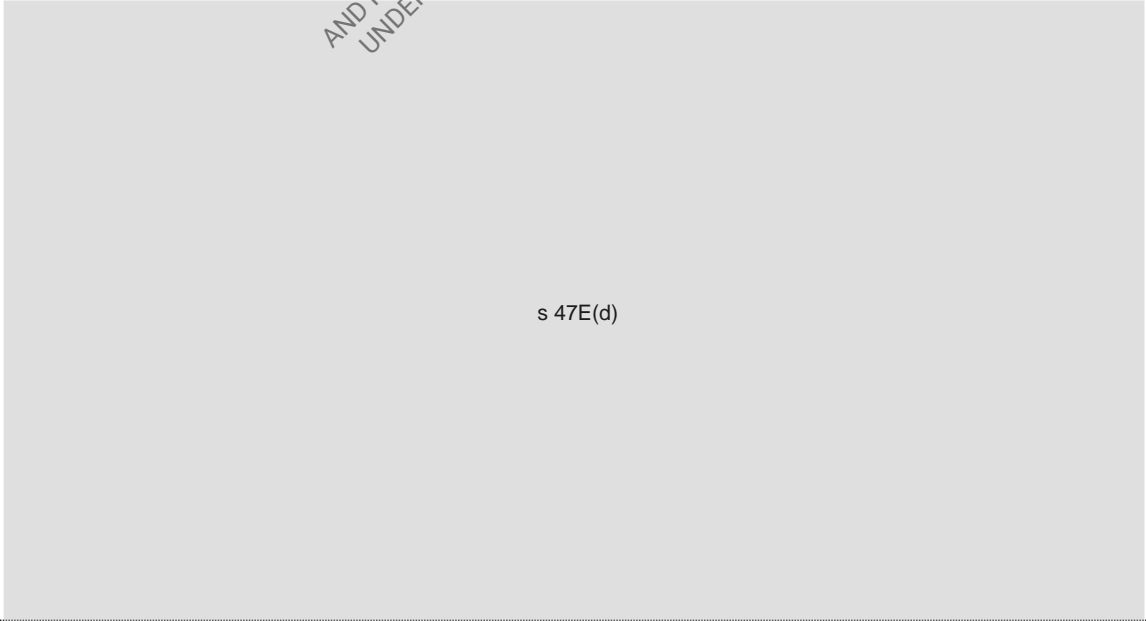
- All lawyers within the CCP hold a practising certificate in the jurisdiction in which they practice and as such, have additional training, professional development and integrity obligations in accordance with the rules imposed by the law society in the relevant jurisdiction.
- The AFP conducts internal Continuous Legal Education (CLE) programs, with the presentations on the topic of ethics and professional responsibilities conducted (at least) annually. Both AFP Legal and Criminal Assets Litigation (CAL) hold annual conferences focussed on training and professional development for the internal lawyers and ensure there are sessions on ethics and professional obligations.



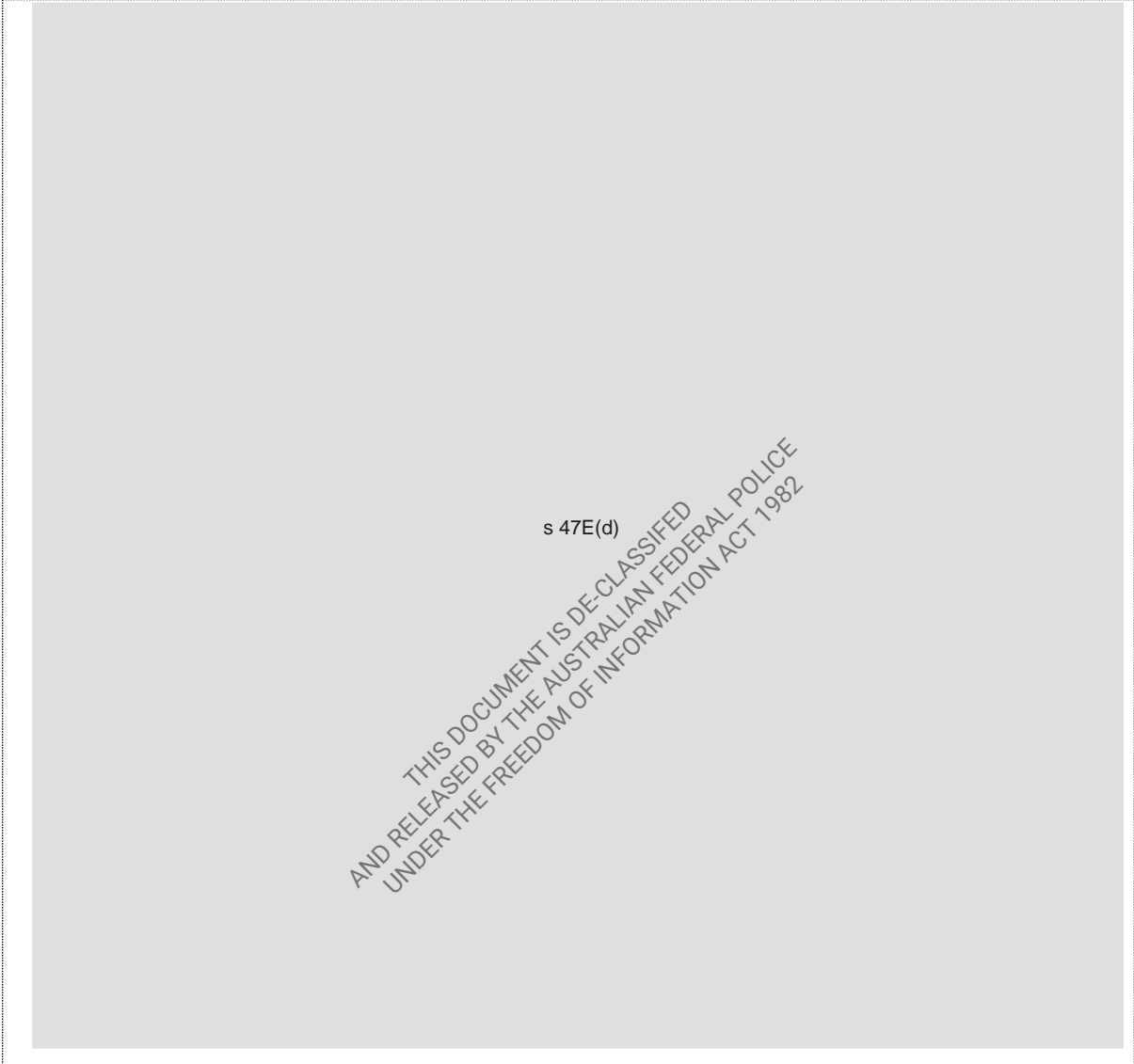
## Legal risk

- CCP complies with the Legal Services Directions (the Directions) and liaises with OLSC in relation to any queries about significant issues reporting or potential legal risk. The CCP have the following steps in place to ensure the AFP comply with the Directions:
  - Notification to the Office of Legal Services Coordination (OLSC) for any reported non-compliance.
  - There is a standing written instruction which is provided to all CAL members, instructing that a copy of the Model Litigant Policy (Policy) must be provided to each counsel on initial brief and that counsel is to comply with the Policy throughout their briefing, including in respect of any future issues arising in the matter.
  - Implementation of an internal better practice guide for the management of possible, actual and perceived allegations of non-compliance with the Model Litigant obligations under Appendix B of the Directions.
  - To mitigate the risk of non-compliance, refresher training on compliance with the Legal Services Directions is scheduled across CCP throughout each legal year.

## Culture

- When considering the findings and recommendations of the Robodebt Royal Commission, a key lesson is the importance of psychosocial safety in the workplace – more specifically, ensuring our people feel safe in sharing their ideas and concerns.
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s 47E(d)



s 47E(d)

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<b>Contact:</b>	Intelligence Capability & Coordination
<b>Consultation:</b>	Chief Counsel Portfolio People Command
<b>Content approved by:</b>	a/Chief Counsel, Alison MacDonald



Commander Intelligence Operations, Donna Parsons

**Clearing Officer:**

s 22(1)(a)(ii)

**Position:**

A/Coordinator Intelligence Capability

**Date:**

6 September 2023

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**Notes for Executive Assistants:**

- The pack is best printed **double sided** – blank pages have been inserted to assist with collation.
- Pages best viewed as A3 are: 21-24, 65-71, 77, 88-91.

Please do not hesitate to contact the [Secretariat](#) should you have any queries.

Kind regards,

s 22(1)(a)(ii)

s 22(1)(a)(ii)

TEAM LEADER - CENTRAL SECRETARIAT UNIT  
STRATEGY & PERFORMANCE OFFICE

Tel: s 22(1)(a)(ii)

[Australian Federal Police](#)



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<b>Date/time</b>	Monday, 4 December 2023, 1000-1200HRS.
<b>Location</b>	s 47E(d)
<b>Chair</b>	a/Commissioner, Lesa Gale.
<b>Facilitator</b>	a/NMSP, Michelle Rak.
<b>Invitees</b>	
<b>Members:</b>	a/COO, Katherine Van Gulp; DCNS, Ian McCartney; a/CPO, Doug Boudry; a/DCI&SC, Scott Lee; a/DCC, Grant Nicholls.
<b>Adviser:</b>	CoS, Dr Chris Black.
<b>Presenters:</b>	CFO, Paul Wood; NMPC, Brooke Everett; a/CC, Alison McDonald.
<b>Secretariat:</b>	Central Secretariat Unit.

No.	Time	Agenda item	Paper	Action	Sponsor	Presenter
1.1						
1.2			s 22(1)(a)(ii)			
1.3						

### STRATEGIC MATTERS

2.1			s 22(1)(a)(ii)			
2.2	1015	Robodebt	Yes	Discuss	a/COO	a/CC
2.3						
3.1						
3.2			s 22(1)(a)(ii)			
4.1						
5.1						

s 22(1)(a)(ii)  
s22(1)(a)(ii)

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**Agenda item number:** 2.2

**Agenda topic:** Robodebt Recommendations and application to AFP

**Sponsor and presenter:** Sponsor: Chief Operating Officer (COO), Charlotte Tressler  
Presenter: a/Chief Counsel, National Manager Legal (a/CC), Alison Macdonald

## DESIRED OUTCOME

It is recommended the board:

1. **Note** the key findings and recommendations of the Report of the Royal Commission into the Robodebt Scheme (the **Report**) published 7 July 2023 (**Attachment A** contains the full list of recommendations and the government response).
2. **Note and discuss** the recommendations relevant to the AFP and how the AFP is placed with respect to these recommendations or is otherwise addressing these recommendations.
3. **Endorse** the draft updated Legal Services Charter of Independence and Ethical Responsibilities (**Attachment C**) for progressing to the Commissioner.

## KEY ISSUES

1. The Royal Commission into the Robodebt Scheme (the **Scheme**) found *"Robodebt was a crude and cruel mechanism, neither fair nor legal, and it made many people feel like criminals. In essence, people were traumatised on the off-chance they might owe money. It was a costly failure of public administration, in both human and economic terms"*.
2. The Commission made a total of 56 recommendations<sup>1</sup>, which speak to a range of actions from strengthening the public service, obtaining legal advice, undertaking data matching and creating policies with *"emphasis on the people they are meant to serve"*.
3. While many of the recommendations are specific to the subject matter underlying the Scheme and/or the Department of Social Services and Human Services, the findings and recommendations from the Report provides some valuable lessons learned for Commonwealth government agencies, including the AFP.

## CULTURE AND LEADERSHIP

4. The Report identified significant leadership failures within the public service, particularly in relation to the design, implementation and oversight of the Scheme. It criticised the lack of accountability and responsibility taken by senior officials for the Scheme's flaws and the harm caused to individuals.

<sup>1</sup> General reporting refers to 57 recommendations. However, the Government considers the Commissioner made 56 recommendations and one closing observation.

5. The Report highlighted a culture within the public service that prioritised compliance and cost recovery over fairness and the rights of the individuals. It noted this culture contributed to the flawed design and implementation of the Scheme.
6. The Report criticised the lack of empathy and understanding displayed by leaders towards the impact of the Scheme on vulnerable individuals. It emphasised the need for a more compassionate and human centric approach in delivering services to the public.
7. The Report identified a failure in risk management practices, with insufficient consideration given to the potential harm and legal implications of the Scheme.
8. The Report called for cultural changes, emphasising the importance of ethical decision making, accountability, transparency and the development of a strong ethical framework and the establishment of a culture that encourages open and honest communication.
9. The Report found there was a failure to provide frank and fearless advice to government ministers and senior officials, highlighting a culture that discouraged the provision of frank and fearless advice regarding the legal and ethical issues associated with the Scheme and how the lack of this advice contributed to the flawed design and implementation.
10. Ultimately, the Report concluded the effectiveness of the recommended changes and whether a public service can be developed with sufficient robustness, will depend on the government of the day, because culture is set from the top down.

**AFP Culture and leadership**

11. The AFP has previously recognised improvements to better address key people risks and support us to meet our future workforce aspirations [redacted] s 47E(d) are key drivers and influences in a positive AFP culture.

12. [redacted] s 47E(d)

13. [redacted] s 47E(d)

14. [redacted] s 47E(d)

15. There is an opportunity for AFP to explicitly address and highlight the outcomes of the Report and the lessons learned from the failure of the Scheme, in the work on culture and leadership referenced above and currently being done by the AFP and, to note and align with the broader reform program of work underway across the APS.

16. The AFP has recently reviewed and updated the SES Performance Framework to emphasise the importance of modelling and promoting values-driven, ethical leadership. [redacted] s 47E(d)

[redacted] s 47E(d)

[redacted] Lessons learnt from the Scheme and the Report may be best fed into the accountability aspects of the SES Performance and Remuneration Framework as it is currently being reviewed.

17. [redacted] s 47E(d)

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## OBLIGATIONS OF PUBLIC SERVANTS (ROLES, PRINCIPLES, VALUES)

18. The Report emphasises the fundamental duty of public servants to act in the best interests of the public and to uphold the principles of integrity, accountability and transparency. It highlighted the need for public servants to prioritise the wellbeing and rights of the individual over compliance and cost recovery.
19. The Report called for a stronger focus on ethical decision making. The Report recommended the development of a strong ethical framework that guides the actions and behaviours of public servants, ensuring decisions are made with integrity, fairness and respect for human rights.
20. The Report highlighted the importance of public servants taking responsibility for the consequences of their actions. The Report criticised the lack of accountability and responsibility taken by senior officials for the flaws in, and the harm caused by, the Scheme.
21. The Report emphasised the importance of establishing clear professional standards for public servants and providing ongoing training to ensure they have the necessary skills and knowledge to fulfil their obligations. The Report recommended investing in professional development programs that promote ethical conduct, legal compliance and a human-centred approach.
22. The Report called for establishing a culture of integrity, within the public service, where public servants are encouraged and supported to act ethically and in the public interest. It recommends leaders promote a culture that values honesty, transparency and accountability and encourages open communication.
23. Of particular concern for the senior executive service is the Report's overview of the role of departmental secretaries and deputy secretaries and their impartiality. The Report stated evidence from secretaries and other senior leaders were "excessively responsive to government, undermining the concept of impartiality and frank and fearless advice".
24. A core skill for senior public servants is managing the balance between serving the demands of elected governments and those of the public, while maintaining personal and organisational integrity.

### **Roles, Principles and Values in the AFP**

25. The AFP is a values-driven organisation and the AFP Core Values of integrity, commitment, excellence, accountability, fairness, trust and respect, represent the organisations' principles and standards.
26. These values must be demonstrated every day, discussed with colleagues, modelled, championed and recognised. These values are, and should be, the basis on which our performance as public servants is assessed and rewarded.

### **Serving the Public – how we treat the people we serve**

27. In a scathing overview of the scheme, the Commissioner stated Robodebt exemplifies a view of welfare recipients "as a drag on the national economy, an entry on the debit side of the Budget to be reduced by any means available". The Report states "the environment in which the development of what would become the Scheme occurred was fraught," and "It was not an environment which was conducive to instances of careful consideration, well-reasoned decision making, and proper scrutiny and supervision."
28. Recommendations in the Report propose greater consideration of individual circumstances when developing policy, along with the strengthening of advocacy groups and legal services for vulnerable groups.
29. The AFP mission and values statement 'policing for a safer Australia' clearly defines and aligns our purpose and our effort with the public interest and the people we serve. This is used to guide behaviours and decision making. Our mission and values drive a culture of public service, integrity and accountability.
30. One of the AFPs key operating principles is a clear and focused effort on enhancing partnerships through collaboration with other Commonwealth entities, state and territory police, international partners, non-government partners, universities and the especially the community. Strong and meaningful partnerships with the community and people we serve enhances the AFPs ability to successfully access, build and sustain trust and capabilities. Within the AFP community partner network, the AFP works with community to provide crime prevention and victim support services including

information sessions, the ThinkUKnow online safety education program and community liaison for vulnerable groups.

31. The AFP has taken steps to enhance engagement and build trust with the community. In 2023, the AFP launched our Integrated Complaints Management Model to provide a victim-centred and trauma-informed avenue for members of the public to provide feedback (both complaints and compliments). ACT Policing has also recently progressed a pilot cultural awareness training for its members, to support the provision of culturally competent policing services to the community.

## 32. **ACCOUNTABILITY, OVERSIGHT AND INDEPENDENCE**

33. The Report concluded the institutional checks and balances – the Commonwealth Ombudsman’s Office, the Office of Legal Services Coordination (OLSC), the Office of the Australian Information Commissioner (OAIC) and the Administrative Appeals Tribunal (AAT) – were ineffective in presenting any hindrance to the Scheme’s continuance.
34. The Report highlighted the need for stronger oversight mechanisms to prevent similar failures in the future. The Report makes a number of recommendations in relation to the Commonwealth Ombudsman and imposing a statutory obligation on agencies to assist the Ombudsman.
35. The Report recommended the establishment of clearer lines of accountability within the public service to ensure individuals and agencies are held responsible for their decisions and actions and for failure to provide frank and fearless advice.
36. The Report emphasised the importance of independence in decision making. It recommended decisions regarding the design and implementation of government programs be made based on evidence, expert advice and the best interests of the public, rather than political considerations.

### **Accountability and Independence of the AFP**

37. As an independent statutory agency the functions and duties of the AFP, and the obligations of the Commissioner and Deputy Commissioners, are set out in *Australian Federal Police Act 1979* (the AFP Act). The powers and duties of AFP members, the agency’s broader law enforcement roles and responsibilities, and the overarching accountability of the AFP Commissioner are also contained in the AFP Act.
38. The AFP has a well-developed and robust Governance Framework, outlining AFP appointees’ obligations and responsibility for compliance with relevant laws, policies and procedures, as well as the accountability framework for ethical and transparent decision making and conduct.
39. These measures are supported by a strong Professional Standards regime in the AFP Act and supported by the Commissioner’s Order on Professional Standards (**CO2**), which outlines the AFP Code of Conduct and imposes mandatory reporting obligations on AFP Appointees.
40. The AFP organisational structure allocates responsibility and accountability for AFP performance, strategic, corporate and operational results across key portfolios aligned with AFP budget outcomes.

### **Oversight in the AFP**

41. A robust oversight framework is critical to supporting public trust and confidence in police. Oversight bodies also play an important role in identifying and bringing to light deficiencies and risks in agency operating systems and legal frameworks.
42. The Commonwealth Ombudsman already has oversight of the AFP, and the AFP has always cooperated fully with any Ombudsman investigations, including by providing access to relevant systems and sharing of legal advices.
43. Further, the AFP has an extensive oversight framework. There is an abundance of external oversight agencies, independent reviewers and parliamentary bodies with various (and sometimes overlapping) responsibility for the AFP and its appointees, including:
  - a) The courts review the legality and propriety of AFP’s operations and powers in criminal prosecutions.



- b) The Commonwealth Ombudsman oversees the AFP's use of certain statutory powers including, coercive and intrusive powers as well as a general complaints function.
- c) The National Anti-Corruption Commission monitors and investigates alleged corruption within the AFP.
- d) The OAIC investigates issues relating to privacy, conducts privacy assessments and oversees the operation of the *Freedom of Information Act 1982* (FOI Act) in relation to the AFP.
- e) The Parliamentary Joint Committee on Law Enforcement monitors the performance by the AFP of its functions, including the AFP's powers and procedures.
- f) The Parliamentary Joint Committee on Intelligence and Security monitors the AFP's performance of its functions under Part 5.3 of the Criminal Code and Division 3A of Part IAA of the *Crimes Act 1914* (terrorism powers and offences).
- g) The AFP appears before the Legal and Constitutional Affairs Committee at Senate Estimates to account for its performance and expenditure against the AFP's functions and budget.
- h) The Attorney-General is responsible for the administration of the AFP as a portfolio agency and accountable to Parliament for its overall operation.

## RECORD KEEPING

- 44. The Report found there were significant deficiencies in the record keeping practices of the relevant agencies. The Commission found important information and documentation were not properly recorded or retained making it difficult to understand the decision-making process and/or hold individuals accountable.
- 45. The Report emphasised the importance of accurate and complete record keeping in the public service. Comprehensive records are essential for transparency and accountability and the ability to review and evaluate government programs.

### **Record Keeping in the AFP**

- 46. The AFP is required to comply with *Archives Act 1983* (Cth) and National Archives of Australia's guidelines in relation to record keeping. This includes: requirements to describe records properly; correctly managing retention requirements; applying the appropriate security classifications; and not deleting, destroying or otherwise removing records without following proper process.

47.

s 47E(d)

48.

s 47E(d)

- 49. AFP Appointees must comply with the AFP National Guideline on Information Management. The AFP Information Management Handbook provides practical guidance on information management for functional areas across the AFP and complements the National Guideline.

<sup>2</sup> Appendix 3 – AFP record keeping processes and practices – ANAO AUDIT: AFP'S Use of Statutory Powers No 43 2020- 2021.

<sup>3</sup> Recommendation 2 – paragraph 2.92 - ANAO AUDIT: AFP'S Use of Statutory Powers No 43 2020-2021.

## LEGAL SERVICES AND ADVICE

50. The Report found there was a failure to seek and follow appropriate legal advice in the design and implementation of the Scheme. The lack of legal advice and expertise contributed to the scheme's flaws and the harm caused to individuals. The Commissioner found there was a "dismaying revelation of dishonesty and collusion to prevent the Scheme's lack of legal foundation coming to light."
51. The Report emphasised the importance of seeking legal advice at all stages of policy development and implementation. The Report called for the establishment of clear legal frameworks to guide the design and implementation of government programs.
52. In relation to lawyers and legal services, the Report includes recommendations about training for lawyers, legal practice standards, treatment of draft advices, the *Legal Services Directions 2017* (Cth) and associated reporting obligations.
53. The Report recommends the Legal Services Directions should be reviewed and simplified and further, the Australian Government Legal Service's General Counsel Charter be amended to place a positive obligation on Chief Counsels to ensure compliance with the Legal Services Directions.

### **Legal Services in the AFP**

54. All legal services in the AFP are delivered independently through the Chief Counsel Portfolio. All lawyers within the portfolio are hold relevant and current practicing certificates and have overarching professional obligations and duties they owe the Court.
55. **Attachment B** contains the list of Report recommendations relating to Commonwealth government legal services and how the Chief Counsel Portfolio is addressing those recommendations within the AFP.
56. The Chief Counsel Portfolio operates under a Charter of Independence, the Legal Services Charter of Independence and Ethical Responsibilities (the **Charter**) issued by the Commissioner of the AFP. s 47E(d)  
s 47E(d)
57. The principles underpinning the Charter remain current and fit for purpose. However, the release of the Report presents an opportunity for the AFP to update the Charter to include specific directions from the OLSC in the Attorney General's Department.
58. **Attachment C** contains an updated Legal Services Charter of Independence and Ethical Responsibilities Charter for endorsement by the Strategy and Performance Board.

## GOVERNMENT RESPONSE TO THE REPORT

59. The Government published its response to the Report on 13 November 2023 and has accepted or accepted in principle all 56 recommendations.
60. A full list of the recommendations and the Government response is at **Attachment A**.
61. In the response, the Government notes the series of reforms already commenced to restore the public's trust and faith in government and its institutions. The Government states these reforms put people at the centre and promote integrity.

## BACKGROUND

1. The Royal Commission into the Scheme was established on 18 August 2022 under the *Royal Commissions Act 1902* (Cth) to inquire into the Scheme.
2. The Scheme was a proposal developed by the Department of Human Services (DHS), put forward as a budget measure by the Minister for Social Services in 2015. The Scheme begun initially as a pilot in 2015 and was subsequent expanded.
3. The Scheme was designed to recover supposed overpayments from welfare recipients going back to the financial year 2010-11 and relied heavily on a process known as 'income averaging' to assess income and entitlement to benefit. Results were not accurate and it did not comply with the income calculation provisions of the *Social Security Act 1991* (Cth).

4. By the end of 2016, the scheme was the subject of heavy public criticism but the Scheme continued until November 2019, when it was announced debts would no longer be raised solely on the basis of averaged income.
5. The Report into the Scheme included 56 recommendations and was published 7 July 2023.
6. The Government formally responded to the Report on 13 November 2023, accepting or accepting in principle all 56 recommendations as part of the ongoing work to restore faith, integrity and trust in government.

## FINANCIAL AND STAFFING IMPLICATIONS

**Nil.** The AFP is able to support and implement any improvements to current AFP process and practices within current resources.

## CONSULTATION

Strategy and Performance Office and People Strategies Command have been consulted.

## COMMUNICATION APPROACH

Chief Counsel Portfolio will engage with Strategic Comms to develop a communication strategy on the update to the Charter and relevant recommendations and Government response to the Report.

## ENTERPRISE RISK

1. **Enterprise Risk 2 – Culture Standards and Integrity** – A risk of failure to comply with the AFP's standards, values regulatory framework and statutory requirements. A risk the AFP fails to uphold standards of accountability, integrity and independence.
2. **Enterprise Risk 8 – Information** – A risk the AFP fails to ethically, lawfully and effectively collect use, manage and protect information.

## ATTACHMENTS

The following are attachments to the paper:

**Attachment A** – Report recommendations and the government response.

**Attachment B** – Report recommendations relating to Commonwealth government legal services including AFP actions in response.

**Attachment C** – Updated Legal Services Charter of Independence and Ethical Responsibilities.

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s 47E(d)

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REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Introductory section</b></p> <p><b>Goes to the lack of:</b></p> <ul style="list-style-type: none"> <li>• the provision of, frank and fearless advice;</li> <li>• adherence to obligations of Public Servants (roles, principals, values);</li> <li>• designing services with emphasis on people meant to serve;</li> <li>• separations of responsibilities / accountability; and</li> <li>• independent legal services.</li> </ul>	<p><b>Commissioner's observations</b></p> <ul style="list-style-type: none"> <li>• The Robodebt scheme failed the public interest in a myriad of ways.</li> <li>• Remarkable how little interest there was in ensuring the Scheme's legality, <ul style="list-style-type: none"> <li>○ how rushed its implementation was,</li> <li>○ how little thought was given to how it would affect welfare recipients and;</li> <li>○ the lengths to which public servants were prepared to go to oblige ministers on a quest for savings.</li> </ul> </li> <li>• Dismaying revelation of dishonesty and collusion to prevent the Scheme's lack of legal foundation coming to light.</li> <li>• The ineffectiveness of institutional checks and balances – the <i>Commonwealth Ombudsman's Office</i>, the <i>Office of Legal Services Coordination (OLSC)</i>, the <i>Office of the Australian Information Commissioner (OAIC)</i> and the <i>Administrative Appeals Tribunal (AAT)</i> – in presenting any hindrance to the Scheme's continuance.</li> <li>• Effectiveness of the recommended changes depends on:</li> <li>• Whether a public service can be developed with sufficient robustness will depend on the will of the government of the day, because culture is set from the top down.</li> <li>• Politicians need to lead a change in social attitudes to people receiving welfare payments.</li> </ul>	
<p><b>Effects of Robodebt on individuals</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• obligations of public servants (roles, principals, values);</li> <li>• designing services with emphasis on people meant to serve.</li> </ul>	<p><b>Recommendation 10.1: Design policies and processes with emphasis on the people they are meant to serve</b></p> <p>Services Australia design its policies and processes with a primary emphasis on the recipients it is meant to serve. That should entail:</p> <ul style="list-style-type: none"> <li>• avoiding language and conduct which reinforces feelings of stigma and shame associated with the receipt of government support when it is needed</li> <li>• 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</li> <li>• 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</li> </ul>	<p><b>ACCEPT</b></p>

REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
	customer cohort and taking all practicable steps to avoid the possibility that interactions with the government might exacerbate those stresses or introduce new ones.	
<p><b>The concept of vulnerability</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>designing services with emphasis on people meant to serve;</li> <li>guidance and training;</li> <li>obligations of public servants (roles, principals, values);</li> <li>record keeping.</li> </ul>	<p><b>Recommendation 11.1: Clear documentation of exclusion criteria</b>  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.</p>	ACCEPT
	<p><b>Recommendation 11.2: Identification of circumstances affecting the capacity to engage with compliance activity</b>  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.</p>	ACCEPT
	<p><b>Recommendation 11.3: Engagement prior to removing a vulnerability indicator from a file</b>  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.</p>	ACCEPT
	<p><b>Recommendation 11.4: Consideration of vulnerabilities affected by each compliance program, including consultation with advocacy bodies</b>  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.</p>	ACCEPT

REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>The roles of advocacy groups and legal services</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>frank and fearless advice;</li> <li>designing services with emphasis on people meant to serve;</li> <li>independent legal services.</li> </ul>	<p><b>Recommendation 12.1: Easier engagement with Centrelink</b> Options for easier engagement with Centrelink by advocacy groups – for example, through the creation of a national advocates line – should be considered.</p>	ACCEPT
	<p><b>Recommendation 12.2: Customer experience reference group</b> 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.</p>	ACCEPT IN PRINCIPLE
	<p><b>Recommendation 12.3: Consultation</b> Peak advocacy bodies should be consulted prior to the implementation of projects involving the modification of the social security system.</p>	ACCEPT
	<p><b>Recommendation 12.4: Regard for funding for legal aid commissions and community legal centres</b> When it next conducts a review of the National Legal Assistance Partnership, the Commonwealth should have regard, in considering funding for legal aid commissions and community legal centres, to the importance of the public interest role played by those services as exemplified in their work during the Scheme.</p>	ACCEPT
<p><b>Experiences of Human Services employees</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>the provision of, frank and fearless advice;</li> <li>adherence to obligations of Public Servants (roles, principals, values);</li> </ul>	<p><b>Recommendation 13.1: Consultation process</b> Services Australia should put in place processes for genuine and receptive consultation with frontline staff when new programs are being designed and implemented.</p>	ACCEPT
	<p><b>Recommendation 13.2: Feedback processes</b> 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.</p>	ACCEPT
	<p><b>Recommendation 13.3: 'Face-to-face' support</b> More 'face-to-face' customer service support options should be available for vulnerable recipients needing support.</p>	ACCEPT IN PRINCIPLE

REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
<ul style="list-style-type: none"> <li>training and guidance;</li> <li>designing services with emphasis on people meant to serve.</li> </ul>	<p><b>Recommendation 13.4: Increased number of social workers</b> Increased social worker support (for both recipients and staff), and better referral processes to enable this support, should be implemented.</p>	ACCEPT IN PRINCIPLE
<p><b>Failures in the Budget process</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>separations of responsibilities / accountability;</li> <li>independent legal services;</li> <li>the provision of, frank and fearless advice;</li> <li>record keeping</li> </ul>	<p><b>Recommendation 15.1: Legislative change better defined in New Policy Proposals</b> 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.</p>	ACCEPT
	<p><b>Recommendation 15.2: Include legal advices with New Policy Proposals</b> 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.</p>	ACCEPT IN PRINCIPLE
	<p><b>Recommendation 15.3: Australian Government Solicitor statement in the NPP</b> 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.</p>	ACCEPT
	<p><b>Recommendation 15.4: Standard, specific language on legal risks in the NPP</b> 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.</p>	ACCEPT
	<p><b>Recommendation 15.5: Documented assumptions for compliance Budget measures</b> That in developing compliance Budget measures, Services Australia and DSS document the basis for the assumptions and inputs used, including the sources of the data relied on.</p>	ACCEPT

REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
	<p><b>Recommendation 15.6: Documentation on the basis for assumptions provided to Finance</b>            That in seeking agreement from Finance for costings of compliance Budget measures, Services Australia and DSS provide Finance with documentation setting out the basis for the assumptions and inputs used, including related data sources, to allow Finance to properly investigate and test those assumptions and inputs.</p>	ACCEPT
<p><b>Data-matching and exchanges</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• independent legal services;</li> <li>• the provision of, frank and fearless advice;</li> <li>• designing services with emphasis on people meant to serve;</li> <li>• training and guidance;</li> <li>• record keeping.</li> </ul>	<p><b>Recommendation 16.1: Legal advice on end-to-end data exchanges</b>            The Commonwealth should seek legal advice on the end-to-end data exchange processes which are currently operating between Services Australia and the ATO to ensure they are lawful.</p> <p><b>Recommendation 16.2: Review and strengthen governance of data-matching programs</b>            The ATO and DHS should take immediate steps to review and strengthen their operational governance practices as applied to jointly conducted data-matching programs. This should include:</p> <ul style="list-style-type: none"> <li>• reviews to ensure that all steps and operations relating to existing or proposed data-matching programs are properly documented</li> <li>• a review of all existing framework documents for existing or proposed data-matching programs</li> <li>• a review of the operations of the ATO/DHS Consultative Forum and the ATO/DHS Data Management Forum</li> <li>• a review of the existing Head Agreement/s, Memoranda of Understanding and Services Schedule</li> <li>• a joint review of any existing or proposed data-matching program protocols to ensure they are legally compliant in respect of their provision for the data exchanges contemplated for the relevant data-matching program.</li> </ul>	ACCEPT



REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Automated decision making</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• separations of responsibilities / accountability;</li> <li>• designing services with emphasis on people meant to serve;</li> <li>• law reform and reform of process and decision making;</li> <li>• record keeping.</li> </ul>	<p><b>Recommendation 17.1: Reform of legislation and implementation of regulation</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>• there should be a clear path for those affected by decisions to seek review</li> <li>• departmental websites should contain information advising that automated decision-making is used and explaining in plain language how the process works</li> <li>• business rules and algorithms should be made available, to enable independent expert scrutiny.</li> </ul>	ACCEPT
	<p><b>Recommendation 17.2: Establishment of a body to monitor and audit automated decision-making</b></p> <p>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.</p>	ACCEPT

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REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Debt recovery and debt collectors</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• designing services with emphasis on people meant to serve</li> <li>• separations of responsibilities / accountability;</li> <li>• law reform</li> <li>• record keeping</li> </ul>	<p><b>Recommendation 18.1: Comprehensive debt recovery policy for Services Australia</b></p> <p>Services Australia should develop a comprehensive debt recovery management policy which among other things should incorporate the Guideline for Collectors and Creditors' issued by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC). Examples of such documents already exist at both federal and state levels. Any such policy should also prescribe how Services Australia undertakes to engage with debtors, including that staff must:</p> <ul style="list-style-type: none"> <li>• ensure any debt recovery action is always ethical, proportionate, consistent and transparent</li> <li>• treat all recipients fairly and with dignity, taking each person's circumstances into account before commencing recovery action</li> <li>• subject to any express legal authority to do so, refrain from commencing or continuing recovery action while a debt is being reviewed or disputed, and</li> <li>• in accordance with legal authority, consider and respond appropriately and proportionately to cases of hardship.</li> </ul> <p>Services Australia should ensure that recipients are given ample and appropriate opportunities to challenge, review and seek guidance on any proposed debts before they are referred for debt recovery.</p>	ACCEPT
	<p><b>Recommendation 18.2: Reinstate the limitation of six years on debt recovery</b></p> <p>The Commonwealth should repeal s 1234B of the Social Security Act and reinstate the effective limitation period of six years for the bringing of proceedings to recover debts under Part 5.2 of the Act formerly contained in s 1232 and s 1236 of that Act, before repeal of the relevant sub-sections by the <i>Budget Savings (Omnibus) Act (No 55) 2016</i>. There is no reason that current and former social security recipients should be on any different footing from other debtors.</p>	ACCEPT IN PRINCIPLE

REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>Lawyers and legal services</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• independent legal services;</li> <li>• the provision of, frank and fearless advice;</li> <li>• adherence to obligations of Public Servants (roles, principals, values);</li> <li>• training and guidance;</li> <li>• law reform;</li> <li>• record keeping</li> </ul>	<p><b>Recommendation 19.1: Selection of chief counsel</b>  The selection panel for the appointment of chief counsel of Services Australia or DSS (chief counsel being the head of the entity's legal practice) should include as a member of the panel, the Australian Government Solicitor.</p>	ACCEPT
	<p><b>Recommendation 19.2: Training for lawyers – Services Australia</b>  Services Australia should provide regular training to its in-house lawyers on the core duties and responsibilities set out in the Legal Practice Standards, including:</p> <ul style="list-style-type: none"> <li>• an emphasis on the duty to avoid any compromise to their integrity and professional independence and the challenges that may be presented to a government lawyer in fulfilling that obligation</li> <li>• appropriate statutory and case authority references in advice writing.</li> </ul>	ACCEPT
	<p><b>Recommendation 19.3: Legal practice standards – Social Services</b>  DSS should develop Legal Practice Standards which set out the core duties and responsibilities of all legal officers working at DSS.</p>	ACCEPT
	<p><b>Recommendation 19.4: Training for lawyers – Social Services</b>  DSS should provide regular training on the core duties and responsibilities to be set out in the Legal Practice Standards which should include: an emphasis on the duty to avoid any compromise to their integrity and professional independence and the challenges that may be presented to a government lawyer in fulfilling that obligation appropriate statutory and case authority references in advice writing.</p>	ACCEPT
	<p><b>Recommendation 19.5: Draft advice – Social Services</b>  DSS should issue a further direction providing that, if the administering agency decides that a draft advice need not be provided in final form, that decision and the reasons for it must be documented. One of those steps – finalisation, or a documented decision against finalisation – should have been taken within three months of the receipt of the draft advice.</p>	ACCEPT
	<p><b>Recommendation 19.6: Draft advice – Services Australia</b>  Services Australia should issue a direction that legal advice is to be left in draft form only to the extent that the administrative step of finalising it has not yet been undertaken by lawyers or there</p>	ACCEPT

REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
	<p>are remaining questions to be answered in relation to the issues under consideration and that, if the administering agency decides that a draft advice need not be provided in final form, that decision and the reasons for it must be documented. One of those steps – finalisation, or a documented decision against finalisation – should have been taken within three months of the receipt of the draft advice.</p>	
	<p><b>Recommendation 19.7: The Directions 1</b>  The <i>Legal Services Directions 2017</i> should be reviewed and simplified.</p>	ACCEPT
	<p><b>Recommendation 19.8: Office of Legal Services Coordination to assist agencies with significant issues reporting</b>  The OLSC should provide more extensive information and feedback to assist agencies with the significant legal issues process.</p>	ACCEPT
	<p><b>Recommendation 19.9: Recording of reporting obligations</b>  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.</p>	ACCEPT
	<p><b>Recommendation 19.10: The Directions 2</b>  The OLSC should issue guidance material on the obligations to consult on and disclose advice in clause 10 of the <i>Legal Services Directions 2017</i>.</p>	ACCEPT
	<p><b>Recommendation 19.11: Resourcing the Office of Legal Services Coordination</b>  The OLSC should be properly resourced to deliver these functions.</p>	ACCEPT
	<p><b>Recommendation 19.12: Chief counsel</b>  The Australian Government Legal Service's General Counsel Charter be amended to place a positive obligation on chief counsel to ensure that the <i>Legal Services Directions 2017 (Cth)</i> are complied with and to document interactions with OLSC about inquiries made, and responses given, concerning reporting obligations under those Directions.</p>	ACCEPT

REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
	<p><b>Recommendation 19.13: Review of the Bilateral Management Agreement</b> The revised Bilateral Management Agreement should set out the requirement to consult on and disclose legal advices between the two agencies where any intersection of work is identified.</p>	ACCEPT
<p><b>Administrative Appeals Tribunal</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• Training and guidance</li> <li>• Independent legal services</li> <li>• record keeping</li> <li>• law /judicial reform</li> </ul>	<p><b>Recommendation 20.1: AAT cases with significant legal and policy issues</b> 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.</p>	ACCEPT
	<p><b>Recommendation 20.2: Training for DHS legal officers</b> Services Australia legal officers whose duties involve the preparation of advices in relation to AAT decisions should receive training which emphasises the requirements of the Standing Operational Statements in relation to appeal recommendations and referral to DSS; Services Australia's obligations as a model litigant; and the obligation to pay due regard to AAT decisions and directions.</p>	ACCEPT
	<p><b>Recommendation 20.3: Identifying significant AAT decisions</b> 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.</p>	ACCEPT
	<p><b>Recommendation 20.4: Publication of first instance AAT decisions</b> The federal administrative review body which replaces the AAT should devise a system for publication on a readily accessible platform of first instance social security decisions which involve significant conclusions of law or have implications for social security policy.</p>	ACCEPT
	<p><b>Recommendation 20.5: Administrative Review Council</b> Re-instate the Administrative Review Council or a body with similar membership and similar functions, with consideration given to a particular role in review of Commonwealth administrative decision-making processes.</p>	ACCEPT

REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
<p><b>The Commonwealth Ombudsman</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• separations of responsibilities / accountability;</li> <li>• law reform</li> <li>• record keeping</li> <li>• independent legal services;</li> <li>• the provision of, frank and fearless advice;</li> </ul>	<p><b>Recommendation 21.1: Statutory duty to assist</b>  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.</p>	ACCEPT
	<p><b>Recommendation 21.2: Another power to obtain information</b>  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.</p>	ACCEPT
	<p><b>Recommendation 21.3: Oversight of the legal services division</b>  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.</p>	ACCEPT IN PRINCIPLE
	<p><b>Recommendation 21.4: Log of communications</b>  The Ombudsman maintain a log, recording communications with a department or agency for the purposes of an own motion investigation.</p>	ACCEPT
	<p><b>Recommendation 21.5: Powers of referral</b>  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.</p>	ACCEPT
<p><b>Improving the Australian Public Service</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• Structural reform, law reform</li> </ul>	<p><b>Recommendation 23.1: Structure of government departments</b>  The Australian Government should undertake an immediate and full review to examine whether the existing structure of the social services portfolio, and the status of Services Australia as an entity, are optimal.</p>	ACCEPT IN PRINCIPLE
	<p><b>Recommendation 23.2: Obligations of public servants</b>  The APSC should, as recommended by the Thodey Review, deliver whole-of-service induction on essential knowledge required for public servants.</p>	ACCEPT

REPORT CATEGORY	RECOMMENDATION	GOVERNMENT RESPONSE
<ul style="list-style-type: none"> <li>• Training and guidance</li> <li>• designing services with emphasis on people meant to serve</li> <li>• separations of responsibilities / accountability;</li> <li>• adherence to obligations of Public Servants (roles, principals, values);</li> <li>• record keeping</li> </ul>	<p><b>Recommendation 23.3: Fresh focus on ‘customer service’</b>            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.</p>	ACCEPT
	<p><b>Recommendation 23.4: Administrative Review Council</b>            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).</p>	ACCEPT
	<p><b>Recommendation 23.5: ‘Knowledge College’</b>            The Commonwealth should explore the feasibility of establishing an internal college within Services Australia to provide training and development to staff linked to the skills and knowledge required to undertake their duties.</p>	ACCEPT
	<p><b>Recommendation 23.6: Front-line Service</b>            SES staff at Services Australia should spend some time in a front-line service delivery role and with other community partnerships.</p>	ACCEPT
	<p><b>Recommendation 23.7: Agency heads being held to account</b>            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. 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.</p>	ACCEPT
	<p><b>Recommendation 23.8: Documenting decisions and discussions</b>            The Australian Public Service Commission should develop standards for documenting important decisions and discussions, and the delivery of training on those standards.</p>	ACCEPT

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
<p><b>Introductory section</b></p> <p><b>Goes to the lack of:</b></p> <ul style="list-style-type: none"> <li>• the provision of, frank and fearless advice;</li> <li>• adherence to obligations of Public Servants (roles, principals, values);</li> <li>• designing services with emphasis on people meant to serve;</li> <li>• separations of responsibilities / accountability; and</li> <li>• independent legal services.</li> </ul>	<p><b>Commissioner's observations</b></p> <ul style="list-style-type: none"> <li>• The Robodebt scheme failed the public interest in a myriad of ways.</li> <li>• Remarkable how little interest there was in ensuring the Scheme's legality, <ul style="list-style-type: none"> <li>○ how rushed its implementation was,</li> <li>○ how little thought was given to how it would affect welfare recipients and;</li> <li>○ the lengths to which public servants were prepared to go to oblige ministers on a quest for savings.</li> </ul> </li> <li>• Dismaying revelation of dishonesty and collusion to prevent the Scheme's lack of legal foundation coming to light.</li> <li>• The ineffectiveness of institutional checks and balances – the <i>Commonwealth Ombudsman's Office</i>, the <i>Office of Legal Services Coordination (OLSC)</i>, the <i>Office of the Australian Information Commissioner (OAIC)</i> and the <i>Administrative Appeals Tribunal (AAT)</i> – in presenting any hindrance to the Scheme's continuance.</li> <li>• Effectiveness of the recommended changes depends on: <ul style="list-style-type: none"> <li>• Whether a public service can be developed with sufficient robustness will depend on the will of the government of the day, because culture is set from the top down.</li> <li>• Politicians need to lead a change in social attitudes to people receiving welfare payments.</li> </ul> </li> </ul>	
<p><b>Effects of Robodebt on individuals</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• obligations of public servants (roles, principals, values);</li> <li>• designing services with emphasis on people meant to serve.</li> </ul>	<p><b>Recommendation 10.1: Design policies and processes with emphasis on the people they are meant to serve</b></p> <p>Services Australia design its policies and processes with a primary emphasis on the recipients it is meant to serve. That should entail:</p> <ul style="list-style-type: none"> <li>• avoiding language and conduct which reinforces feelings of stigma and shame associated with the receipt of government support when it is needed</li> <li>• 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</li> <li>• explaining processes in clear terms and plain language in communication to customers, and acting with sensitivity to financial and other forms of</li> </ul>	



	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.	
<p><b>The concept of vulnerability</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>designing services with emphasis on people meant to serve;</li> <li>guidance and training;</li> <li>obligations of public servants (roles, principals, values);</li> <li>record keeping.</li> </ul>	<p><b>Recommendation 11.1: Clear documentation of exclusion criteria</b></p> <p>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.</p>	
	<p><b>Recommendation 11.2: Identification of circumstances affecting the capacity to engage with compliance activity</b></p> <p>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.</p>	
	<p><b>Recommendation 11.3: Engagement prior to removing a vulnerability indicator from a file</b></p> <p>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.</p>	
	<p><b>Recommendation 11.4: Consideration of vulnerabilities affected by each compliance program, including consultation with advocacy bodies</b></p> <p>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.</p>	

<p><b>The roles of advocacy groups and legal services</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• frank and fearless advice;</li> <li>• designing services with emphasis on people meant to serve;</li> <li>• independent legal services.</li> </ul>	<p><b>Recommendation 12.1: Easier engagement with Centrelink</b> Options for easier engagement with Centrelink by advocacy groups – for example, through the creation of a national advocates line – should be considered.</p>	
	<p><b>Recommendation 12.2: Customer experience reference group</b> 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.</p>	
	<p><b>Recommendation 12.3: Consultation</b> Peak advocacy bodies should be consulted prior to the implementation of projects involving the modification of the social security system.</p>	
	<p><b>Recommendation 12.4: Regard for funding for legal aid commissions and community legal centres</b> When it next conducts a review of the National Legal Assistance Partnership, the Commonwealth should have regard, in considering funding for legal aid commissions and community legal centres, to the importance of the public interest role played by those services as exemplified in their work during the Scheme.</p>	
<p><b>Experiences of Human Services employees</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• the provision of, frank and fearless advice;</li> <li>• adherence to obligations of Public Servants (roles, principals, values);</li> <li>• training and guidance;</li> <li>• designing services with emphasis on people meant to serve.</li> </ul>	<p><b>Recommendation 13.1: Consultation process</b> Services Australia should put in place processes for genuine and receptive consultation with frontline staff when new programs are being designed and implemented.</p>	
	<p><b>Recommendation 13.2: Feedback processes</b> 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.</p>	
	<p><b>Recommendation 13.3: 'Face-to-face' support</b> More 'face-to-face' customer service support options should be available for vulnerable recipients needing support.</p>	
	<p><b>Recommendation 13.4: Increased number of social workers</b> Increased social worker support (for both recipients and staff), and better referral processes to enable this support, should be implemented.</p>	

<p><b>Failures in the Budget process</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• separations of responsibilities / accountability;</li> <li>• independent legal services;</li> <li>• the provision of, frank and fearless advice;</li> <li>• record keeping</li> </ul>	<p><b>Recommendation 15.1: Legislative change better defined in New Policy Proposals</b>  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.</p>	
	<p><b>Recommendation 15.2: Include legal advices with New Policy Proposals</b>  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.</p>	
	<p><b>Recommendation 15.3: Australian Government Solicitor statement in the NPP</b>  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.</p>	
	<p><b>Recommendation 15.4: Standard, specific language on legal risks in the NPP</b>  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.</p>	
	<p><b>Recommendation 15.5: Documented assumptions for compliance Budget measures</b>  That in developing compliance Budget measures, Services Australia and DSS document the basis for the assumptions and inputs used, including the sources of the data relied on.</p>	
	<p><b>Recommendation 15.6: Documentation on the basis for assumptions provided to Finance</b>  That in seeking agreement from Finance for costings of compliance Budget measures, Services Australia and DSS provide Finance with documentation setting out the basis for the assumptions and inputs used, including related data sources, to allow Finance to properly investigate and test those assumptions and inputs.</p>	

<p><b>Data-matching and exchanges</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>independent legal services;</li> <li>the provision of, frank and fearless advice;</li> <li>designing services with emphasis on people meant to serve;</li> <li>training and guidance;</li> <li>record keeping.</li> </ul>	<p><b>Recommendation 16.1: Legal advice on end-to-end data exchanges</b>  The Commonwealth should seek legal advice on the end-to-end data exchange processes which are currently operating between Services Australia and the ATO to ensure they are lawful.</p>	
	<p><b>Recommendation 16.2: Review and strengthen governance of data-matching programs</b>  The ATO and DHS should take immediate steps to review and strengthen their operational governance practices as applied to jointly conducted data-matching programs. This should include:</p> <ul style="list-style-type: none"> <li>reviews to ensure that all steps and operations relating to existing or proposed data-matching programs are properly documented</li> <li>a review of all existing framework documents for existing or proposed data-matching programs</li> <li>a review of the operations of the ATO/DHS Consultative Forum and the ATO/DHS Data Management Forum</li> <li>a review of the existing Head Agreement/s, Memoranda of Understanding and Services Schedule</li> <li>a joint review of any existing or proposed data-matching program protocols to ensure they are legally compliant in respect of their provision for the data exchanges contemplated for the relevant data-matching program.</li> </ul>	
<p><b>Automated decision making</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>separations of responsibilities / accountability;</li> <li>designing services with emphasis on people meant to serve;</li> <li>law reform and reform of process and decision making;</li> <li>record keeping.</li> </ul>	<p><b>Recommendation 17.1: Reform of legislation and implementation of regulation</b>  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:</p> <ul style="list-style-type: none"> <li>there should be a clear path for those affected by decisions to seek review</li> <li>departmental websites should contain information advising that automated decision-making is used and explaining in plain language how the process works</li> <li>business rules and algorithms should be made available, to enable independent expert scrutiny.</li> </ul>	
	<p><b>Recommendation 17.2: Establishment of a body to monitor and audit automated decision-making</b>  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.</p>	

<p><b>Debt recovery and debt collectors</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>designing services with emphasis on people meant to serve</li> <li>separations of responsibilities / accountability;</li> <li>law reform</li> <li>record keeping</li> </ul>	<p><b>Recommendation 18.1: Comprehensive debt recovery policy for Services Australia</b>  Services Australia should develop a comprehensive debt recovery management policy which among other things should incorporate the Guideline for Collectors and Creditors' issued by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC). Examples of such documents already exist at both federal and state levels. Any such policy should also prescribe how Services Australia undertakes to engage with debtors, including that staff must:</p> <ul style="list-style-type: none"> <li>ensure any debt recovery action is always ethical, proportionate, consistent and transparent</li> <li>treat all recipients fairly and with dignity, taking each person's circumstances into account before commencing recovery action</li> <li>subject to any express legal authority to do so, refrain from commencing or continuing recovery action while a debt is being reviewed or disputed, and</li> <li>in accordance with legal authority, consider and respond appropriately and proportionately to cases of hardship.</li> </ul> <p>Services Australia should ensure that recipients are given ample and appropriate opportunities to challenge, review and seek guidance on any proposed debts before they are referred for debt recovery.</p>	
	<p><b>Recommendation 18.2: Reinstate the limitation of six years on debt recovery</b>  The Commonwealth should repeal s 1234B of the Social Security Act and reinstate the effective limitation period of six years for the bringing of proceedings to recover debts under Part 5.2 of the Act formerly contained in s 1232 and s 1236 of that Act, before repeal of the relevant sub-sections by the <i>Budget Savings (Omnibus) Act (No 55) 2016</i>. There is no reason that current and former social security recipients should be on any different footing from other debtors.</p>	
<p><b>Lawyers and legal services</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>independent legal services;</li> <li>the provision of, frank and fearless advice;</li> </ul>	<p><b>Recommendation 19.1: Selection of chief counsel</b>  The selection panel for the appointment of chief counsel of Services Australia or DSS (chief counsel being the head of the entity's legal practice) should include as a member of the panel, the Australian Government Solicitor.</p>	
	<p><b>Recommendation 19.2: Training for lawyers – Services Australia</b>  Services Australia should provide regular training to its in-house lawyers on the core duties and responsibilities set out in the Legal Practice Standards, including:</p> <ul style="list-style-type: none"> <li>an emphasis on the duty to avoid any compromise to their integrity and professional independence and the challenges that may be presented to a government lawyer in fulfilling that obligation</li> <li>appropriate statutory and case authority references in advice writing.</li> </ul>	<ul style="list-style-type: none"> <li>CCP is working on developing a set of legal practice standards which will incorporate guidance provided by the Attorney-General's Department.</li> <li>The Legal Practice Standards will deal with a range of topics including legal matter management, management of legal advices</li> </ul>

<ul style="list-style-type: none"> <li>• adherence to obligations of Public Servants (roles, principals, values);</li> <li>• training and guidance;</li> <li>• law reform;</li> <li>• record keeping</li> </ul>	<p><b>Recommendation 19.3: Legal practice standards – Social Services</b> DSS should develop Legal Practice Standards which set out the core duties and responsibilities of all legal officers working at DSS.</p> <p><b>Recommendation 19.4: Training for lawyers – Social Services</b> DSS should provide regular training on the core duties and responsibilities to be set out in the Legal Practice Standards which should include: an emphasis on the duty to avoid any compromise to their integrity and professional independence and the challenges that may be presented to a government lawyer in fulfilling that obligation appropriate statutory and case authority references in advice writing.</p> <p><b>Recommendation 19.5: Draft advice – Social Services</b> DSS should issue a further direction providing that, if the administering agency decides that a draft advice need not be provided in final form, that decision and the reasons for it must be documented. One of those steps – finalisation, or a documented decision against finalisation – should have been taken within three months of the receipt of the draft advice.</p> <p><b>Recommendation 19.6: Draft advice – Services Australia</b> Services Australia should issue a direction that legal advice is to be left in draft form only to the extent that the administrative step of finalising it has not yet been undertaken by lawyers or there are remaining questions to be answered in relation to the issues under consideration and that, if the administering agency decides that a draft advice need not be provided in final form, that decision and the reasons for it must be documented. One of those steps – finalisation, or a documented decision against finalisation – should have been taken within three months of the receipt of the draft advice.</p>	<p>(and dealing with draft advices), the Charter of Independence and professional obligations.</p> <ul style="list-style-type: none"> <li>• All lawyers within the CCP hold a practising certificate in the jurisdiction in which they practice, thus have additional training, professional development and integrity obligations by virtue of holding the certificate. This is in addition to the AFP’s integrity standards and framework.</li> <li>• Practising certificate holders are required to complete at least 10 hours of Continuous Professional Development (CPD) each year, being a mix of ethics, professional skills and practice management.</li> <li>• CCP conducts internal Continuous Legal Education (CLE) programs, with presentations on the topic of ethics and professional responsibilities being conducted annually.</li> <li>• Both AFP Legal and Criminal Assets Litigation (CAL) hold annual conferences focussed on training and professional development for the internal lawyers and ensure that there are sessions on ethics and professional skills.</li> </ul> <ul style="list-style-type: none"> <li>• Prior to the Attorney-General’s Department issuing guidance on the treatment of legal advices in draft format, the CCP undertook an audit of advices and found that less than 20 advices had not been finalised and were still draft. Since the audit, CCP has either finalised the advices or included a file note explaining why the advice was not finalised (eg. litigation strategy changed and draft advice no longer relevant).</li> <li>• The Attorney-General’s initial guidance on ‘use of draft legal advice within government’ has been distributed to everyone within the CCP and will form part of the legal practice standards that the portfolio is working on.</li> </ul>
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	<p><b>Recommendation 19.7: The Directions 1</b> The <i>Legal Services Directions 2017</i> should be reviewed and simplified.</p>	
	<p><b>Recommendation 19.8: Office of Legal Services Coordination to assist agencies with significant issues reporting</b> The OLSC should provide more extensive information and feedback to assist agencies with the significant legal issues process.</p>	<ul style="list-style-type: none"> <li>• The CCP complies with the Legal Services Directions and liaises with the Office of Legal Services Coordination (OLSC) within the Attorney-General's Department in relation to any queries about significant issues reporting or potential legal risk.</li> <li>• Where OLSC provides significant advice on reporting obligations, the advice will be shared with the CCP executive and disseminated within teams as required.</li> <li>• The Chief Counsel is a member of the Australian Government Legal Services Legal Risk Committee (coordinated by the Attorney-General's Department) which meets each quarter and ensures that relevant information from the meetings is disseminated to the CCP executive team.</li> </ul>
	<p><b>Recommendation 19.9: Recording of reporting obligations</b> 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.</p>	
	<p><b>Recommendation 19.10: The Directions 2</b> The OLSC should issue guidance material on the obligations to consult on and disclose advice in clause 10 of the <i>Legal Services Directions 2017</i>.</p>	
	<p><b>Recommendation 19.11: Resourcing the Office of Legal Services Coordination</b> The OLSC should be properly resourced to deliver these functions.</p>	
	<p><b>Recommendation 19.12: Chief counsel</b> The Australian Government Legal Service's General Counsel Charter be amended to place a positive obligation on chief counsel to ensure that the <i>Legal Services Directions 2017 (Cth)</i> are complied with and to document interactions with OLSC about inquiries made, and responses given, concerning reporting obligations under those Directions.</p>	<ul style="list-style-type: none"> <li>• The CCP complies with the Legal Services Directions and liaises with the Office of Legal Services Coordination (OLSC) within the Attorney-General's Department in relation to any queries about significant issues reporting or potential legal risk.</li> <li>• Where OLSC provides significant advice on reporting obligations, the advice will be shared with the CCP executive and disseminated within teams as required.</li> </ul>
	<p><b>Recommendation 19.13: Review of the Bilateral Management Agreement</b> The revised Bilateral Management Agreement should set out the requirement to consult on and disclose legal advices between the two agencies where any intersection of work is identified.</p>	

<p><b>Administrative Appeals Tribunal</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• Training and guidance</li> <li>• Independent legal services</li> <li>• record keeping</li> <li>• law /judicial reform</li> </ul>	<p><b>Recommendation 20.1: AAT cases with significant legal and policy issues</b>  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.</p>	
	<p><b>Recommendation 20.2: Training for DHS legal officers</b>  Services Australia legal officers whose duties involve the preparation of advices in relation to AAT decisions should receive training which emphasises the requirements of the Standing Operational Statements in relation to appeal recommendations and referral to DSS; Services Australia’s obligations as a model litigant; and the obligation to pay due regard to AAT decisions and directions.</p>	
	<p><b>Recommendation 20.3: Identifying significant AAT decisions</b>  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.</p>	
	<p><b>Recommendation 20.4: Publication of first instance AAT decisions</b>  The federal administrative review body which replaces the AAT should devise a system for publication on a readily accessible platform of first instance social security decisions which involve significant conclusions of law or have implications for social security policy.</p>	
	<p><b>Recommendation 20.5: Administrative Review Council</b>  Re-instate the Administrative Review Council or a body with similar membership and similar functions, with consideration given to a particular role in review of Commonwealth administrative decision-making processes.</p>	
<p><b>The Commonwealth Ombudsman</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• separations of responsibilities / accountability;</li> <li>• law reform</li> </ul>	<p><b>Recommendation 21.1: Statutory duty to assist</b>  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.</p>	<ul style="list-style-type: none"> <li>• The Commonwealth Ombudsman already has oversight of the AFP, and the AFP has always cooperated fully with any Ombudsman investigations, including by providing access to relevant systems and sharing of legal advices.</li> </ul>
	<p><b>Recommendation 21.2: Another power to obtain information</b>  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.</p>	



<ul style="list-style-type: none"> <li>record keeping</li> <li>independent legal services;</li> <li>the provision of, frank and fearless advice;</li> </ul>	<p><b>Recommendation 21.3: Oversight of the legal services division</b>  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.</p>	
	<p><b>Recommendation 21.4: Log of communications</b>  The Ombudsman maintain a log, recording communications with a department or agency for the purposes of an own motion investigation.</p>	
	<p><b>Recommendation 21.5: Powers of referral</b>  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.</p>	
<p><b>Improving the Australian Public Service</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>Structural reform, law reform</li> <li>Training and guidance</li> <li>designing services with emphasis on people meant to serve</li> <li>separations of responsibilities / accountability;</li> <li>adherence to obligations of Public Servants (roles, principals, values);</li> <li>record keeping</li> </ul>	<p><b>Recommendation 23.1: Structure of government departments</b>  The Australian Government should undertake an immediate and full review to examine whether the existing structure of the social services portfolio, and the status of Services Australia as an entity, are optimal.</p>	
	<p><b>Recommendation 23.2: Obligations of public servants</b>  The APSC should, as recommended by the Thodey Review, deliver whole-of-service induction on essential knowledge required for public servants.</p>	
	<p><b>Recommendation 23.3: Fresh focus on 'customer service'</b>  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.</p>	
	<p><b>Recommendation 23.4: Administrative Review Council</b>  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).</p>	
	<p><b>Recommendation 23.5: 'Knowledge College'</b>  The Commonwealth should explore the feasibility of establishing an internal college within Services Australia to provide training and development to staff linked to the skills and knowledge required to undertake their duties.</p>	

	<p><b>Recommendation 23.6: Front-line Service</b>  SES staff at Services Australia should spend some time in a front-line service delivery role and with other community partnerships.</p>	
	<p><b>Recommendation 23.7: Agency heads being held to account</b>  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. 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.</p>	
	<p><b>Recommendation 23.8: Documenting decisions and discussions</b>  The Australian Public Service Commission should develop standards for documenting important decisions and discussions, and the delivery of training on those standards.</p>	

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**From:** s 47E(d)  
**Sent:** Wednesday, 22 November 2023 3:34 PM  
**To:** Macdonald, Alison  
**Cc:** s 22(1)(a)(ii) s 47E(d) Everett, Brooke  
**Subject:** FW: SPB Paper- Robodebt Draft for consultation [SEC=OFFICIAL]  
**Attachments:** SPB Paper- Robodebt Draft for consultation (003).docx

**OFFICIAL**

Hi Alison,

NMPC has cleared the attached paper for COO with a few track changes with our input, noting with more time we would look to provide more robust feedback.

Let me know if you have any questions.

Thanks

s 22(1)(a)(ii)

PERFORMING DUTIES OF EXECUTIVE OFFICER  
PEOPLE COMMAND

Tel: s 22(1)(a)(ii)



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**From:** Everett, Brooke s 47E(d) [@afp.gov.au](mailto:everett.brooke@afp.gov.au)>  
**Sent:** Wednesday, 22 November 2023 1:01 PM  
**To:** Everett, Brooke s 47E(d) [@afp.gov.au](mailto:everett.brooke@afp.gov.au)>  
**Subject:** SPB Paper- Robodebt Draft for consultation [SEC=OFFICIAL]

**OFFICIAL**

**From:** Macdonald, Alison  
**Sent:** Thursday, 7 December 2023 2:30 PM  
**To:** s 47E(d)  
**Cc:** s 22(1)(a)(ii) s 47E(d)  
**Subject:** FYI AND PAPER FOR AC/NM FORUM - 7/12/23 - ROBODEBT PAPER - : Strategy and Performance Board [SEC=OFFICIAL]  
**Attachments:** 2.2a SPB\_20231204\_ATTACH A\_Robodebt Report and Government Response\_OFFICIAL.pdf; 2.2b SPB\_20231204\_ATTACH B\_Robodebt Report - Recommendations Legal.pdf; 2.2c SPB\_20231204\_ATTACH C\_DRAFT - revised Charter of Independence\_OFFICIAL.pdf; 2.2 SPB\_20231204\_Robodebt\_OFFICIAL.pdf

**OFFICIAL**

Dear All,

Ahead of the AC /NM forum this afternoon and Item #2, please find **attached** the paper on Robodebt (plus attachments) as presented to the Strategy and Performance Board earlier this week.

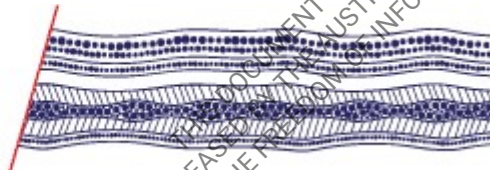
Look forward to answering any questions,

Regards  
Alison

**ALISON MACDONALD**  
ACTING CHIEF COUNSEL  
CHIEF COUNSEL PORTFOLIO

Tel: s 22(1)(a)(ii)

s 22(1)(a)(ii)



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**From:** Macdonald, Alison  
**Sent:** Friday, 14 July 2023 8:39 PM  
**To:** Tressler, Charlotte  
**Cc:** Caldwell, Emily; s 22(1)(a)(ii)  
 s 22(1)(a)(ii)  
**Subject:** RE: Robodebt Royal Commission - brief note [SEC=OFFICIAL:Sensitive] [AFP-L.FID33861]  
**Attachments:** 'Draft Advice' Audit May 2023 final.docx

**OFFICIAL: Sensitive**

Dear COO (Charlotte),

Further to your email **below** and as briefly discussed this afternoon, the Chief Counsel Portfolio is in a strong position relative to the recommendations regarding legal matters arising from the Royal Commission 'Robodebt' report.

Septically with respect to draft advices, both CAL and AFP Legal undertook a review and audit of their respective LEX matter management system in May 2023, to identify any advices either prepared by, or received by AFP Legal or CAL that had not been finalised.

The results were:

- CAL identified two (2) advices on LEX which had not been finalised.
  - Both matters contain notes on the file provide sound reasons for the advices to remain in draft form.
- AFP Legal identified eleven (11) advices on LEX which had not been finalised. Please find **attached** the audit report prepared for the General Counsels.
  - Two (2) advices were from external providers which have since been finalised.
  - Seven (7) were advices prepared internally.
    - Five (5) of which have since been finalised.
    - Two (2) have been updated with notes providing sound reasons for not finalising the advices.
  - Two (2) are being reviewed by Coordinators (as the lawyer authoring the advices is on long term leave) for finalisation.

Happy to discuss further as required,

Regards  
Alison

**ALISON MACDONALD**  
 ACTING CHIEF COUNSEL  
 CHIEF COUNSEL PORTFOLIO

s 22(1)(a)(ii)



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**From:** Tressler, Charlotte < s 47E(d) > [afp.gov.au](mailto:afp.gov.au)  
**Sent:** Sunday, 9 July 2023 4:18 PM  
**To:** Macdonald, Alison < s 47E(d) > [afp.gov.au](mailto:afp.gov.au)  
**Cc:** Caldwell, Emily < s 47E(d) > [afp.gov.au](mailto:afp.gov.au) s 22(1)(a)(ii)

**Subject:** Re: Robodebt Royal Commission - brief note [SEC=OFFICIAL:Sensitive]

Hi Alison

Thanks for sending this through. I am interested in how AFP practices hold up against the below - particularly around draft advice. Look forward to discussing in 1:1

Regards  
Charlotte

---

**From:** Macdonald, Alison [REDACTED] s 47E(d) @[afp.gov.au](mailto:afp.gov.au)>

**Date:** 9 July 2023 at 3:16:39 pm AEST

**To:** Tressler, Charlotte [REDACTED] s 47E(d) [afp.gov.au](mailto:afp.gov.au)>

**Cc:** Caldwell, Emily [REDACTED] s 47E(d) [afp.gov.au](mailto:afp.gov.au)>, [REDACTED] s 22(1)(a)(ii)

[REDACTED] s 22(1)(a)(ii)

**Subject:** FW: Robodebt Royal Commission - brief note [SEC=OFFICIAL:Sensitive]

**OFFICIAL: Sensitive**

Dear COO (Charlotte),

Please see **below** a brief and preliminary summary of prepared by AFP Legal [REDACTED] s 22(1)(a)(ii) a/ Coordinator Employment and Dispute Resolution) in relation to the Robodebt Royal Commission, in so far as any of the recommendations may affect the AFP or Chief Counsel Portfolio.

The Robodebt Royal Commission Report, is available here <https://robodebt.royalcommission.gov.au/system/files/2023-07/report-of-the-royal-commission-into-the-robodebt-scheme.pdf>.

The report is extremely large (and the publically available report is not the full report), so it will likely be necessary to provide more detailed consideration at a later date.

The report is scathing about the government and public sector cultures which led to Robodebt, and notes that the institutional checks and balances – Ombudsman, OLSC, OAIC, AAT – presented no real hindrance to it occurring.

A number of recommendations are made regarding legal matters which are notable for AFP Legal's purposes:

1. In-house lawyers should have regular training about their core duties and responsibilities, including with reference to duty to avoid compromising their integrity and professional independence, and the challenges that may be presented in fulfilling that obligation;
2. There should be a direction that any draft advices be finalised, or failing that the decision and reasons for not finalising it must be documented;
3. In recruiting or appointing a chief counsel, the Australian Government Solicitor should form part of any panel in order to ensure an element of independence in the process;
4. The Legal Services Directions should be reviewed and simplified;
5. OLSC should provide more extensive information and feedback to assist agencies with the significant legal issues process;
6. OLSC should ensure a documentary record is made of substantive inquiries made with agencies, and their responses, concerning their obligations to report significant issues;
7. OLSC should be properly resourced to deliver its functions;
8. The Australian Government Legal Service's General Counsel Charter be amended to place a positive obligation on chief counsel to ensure the Legal Services Directions are complied with, and to document interactions with OLSC about concerns about compliance;
9. That section 34 of the Commonwealth FOI Act (which relates to Cabinet documents) should be repealed, and that the Cabinet handbook be amended to make clear that a document being a Cabinet document is no longer justification for maintaining confidentiality, absent an identifiable public interest reason.

The chapter specifically about legal services, which commences at page 518 at the above link, made some specific observations about the role and duties of chief counsel. It criticises the view that a chief counsel essentially responds to instructions, and notes that the role must include the capacity to recommend that the agency obtain legal advice, particularly if a significant legal issue has been identified.

There are recommendations (16.1 and 16.2) that the Commonwealth seek legal advice about end-to-end data exchange processes currently operating between Services Australia and the ATO to ensure that they are lawful, and that the ATO and DHS should take steps to strengthen their governance regarding data-matching programs.



s 47E(d)

We will update you on any developments, or further insights as we digest the report.

Otherwise, Emily, Patrick and I are available to discuss,

Regards,  
Alison

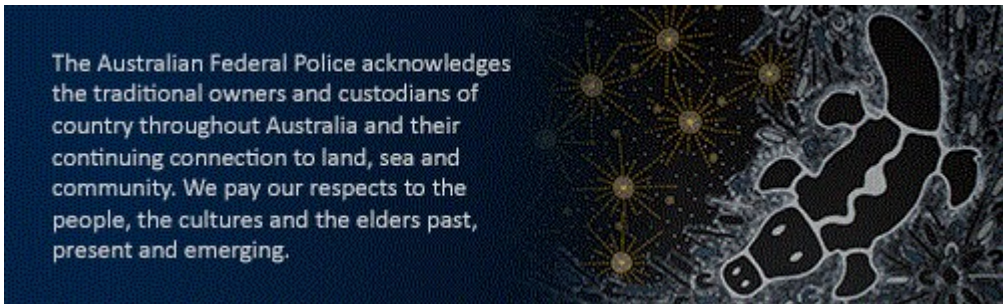
**ALISON MACDONALD**  
ACTING CHIEF COUNSEL  
CHIEF COUNSEL PORTFOLIO

s 22(1)(a)(ii)

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s 22(1)(a)(ii)

**From:** Macdonald, Alison  
**Sent:** Friday, 24 November 2023 4:43 PM  
**To:** s 22(1)(a)(ii)  
**Cc:** s 33(a)(i)  
**Subject:** RE: FOR INFO - SPB papers due to COO by Tues. 21 Nov 2023 [SEC=OFFICIAL:Sensitive]  
**Attachments:** SPB Paper- Robodebt - following consultation (adm).docx; SPB Paper- Robodebt - FINAL.docx; Attachment A - Recommendations - Robodebt Report.docx; Attachment B - Recommendations - Robodebt Report - Legal.docx; Attachment C DRAFT - revised Charter of Independence.docx

**OFFICIAL: Sensitive**

Dear s 22(1)(a)(ii)

Please find **attached** the updated SPB paper addressing COO's comments.

The paper is **attached** with the amendments marked up in 'track changes' for ease of reference.

Presuming the COO is comfortable with the updated wording, a 'clean copy' is also **attached** for progressing to the Secretariat.

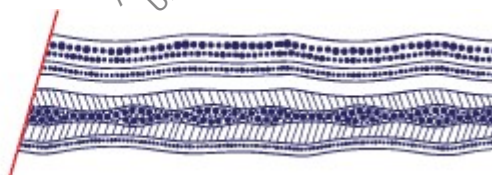
I have also attached the Attachments to the paper.

Please advise if I /we need to take any action to progress these papers to the Secretariat.

Regards  
Alison

**ALISON MACDONALD**  
ACTING CHIEF COUNSEL  
CHIEF COUNSEL PORTFOLIO

s 22(1)(a)(ii)



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**From:** s 22(1)(a)(ii) @afp.gov.au>  
**Sent:** Friday, 24 November 2023 1:16 PM  
**To:** Macdonald, Alison s 47E(d) afp.gov.au>  
**Cc:** s 22(1)(a)(ii) s 22(1)(a)(ii)

**Subject:** RE: FOR INFO - SPB papers due to COO by Tues. 21 Nov 2023 [SEC=OFFICIAL:Sensitive]

**OFFICIAL: Sensitive**

Afternoon Alison,

Do you have an ETA on the updates?

Thank you

Regards,

s 22(1)(a)(ii)  
EXECUTIVE OFFICER TO CHARLOTTE TRESSLER  
CHIEF OPERATING OFFICER  
Tel: +61 (0)2 s 47E(d)



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**From:** s 22(1)(a)(ii)  
**Sent:** Thursday, 23 November 2023 10:46 AM  
**To:** Macdonald, Alison s 47E(d) [afp.gov.au](mailto:afp.gov.au)>  
**Cc:** s 22(1)(a)(ii) s 22(1)(a)(ii)  
**Subject:** RE: FOR INFO - SPB papers due to COO by Tues. 21 Nov 2023 [SEC=OFFICIAL:Sensitive]

**OFFICIAL: Sensitive**

Minor comments from COO, please see attached.

Thank you

Regards,

s 22(1)(a)(ii)  
EXECUTIVE OFFICER TO CHARLOTTE TRESSLER  
CHIEF OPERATING OFFICER  
s 22(1)(a)(ii)



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**From:** Macdonald, Alison s 47E(d) [afp.gov.au](mailto:afp.gov.au)>  
**Sent:** Wednesday, 22 November 2023 6:19 PM  
**To:** s 22(1)(a)(ii)  
**Cc:** s 22(1)(a)(ii) s 22(1)(a)(ii)  
**Subject:** RE: FOR INFO - SPB papers due to COO by Tues. 21 Nov 2023 [SEC=OFFICIAL:Sensitive]

**OFFICIAL: Sensitive**

Dear Laura,

Please find **attached** the draft SPB Paper on the outcomes of the Robodebt Royal Commission and lessons for the AFP – Agenda Item 2.2. for the COO’s review and consideration.

I appreciate the paper is longer than the preferred length, but noting the purpose of the paper is to discuss the Report, and the Report itself is 566 pages long, it was difficult make any shorter and still be meaningful.

Very happy to discuss and /or amend as required,

Regards  
Alison

**ALISON MACDONALD**  
ACTING CHIEF COUNSEL  
CHIEF COUNSEL PORTFOLIO

s 22(1)(a)(ii)



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**From** s 22(1)(a)(ii)

**Sent:** Thursday, November 16, 2023 11:33 AM

**To:** s 22(1)(a)(ii) s 47E(d) s 22(1)(a)(ii)

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

**Cc:** s 22(1)(a)(ii)

**Subject:** SPB papers [SEC=OFFICIAL:Sensitive]

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Good morning all,

As you would all be aware the next Strategy and Performance Board meeting is on Monday 4 December (agenda attached for reference).

All papers for the SPB will need to be finalised **before** COO goes on leave from Monday 27 November, this date aligns with the Office of the Commissioner’s strict deadline of paper distribution 7 days before the meeting.

Grateful or your AC/NM cleared papers by not later than **COB Tuesday 21 November**.

Thank you and please let me know if you have any questions.

Regards,

s 22(1)(a)(ii)

EXECUTIVE OFFICER TO CHARLOTTE TRESSLER  
CHIEF OPERATING OFFICER

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



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## SUMMARY

- The Report of the Royal Commission into the Robodebt Scheme (the Report) included 57 recommendations, of which 24 related to legal services.
- As a Commonwealth Agency we take these recommendations very seriously and **are proactively** reviewing the **recommendations and findings** to identify any improvements the AFP can make.
- Ahead of the Government's formal response to the Report our Chief Counsel Portfolio has already undertaken number of steps in anticipation of, or in response to the Report including:
  - an audit of legal advices and taken steps to finalise the small number (less than 15 over three years) of advices that were still in draft form.
  - developing a revised and updated set of legal practice standards which will incorporate any additional guidance provided by the Attorney-General's Department.
- Chief Counsel Portfolio have a Charter of Independence, and will review the Charter this year, to be signed by the current Commissioner, to reinforce the importance of this document to the AFP more broadly.
- We are also reviewing the AFP's record keeping and processes for documenting decisions and discussions. Once the APSC updates their recommended standards, we will ensure the AFP's procedures align with those recommendations.

## AFP current practices and position in relation to Recommendations

### Recommendations relating to lawyers and legal services

- The Report includes recommendations about training for lawyers, legal practice standards, treatment of draft advices, the *Legal Services Directions 2017* and associated reporting obligations.
- While none of the recommendations were targeted at the AFP, and the AFP will wait the Government's formal response to the recommendations, the AFP considers there are some valuable recommendations for all Commonwealth government legal practices.

### AFP Charter of Independence

- The AFP implemented a Charter of Independence in relation to the provision of legal services in 2004.
  - The Charter was signed by the then Commissioner (Mick Keelty) and has been adopted by subsequent Commissioners. The current Charter was signed by (then) Commissioner (Andrew Colvin) in 2016.
  - The Charter outlines the ethical and professional responsibilities of AFP lawyers, and confirms the independence of AFP lawyers and the legal services they provide the AFP.
-

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## Draft Advices

- The Attorney-General's initial guidance on 'use of draft legal advice within government' has been distributed to everyone within the Chief Counsel Portfolio (CCP) and will form part of the AFP CCP legal practice standards.
- Prior to the Attorney-General's Department issuing guidance on the treatment of legal advices in draft format, the CCP (within the AFP) undertook an audit of legal advices and found that less than 20 legal advices (over a three-year period) had not been finalised and/or were still draft form.
- Since this audit, the CCP has either finalised these legal advices or included a file note explaining why the advice was not finalised (e.g. matter settled or proceedings not commenced and advice no longer relevant).
- The CCP is developing a revised and updated set of legal practice standards which will incorporate any additional guidance provided by the Attorney-General's Department.

## Practising Certificates and training

- All lawyers within the CCP hold a practising certificate in the jurisdiction in which they practice. As such, they have additional training, professional development and integrity obligations in accordance with the rules imposed by the law society in the relevant jurisdiction.
- The AFP conducts internal Continuous Legal Education (CLE) programs, with presentations on the topic of ethics and professional responsibilities conducted (at least) annually. Both AFP Legal and Criminal Assets Litigation (CAL) hold annual conferences focussed on training and professional development for the internal lawyers and ensure there are sessions on ethics and professional skills.
- AFP and the CCP comply with the *Legal Services Directions* and liaise with the Office of Legal Services Coordination (OLSC) within the Attorney-General's Department in relation to any queries about significant issues reporting or potential legal risk.
- The Chief Counsel is a member of the Australian Government Legal Services Legal Risk Committee (coordinated by the Attorney-General's Department) which meets each quarter. The Chief Counsel ensures relevant information from the meetings is disseminated to lawyers within the AFP.

## Recommendations relating to the Commonwealth Ombudsman

- The Report makes a number of recommendations in relation to the Commonwealth Ombudsman and imposing a statutory obligation on agencies to assist the Ombudsman.
- The Commonwealth Ombudsman has oversight of the AFP and the AFP has always cooperated fully with any Ombudsman investigations, including by providing access to relevant systems and sharing of legal advices.

## Recommendations relating to documenting decisions and discussions, and record keeping

---



- 
- The Report makes a recommendation the Australian Public Service Commission develop standards for documenting important decisions and discussions, and the delivery of training on those standards. The AFP will look to implement any changes to align with these standards.
  - The Royal Commission noted, amongst other things, that there were issues with record-keeping. This related both to record-keeping of the basis on which decisions were made, as well as the absence of file notes from OLSC when they enquired and raised concerns with, Services Australia. Ombudsman record-keeping was also criticised. Accordingly, recommendations were made that records of communications and decisions be made and maintained.

- [REDACTED]
- [REDACTED]
- [REDACTED]

s 47E(d)

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## Background

- [REDACTED]
- [REDACTED]
- The Report of the Royal Commission into the Robodebt Scheme (the Report) included 57 recommendations.
- A taskforce led by the Department of the Prime Minister and Cabinet, the Attorney-General's Department, and the Australian Public Service Commission has been established to inform and support the Government's response to the Report.

**ACTION OFFICER**

**Name:** Emily Caldwell – General Counsel Operations

**Phone:** s 22(1)(a)(ii)

**From:** s 22(1)(a)(ii) on behalf of s 47E(d)  
**Sent:** Wednesday, 6 December 2023 8:20 AM  
**To:** Macdonald, Alison  
**Cc:** s 47E(d) s 22(1)(a)(ii)  
**Subject:** Strategy and Performance Board | December 2023 Action Item | Circulation of Board Paper [SEC=OFFICIAL]  
**Attachments:** 2.2a SPB\_20231204\_ATTACH A\_Robodebt Report and Government Response\_OFFICIAL.pdf; 2.2b SPB\_20231204\_ATTACH B\_Robodebt Report - Recommendations Legal.pdf; 2.2c SPB\_20231204\_ATTACH C\_DRAFT - revised Charter of Independence\_OFFICIAL.pdf; 2.2 SPB\_20231204\_Robodebt\_OFFICIAL.pdf  
**Categories:** CC -EXECUTIVE, ACL

**OFFICIAL**

a/CC

Good Morning Alison,

Following yesterday's Strategy and Performance Board Meeting, please find **attached** the Final (PDF'd) version of the **Robodebt Recommendations Paper** you presented to the Board.

As agreed by the Board, the Secretariat would be most grateful if you could **circulate the attached paper to the SES Band 2 (ACNM cohort) for their visibility and information** – noting the key matters and learnings for the AFP leadership to consider.

We would appreciate our [team inbox](#) being copied on this email for visibility and to enable us to maintain a record of the completion of the Action Item.

Please do not hesitate to contact the s 47E(d) should you have queries.

Kind regards

s 22(1)(a)(ii)

A/COORDINATOR | CENTRAL SECRETARIAT UNIT  
STRATEGY & PERFORMANCE OFFICE  
**AUSTRALIAN FEDERAL POLICE**

s 22(1)(a)(ii)

[www.afp.gov.au](http://www.afp.gov.au)

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s 22(1)(a)(ii)

**From:** Macdonald, Alison  
**Sent:** Thursday, 3 August 2023 9:20 PM  
**To:** Tressler, Charlotte; s 22(1)(a)(ii)  
**Cc:** s 22(1)(a)(ii) s 47E(d) Williamson-de Vries, Susie; s 22(1)(a)(ii)  
**Subject:** UPDATED BP BRIEF - ROBODEBT RECOMMENDATIONS [SEC=OFFICIAL]  
**Attachments:** SB23-000117 updated.docx; SB23-000117 (adm).docx

**OFFICIAL**

Dear COO (Charlotte) and s 22(1)(a)(ii)

Please find **attached** the updated Back Pocket Brief on the Robodebt Royal Commission Recommendations now with additional points in relation to record keeping, at the end of the brief and with a table at **Attachment A**, summarising the recommendations, and the issues they go to in the following broad categories:

- the provision of, frank and fearless advice;
- adherence to obligations of Public Servants (roles, principals, values);
- designing services with emphasis on people meant to serve;
- separations of responsibilities / accountability;
- guidance and training;
- law reform
- process and structural reform
- record keeping.

I have also **attached** a 'marked up' version of the brief for ease of identifying amendments.

s 22(1)(a)(ii) Susie and team – copied you in for your updates etc.

Regard  
Alison

**ALISON MACDONALD**  
ACTING CHIEF COUNSEL  
CHIEF COUNSEL PORTFOLIO

s 22(1)(a)(ii)

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## Robodebt Royal Commission

### Background

- A summary of the recommendations of the *Royal Commission into the Robodebt Scheme* is set out in the table at **Attachment A**.
- The AFP Commissioner received a sealed submission from the Royal Commissioner for the Robodebt Scheme (Catherine Holmes AC SC) in relation to possible criminal investigations/prosecutions.
  - DCNS (Deputy Commissioner McCartney) can provide limited information on the AFP investigation.
- A taskforce led by the Department of the Prime Minister and Cabinet, the Attorney-General's Department, and the Australian Public Service Commission has been established to inform and support the Government's response to the Report.
- The Report of the Royal Commission into the Robodebt Scheme (the Report) included 57 recommendations.
- While none of the recommendations were targeted at the AFP, and the AFP will wait the Government's formal response to the recommendations, the AFP considers there are some valuable recommendations for all Commonwealth government agencies.

### AFP current practices and position in relation to Recommendations

#### Recommendations relating to lawyers and legal services

- The Report includes recommendations about training for lawyers, legal practice standards, treatment of draft advices, the *Legal Services Directions 2017* and associated reporting obligations.

#### AFP Charter of Independence

- The AFP implemented a Charter of Independence in relation to the provision of legal services in 2004.
- The Charter was signed by the then Commissioner (Mick Keelty) and has been adopted by subsequent Commissioners. The current Charter was signed by (then) Commissioner (Andrew Colvin) in 2016.
- The Charter outlines the ethical and professional responsibilities of AFP lawyers, and confirms the independence of AFP lawyers and the legal services they provide the AFP.

## Draft Advices

- The Attorney-General's initial guidance on 'use of draft legal advice within government' has been distributed to everyone within the Chief Counsel Portfolio (CCP) and when finalised will form part of the AFP CCP legal practice standards.
- Prior to the Attorney-General's Department issuing guidance on the treatment of legal advices in draft format, the Chief Counsel Portfolio (within the AFP) undertook an audit of legal advices and found that less than 20 legal advices (over a three-year period) had not been finalised and/or were still draft form.
- Since this audit, the Chief Counsel Portfolio has either finalised these legal advices or included a file note explaining why the advice was not finalised (eg. matter settled or proceedings not commenced and advice no longer relevant).
- The Chief Counsel Portfolio is developing a revised and updated set of legal practice standards which will incorporate any additional guidance provided by the Attorney-General's Department.

## Practising Certificates and training

- All lawyers within the Chief Counsel Portfolio hold a practising certificate in the jurisdiction in which they practice. As such, they have additional training, professional development and integrity obligations in accordance with the rules imposed by the law society in the relevant jurisdiction.
- The AFP conducts internal Continuous Legal Education (CLE) programs, with the presentations on the topic of ethics and professional responsibilities conducted (at least) annually. Both AFP Legal and Criminal Assets Litigation (CAL) hold annual conferences focussed on training and professional development for the internal lawyers and ensure there are sessions on ethics and professional skills.
- AFP and the Chief Counsel Portfolio comply with the *Legal Services Directions* and liaise with the Office of Legal Services Coordination (OLSC) within the Attorney-General's Department in relation to any queries about significant issues reporting or potential legal risk.
- The Chief Counsel is a member of the Australian Government Legal Services Legal Risk Committee (coordinated by the Attorney-General's Department) which meets each quarter. The Chief Counsel ensures relevant information from the meetings is disseminated to lawyers within the AFP.

## Recommendations relating to the Commonwealth Ombudsman

- The Report makes a number of recommendations in relation to the Commonwealth Ombudsman and imposing a statutory obligation on agencies to assist the Ombudsman.

- The Commonwealth Ombudsman already has oversight of the AFP and the AFP has always cooperated fully with any Ombudsman investigations, including by providing access to relevant systems and sharing of legal advices.

## Record Keeping

- The AFP and Chief Counsel Portfolio have robust record keeping and matter management systems, in accordance with the *Archives Act 1983*.
  - The *Archives Act 1983* creates obligations for Commonwealth agencies to create, capture, manage and preserve Commonwealth records which document information about the business activities and processes of government.
- The AFP is committed to best practice record keeping in line with the International Management Standard AS ISO 15489-2022 and the Government framework for an accountable agency.
  - A record is created to support a business activity and is kept as evidence of that activity.
  - The AFP retains the ownership of all records created by all employees in the course of conducting business.
- All AFP employees are required to understand their record-keeping responsibilities, and to keep records of daily work and create records that document:
  - information relating to projects or activities being undertaken,
  - formal business communications with external and internal recipients,
  - guidance, advice or direction,
  - evidence, and
  - approval or authorisation.
- All AFP Appointees are required to manage and deal with information and record keeping in accordance with the AFP National Guideline on Information Management.
- This guideline outlines the obligations for AFP personnel for effective management of data, information and knowledge and is supported by the AFP Information Management Handbook.
- The Handbook provides practical and functional guidance on (among other matters) the AFP procedures and processes for creating, handling, keeping and proper destruction of AFP records, in accordance with relevant AFP governance and legislation.

## Attachment A

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
<p><b>Introductory section</b></p> <p>Goes to the lack of:</p> <ul style="list-style-type: none"> <li>• the provision of, frank and fearless advice;</li> <li>• adherence to obligations of Public Servants (roles, principals, values);</li> <li>• designing services with emphasis on people meant to serve;</li> </ul>	<p><i>Commissioner's observations</i></p> <ul style="list-style-type: none"> <li>• The Robodebt scheme failed the public interest in a myriad of ways.</li> <li>• Remarkable how little interest there was in ensuring the Scheme's legality,               <ul style="list-style-type: none"> <li>○ how rushed its implementation was,</li> <li>○ how little thought was given to how it would affect welfare recipients and,</li> <li>○ the lengths to which public servants were prepared to go to oblige ministers on a quest for savings.</li> </ul> </li> <li>• Dismaying revelation of dishonesty and collusion to prevent the Scheme's lack of legal foundation coming to light.</li> <li>• The ineffectiveness of institutional checks and balances – the <i>Commonwealth Ombudsman's Office</i>, the <i>Office of Legal Services Coordination (OLSC)</i>, the Office of the Australian Information Commissioner (<b>OAIC</b>) and the Administrative Appeals Tribunal (<b>AAT</b>) – in presenting any hindrance to the Scheme's continuance.</li> <li>• Effectiveness of the recommended changes depends on:</li> </ul>	

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
<ul style="list-style-type: none"> <li>• separations of responsibilities / accountability; and</li> <li>• independent legal services.</li> </ul>	<ul style="list-style-type: none"> <li>• Whether a public service can be developed with sufficient robustness will depend on the will of the government of the day, because culture is set from the top down.</li> <li>• Politicians need to lead a change in social attitudes to people receiving welfare payments.</li> </ul>	
<p><b>Effects of Robodebt on individuals</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• obligations of public servants (roles, principals, values);</li> <li>• designing services with emphasis on people meant to serve.</li> </ul>	<p><i>Recommendation 10.1: Design policies and processes with emphasis on the people they are meant to serve</i></p> <p>Services Australia design its policies and processes with a primary emphasis on the recipients it is meant to serve. That should entail:</p> <ul style="list-style-type: none"> <li>• avoiding language and conduct which reinforces feelings of stigma and shame associated with the receipt of government support when it is needed</li> <li>• 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</li> <li>• 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.</li> </ul>	



Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
<p><b>The concept of vulnerability</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• designing services with emphasis on people meant to serve;</li> <li>• guidance and training;</li> <li>• obligations of public servants (roles, principals, values);</li> <li>• record keeping.</li> </ul>	<p><i>Recommendation 11.1: Clear documentation of exclusion criteria</i>  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.</p> <p><i>Recommendation 11.2: Identification of circumstances affecting the capacity to engage with compliance activity</i>  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.</p> <p><i>Recommendation 11.3: Engagement prior to removing a vulnerability indicator from a file</i>  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</p>	

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
	<p>relation to the recipient, confirms that they are no longer suffering from the vulnerability to which the indicator relates.</p> <p><i>Recommendation 11.4: Consideration of vulnerabilities affected by each compliance program, including consultation with advocacy bodies</i></p> <p>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.</p>	
<p><b>The roles of advocacy groups and legal services</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• frank and fearless advice;</li> <li>• designing services with emphasis on people meant to serve;</li> </ul>	<p><i>Recommendation 12.1: Easier engagement with Centrelink</i></p> <p>Options for easier engagement with Centrelink by advocacy groups – for example, through the creation of a national advocates line – should be considered.</p> <p><i>Recommendation 12.2: Customer experience reference group</i></p> <p>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.</p> <p><i>Recommendation 12.3: Consultation</i></p> <p>Peak advocacy bodies should be consulted prior to the implementation of projects involving the modification of the social security system.</p>	

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<ul style="list-style-type: none"> <li>independent legal services.</li> </ul>	<p><i>Recommendation 12.4: Regard for funding for legal aid commissions and community legal centres</i></p> <p>When it next conducts a review of the National Legal Assistance Partnership, the Commonwealth should have regard, in considering funding for legal aid commissions and community legal centres, to the importance of the public interest role played by those services as exemplified in their work during the Scheme.</p>	
<p><b>Experiences of Human Services employees</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>the provision of, frank and fearless advice;</li> <li>adherence to obligations of Public Servants (roles, principals, values);</li> <li>training and guidance;</li> <li>designing services with emphasis on people meant to serve.</li> </ul>	<p><i>Recommendation 13.1: Consultation process</i></p> <p>Services Australia should put in place processes for genuine and receptive consultation with frontline staff when new programs are being designed and implemented.</p> <p><i>Recommendation 13.2: Feedback processes</i></p> <p>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.</p> <p><i>Recommendation 13.3: 'Face-to-face' support</i></p> <p>More 'face-to-face' customer service support options should be available for vulnerable recipients needing support.</p> <p><i>Recommendation 13.4: Increased number of social workers</i></p> <p>Increased social worker support (for both recipients and staff), and better referral processes to enable this support, should be implemented.</p>	

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
<p><b>Failures in the Budget process</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• separations of responsibilities / accountability;</li> <li>• independent legal services;</li> <li>• the provision of, frank and fearless advice;</li> <li>• record keeping</li> </ul>	<p><i>Recommendation 15.1: Legislative change better defined in New Policy Proposals</i>  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.</p> <p><i>Recommendation 15.2: Include legal advices with New Policy Proposals</i>  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.</p> <p><i>Recommendation 15.3: Australian Government Solicitor statement in the NPP</i>  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.</p>	

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	<p><i>Recommendation 15.4: Standard, specific language on legal risks in the NPP</i> 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.</p>	
	<p><i>Recommendation 15.5: Documented assumptions for compliance Budget measures</i> That in developing compliance Budget measures, Services Australia and DSS document the basis for the assumptions and inputs used, including the sources of the data relied on.</p>	
	<p><i>Recommendation 15.6: Documentation on the basis for assumptions provided to Finance</i> That in seeking agreement from Finance for costings of compliance Budget measures, Services Australia and DSS provide Finance with documentation setting out the basis for the assumptions and inputs used, including related data sources, to allow Finance to properly investigate and test those assumptions and inputs.</p>	
<p><b>Data-matching and exchanges</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>independent legal services;</li> </ul>	<p><i>Recommendation 16.1: Legal advice on end-to-end data exchanges</i> The Commonwealth should seek legal advice on the end-to-end data exchange processes which are currently operating between Services Australia and the ATO to ensure they are lawful.</p>	
	<p><i>Recommendation 16.2: Review and strengthen governance of data-matching programs</i> The ATO and DHS should take immediate steps to review and strengthen their operational governance practices as applied to jointly conducted data-matching programs. This should include:</p>	

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<ul style="list-style-type: none"> <li>• the provision of, frank and fearless advice;</li> <li>• designing services with emphasis on people meant to serve;</li> <li>• training and guidance;</li> <li>• record keeping.</li> </ul>	<ul style="list-style-type: none"> <li>• reviews to ensure that all steps and operations relating to existing or proposed data-matching programs are properly documented</li> <li>• a review of all existing framework documents for existing or proposed data-matching programs</li> <li>• a review of the operations of the ATO/DHS Consultative Forum and the ATO/DHS Data Management Forum</li> <li>• a review of the existing Head Agreement/s, Memoranda of Understanding and Services Schedule</li> <li>• a joint review of any existing or proposed data-matching program protocols to ensure they are legally compliant in respect of their provision for the data exchanges contemplated for the relevant data-matching program.</li> </ul>	

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<p><b>Automated decision making</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• separations of responsibilities / accountability;</li> <li>• designing services with emphasis on people meant to serve;</li> <li>• law reform and reform of process and decision making;</li> <li>• record keeping.</li> </ul>	<p><i>Recommendation 17.1: Reform of legislation and implementation of regulation</i></p> <p>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:</p> <ul style="list-style-type: none"> <li>• there should be a clear path for those affected by decisions to seek review</li> <li>• departmental websites should contain information advising that automated decision-making is used and explaining in plain language how the process works</li> <li>• business rules and algorithms should be made available, to enable independent expert scrutiny.</li> </ul> <p><i>Recommendation 17.2: Establishment of a body to monitor and audit automated decision-making</i></p> <p>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.</p>	

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<p><b>Debt recovery and debt collectors</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• designing services with emphasis on people meant to serve</li> <li>• separations of responsibilities / accountability;</li> <li>• law reform</li> <li>• record keeping</li> </ul>	<p><i>Recommendation 18.1: Comprehensive debt recovery policy for Services Australia</i></p> <p>Services Australia should develop a comprehensive debt recovery management policy which among other things should incorporate the Guideline for Collectors and Creditors' issued by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC). Examples of such documents already exist at both federal and state levels. Any such policy should also prescribe how Services Australia undertakes to engage with debtors, including that staff must:</p> <ul style="list-style-type: none"> <li>• ensure any debt recovery action is always ethical, proportionate, consistent and transparent</li> <li>• treat all recipients fairly and with dignity, taking each person's circumstances into account before commencing recovery action</li> <li>• subject to any express legal authority to do so, refrain from commencing or continuing recovery action while a debt is being reviewed or disputed, and</li> <li>• in accordance with legal authority, consider and respond appropriately and proportionately to cases of hardship.</li> </ul> <p>Services Australia should ensure that recipients are given ample and appropriate opportunities to challenge, review and seek guidance on any proposed debts before they are referred for debt recovery.</p>	
	<p><i>Recommendation 18.2: Reinstate the limitation of six years on debt recovery</i></p> <p>The Commonwealth should repeal s 1234B of the Social Security Act and reinstate the effective limitation period of six years for the bringing of proceedings to recover debts under Part 5.2 of the Act formerly contained in s 1232 and s 1236 of that Act, before repeal of</p>	



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	the relevant sub-sections by the <i>Budget Savings (Omnibus) Act (No 55) 2016</i> . There is no reason that current and former social security recipients should be on any different footing from other debtors.	
<p><b>Lawyers and legal services</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• independent legal services;</li> <li>• the provision of, frank and fearless advice;</li> <li>• adherence to obligations of Public Servants (roles, principals, values);</li> <li>• training and guidance;</li> <li>• law reform;</li> </ul>	<p><i>Recommendation 19.1: Selection of chief counsel</i> The selection panel for the appointment of chief counsel of Services Australia or DSS (chief counsel being the head of the entity's legal practice) should include as a member of the panel, the Australian Government Solicitor.</p> <p><i>Recommendation 19.2: Training for lawyers – Services Australia</i> Services Australia should provide regular training to its in-house lawyers on the core duties and responsibilities set out in the Legal Practice Standards, including:</p> <ul style="list-style-type: none"> <li>• an emphasis on the duty to avoid any compromise to their integrity and professional independence and the challenges that may be presented to a government lawyer in fulfilling that obligation</li> <li>• appropriate statutory and case authority references in advice writing.</li> </ul> <p><i>Recommendation 19.3: Legal practice standards – Social Services</i> DSS should develop Legal Practice Standards which set out the core duties and responsibilities of all legal officers working at DSS.</p> <p><i>Recommendation 19.4: Training for lawyers – Social Services</i> DSS should provide regular training on the core duties and responsibilities to be set out in the Legal Practice Standards which</p>	<ul style="list-style-type: none"> <li>• CCP is working on developing a set of legal practice standards which will incorporate guidance provided by the Attorney-General's Department.</li> <li>• The Legal Practice Standards will deal with a range of topics including legal matter management, management of legal advices (and dealing with draft advices), the Charter of Independence and professional obligations.</li> <li>• All lawyers within the CCP hold a practising certificate in the jurisdiction in which they practice, thus have additional training, professional development and integrity obligations by virtue of holding the certificate. This is in addition to the AFP's integrity standards and framework.</li> </ul>

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
<ul style="list-style-type: none"> <li>record keeping</li> </ul>	<p>should include: an emphasis on the duty to avoid any compromise to their integrity and professional independence and the challenges that may be presented to a government lawyer in fulfilling that obligation appropriate statutory and case authority references in advice writing.</p> <p><i>Recommendation 19.5: Draft advice – Social Services</i>  DSS should issue a further direction providing that, if the administering agency decides that a draft advice need not be provided in final form, that decision and the reasons for it must be documented.  One of those steps – finalisation, or a documented decision against finalisation – should have been taken within three months of the receipt of the draft advice.</p>	<ul style="list-style-type: none"> <li>Practising certificate holders are required to complete at least 10 hours of Continuous Professional Development (CPD) each year, being a mix of ethics, professional skills and practice management.</li> <li>CCP conducts internal Continuous Legal Education (CLE) programs, with presentations on the topic of ethics and professional responsibilities being conducted annually.</li> <li>Both AFP Legal and Criminal Assets Litigation (CAL) hold annual conferences focussed on training and professional development for the internal lawyers and ensure that there are sessions on ethics and professional skills.</li> <li>Prior to the Attorney-General's Department issuing guidance on the treatment of legal advices in draft format, the CCP undertook an audit of advices and found that less than 20 advices had not been finalised and were still draft. Since the audit, CCP has either finalised the advices or included a file note explaining why the</li> </ul>

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	<p><i>Recommendation 19.6: Draft advice – Services Australia</i>            Services Australia should issue a direction that legal advice is to be left in draft form only to the extent that the administrative step of finalising it has not yet been undertaken by lawyers or there are remaining questions to be answered in relation to the issues under consideration and that, if the administering agency decides that a draft advice need not be provided in final form, that decision and the reasons for it must be documented. One of those steps – finalisation, or a documented decision against finalisation – should have been taken within three months of the receipt of the draft advice.</p>	<p>advice was not finalised (eg. litigation strategy changed and draft advice no longer relevant).</p> <ul style="list-style-type: none"> <li>• The Attorney-General’s initial guidance on ‘use of draft legal advice within government’ has been distributed to everyone within the CCP and will form part of the legal practice standards that the portfolio is working on.</li> </ul>
	<p><i>Recommendation 19.7: The Directions 1</i>            The <i>Legal Services Directions 2017</i> should be reviewed and simplified.</p>	
	<p><i>Recommendation 19.8: Office of Legal Services Coordination to assist agencies with significant issues reporting</i>            The OLSC should provide more extensive information and feedback to assist agencies with the significant legal issues process.</p>	<ul style="list-style-type: none"> <li>• The CCP complies with the Legal Services Directions and liaises with the Office of Legal Services Coordination (OLSC) within the Attorney-General’s Department in relation to any queries about significant issues reporting or potential legal risk.</li> <li>• Where OLSC provides significant advice on reporting obligations, the advice will be shared with the CCP executive and disseminated within teams as required.</li> <li>• The Chief Counsel is a member of the Australian Government Legal Services Legal Risk Committee (coordinated by</li> </ul>
	<p><i>Recommendation 19.9: Recording of reporting obligations</i>            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.</p>	

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
		<p>the Attorney-General's Department) which meets each quarter and ensures that relevant information from the meetings is disseminated to the CCP executive team.</p>
	<p><i>Recommendation 19.10: The Directions 2</i> The OLSC should issue guidance material on the obligations to consult on and disclose advice in clause 10 of the Legal Services Directions 2017.</p>	
	<p><i>Recommendation 19.11: Resourcing the Office of Legal Services Coordination</i> The OLSC should be properly resourced to deliver these functions.</p>	
	<p><i>Recommendation 19.12: Chief counsel</i> The Australian Government Legal Services General Counsel Charter be amended to place a positive obligation on chief counsel to ensure that the Legal Services Directions 2017 (Cth) are complied with and to document interactions with OLSC about inquiries made, and responses given, concerning reporting obligations under those Directions.</p>	<ul style="list-style-type: none"> <li>• The CCP complies with the Legal Services Directions and liaises with the Office of Legal Services Coordination (OLSC) within the Attorney-General's Department in relation to any queries about significant issues reporting or potential legal risk.</li> <li>• Where OLSC provides significant advice on reporting obligations, the advice will be shared with the CCP executive and disseminated within teams as required.</li> </ul>

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
	<p><i>Recommendation 19.13: Review of the Bilateral Management Agreement</i>            The revised Bilateral Management Agreement should set out the requirement to consult on and disclose legal advices between the two agencies where any intersection of work is identified.</p>	
<p><b>Administrative Appeals Tribunal</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• Training and guidance</li> <li>• Independent legal services</li> <li>• record keeping</li> <li>• law /judicial reform</li> </ul>	<p><i>Recommendation 20.1: AAT cases with significant legal and policy issues</i>            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.</p>	
	<p><i>Recommendation 20.2: Training for DHS legal officers</i>            Services Australia legal officers whose duties involve the preparation of advices in relation to AAT decisions should receive training which emphasises the requirements of the Standing Operational Statements in relation to appeal recommendations and referral to DSS; Services Australia’s obligations as a model litigant; and the obligation to pay due regard to AAT decisions and directions.</p>	
	<p><i>Recommendation 20.3: Identifying significant AAT decisions</i>            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.</p>	
	<p><i>Recommendation 20.4: Publication of first instance AAT decisions</i>            The federal administrative review body which replaces the AAT should devise a system for publication on a readily accessible platform of first instance social security decisions which involve significant conclusions of law or have implications for social security policy.</p>	

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
	<p><i>Recommendation 20.5: Administrative Review Council</i>  Re-instate the Administrative Review Council or a body with similar membership and similar functions, with consideration given to a particular role in review of Commonwealth administrative decision-making processes.</p>	
<p><b>The Commonwealth Ombudsman</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• separations of responsibilities / accountability;</li> <li>• law reform</li> <li>• record keeping</li> <li>• independent legal services;</li> <li>• the provision of, frank and fearless advice;</li> </ul>	<p><i>Recommendation 21.1: Statutory duty to assist</i>  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.</p> <p><i>Recommendation 21.2: Another power to obtain information</i>  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.</p> <p><i>Recommendation 21.3: Oversight of the legal services division</i>  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.</p>	<p>The Commonwealth Ombudsman already has oversight of the AFP, and the AFP has always cooperated fully with any Ombudsman investigations, including by providing access to relevant systems and sharing of legal advices.</p>

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
	<p><i>Recommendation 21.4: Log of communications</i></p> <p>The Ombudsman maintain a log, recording communications with a department or agency for the purposes of an own motion investigation.</p>	
	<p><i>Recommendation 21.5: Powers of referral</i></p> <p>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.</p>	
<p><b>Improving the Australian Public Service</b></p> <p><b>Recommendations go to:</b></p> <ul style="list-style-type: none"> <li>• Structural reform, law reform</li> <li>• Training and guidance</li> <li>• designing services with emphasis on people meant to serve</li> </ul>	<p><i>Recommendation 23.1: Structure of government departments</i></p> <p>The Australian Government should undertake an immediate and full review to examine whether the existing structure of the social services portfolio, and the status of Services Australia as an entity, are optimal.</p>	
	<p><i>Recommendation 23.2: Obligations of public servants</i></p> <p>The APSC should, as recommended by the Thodey Review, deliver whole-of-service induction on essential knowledge required for public servants.</p>	
	<p><i>Recommendation 23.3: Fresh focus on 'customer service'</i></p> <p>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.</p>	

Report category	Recommendation	Actions being undertaken by Chief Counsel Portfolio
<ul style="list-style-type: none"> <li>• separations of responsibilities / accountability;</li> <li>• adherence to obligations of Public Servants (roles, principals, values);</li> <li>• record keeping</li> </ul>	<p><i>Recommendation 23.4: Administrative Review Council</i> 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).</p>	
	<p><i>Recommendation 23.5: 'Knowledge College'</i> The Commonwealth should explore the feasibility of establishing an internal college within Services Australia to provide training and development to staff linked to the skills and knowledge required to undertake their duties.</p>	
	<p><i>Recommendation 23.6: Front-line Service</i> SES staff at Services Australia should spend some time in a front-line service delivery role and with other community partnerships.</p>	
	<p><i>Recommendation 23.7: Agency heads being held to account</i> 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. 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.</p>	
	<p><i>Recommendation 23.8: Documenting decisions and discussions</i> The Australian Public Service Commission should develop standards for documenting important decisions and discussions, and the delivery of training on those standards.</p>	