

This summary of the report of the Royal Commission into the Robodebt Scheme has been collated by the Attorney-General's Department to assist with the navigation of the report. Any content in this summary should be confirmed with the report. This summary is not for wider circulation and is strictly for limited circulation until the report is no longer embargoed.

Summary of the report

Introductory Section

The covering letter of transmittal provides that the Commissioner will also be submitting relevant parts of the additional chapter of the report (sealed chapter) to heads of various Commonwealth agencies; the Australian Public Service Commissioner, the National Anti-Corruption Commissioner, the President of the Law Society of the Australian Capital Territory and the Australian Federal Police.

The Commissioner's preface sets out a number of observations, including:

- The Robodebt scheme **failed the public interest in a myriad of ways**.
- It is remarkable how little interest there seems to have been in ensuring the Scheme's legality, how rushed its implementation was, how little thought was given to how it would affect welfare recipients and the lengths to which public servants were prepared to go to oblige ministers on a quest for savings.
- Truly dismaying was the **revelation of dishonesty and collusion** to prevent the Scheme's lack of legal foundation coming to light.
- Equally disheartening was the **ineffectiveness of what one might consider institutional checks and balances** – the Commonwealth Ombudsman's Office, the Office of Legal Services Coordination, the Office of the Australian Information Commissioner and the Administrative Appeals Tribunal – in presenting any hindrance to the Scheme's continuance.
- A sealed section which contains referrals of information concerning some persons for further investigation by other bodies is intended **as a means of holding individuals to account, in order to reinforce the importance of public service officers' acting with integrity**.
- As to how effective recommended change will be:
    - whether a public service can be developed with sufficient robustness to ensure that something of the like of the Robodebt scheme could not occur again **will depend on the will of the government of the day, because culture is set from the top down**.
    - politicians **need to lead a change in social attitudes** to people receiving welfare payments.
- The evidence before the Commission was that fraud in the welfare system was miniscule, but that is not the impression one would get from what ministers responsible for social security payments have said over the years. Those attitudes are set by politicians, who need to abandon for good (in every sense) the narrative of taxpayer versus welfare recipient (**page iii**).

The **introduction** gives an overview of the workings of the Royal Commission, why it was set up, the procedural fairness and the standard of proof of the Commission, the challenges of the Commission, Parliamentary privilege, the structure of the report and use of language, for example the use of "recipient" instead of "customer" in the report (**pages v – ix**).

The **terms of reference** are provided and all the **recommendations** (**pages x – xxi**).

Recommendations

Effects of Robodebt on individuals

Recommendation 10.1: Design policies and processes with emphasis on the people they are meant to serve

Services Australia design its policies and processes with a primary emphasis on the recipients it is meant to serve.

That should entail:

- avoiding language and conduct which reinforces feelings of stigma and shame associated with the receipt of government support when it is needed
- facilitating easy and efficient engagement with options of online, in person and telephone communication which is sensitive to the particular circumstances of the customer cohort, including itinerant lifestyles, lack of access to technology, lack of digital literacy and the particular difficulties rural and remote living
- explaining processes in clear terms and plain language in communication to customers, and acting with sensitivity to financial and other forms of stress experienced by the customer cohort and taking all practicable steps to avoid the possibility that interactions with the government might exacerbate those stresses or introduce new ones.

The concept of vulnerability

Recommendation 11.1: Clear documentation of exclusion criteria

Services Australia should ensure that for any cohort of recipients that is intended to be excluded from a compliance process or activity, there is clear documentation of the exclusion criteria, and, unless there is a technical reason it cannot be, the mechanism by which that is to occur should be reflected in the relevant technical specification documents.

Recommendation 11.2: Identification of circumstances affecting the capacity to engage with compliance activity

Services Australia should ensure that its processes and policies in relation to the identification of potential vulnerabilities extend to the identification of circumstances affecting a recipient's capacity to engage with any form of compliance activity. To this end, circumstances likely to affect a recipient's capacity to engage with compliance activities should be recorded on their file regardless of whether they are in receipt of a payment that gives rise to mutual obligations.

Recommendation 11.3: Engagement prior to removing a vulnerability indicator from a file

Services Australia should ensure that its processes and policies in relation to the identification of potential vulnerabilities require staff to engage with a recipient prior to the removal of an indicator on their file. For this purpose, Services Australia should remove any feature that would allow for the automatic expiry of a vulnerability indicator (or equivalent flagging tool). An indicator should only be removed where a recipient, or evidence provided to the Agency in relation to the recipient, confirms that they are no longer suffering from the vulnerability to which the indicator relates.

Recommendation 11.4: Consideration of vulnerabilities affected by each compliance program, including consultation with advocacy bodies

Services Australia should incorporate a process in the design of compliance programs to consider and document the categories of vulnerable recipients who may be affected by the program, and how those recipients will be dealt with. Services Australia should consult stakeholders (including peak advocacy bodies) as part of this process to ensure that adequate provision is made to accommodate vulnerable recipients who may encounter particular difficulties engaging with the program.

The roles of advocacy groups and legal services

Recommendation 12.1: Easier engagement with Centrelink

Options for easier engagement with Centrelink by advocacy groups – for example, through the creation of a national advocates line – should be considered.

Recommendation 12.2: Customer experience reference group

The government should consider establishing a customer experience reference group, which would

provide streamlined insight to government regarding the experiences of people accessing income support.

Recommendation 12.3: Consultation

Peak advocacy bodies should be consulted prior to the implementation of projects involving the modification of the social security system.

Recommendation 12.4: Regard for funding for legal aid commissions and community legal centres

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.

Experiences of Human Services employees

Recommendation 13.1: Consultation process

Services Australia should put in place processes for genuine and receptive consultation with frontline staff when new programs are being designed and implemented.

Recommendation 13.2: Feedback processes

Better feedback processes should be put in place so that frontline staff can communicate their feedback in an open and consultative environment. Management should have constructive processes in place to review and respond to staff feedback.

Recommendation 13.3: "Face-to-face" support

More "face-to-face" customer service support options should be available for vulnerable recipients needing support.

Recommendation 13.4: Increased number of social workers

Increased social worker support (for both recipients and staff), and better referral processes to enable this support, should be implemented.

Failures in the Budget process

Recommendation 15.1: Legislative change better defined in New Policy Proposals

The Budget Process Operational Rules should include a requirement that all New Policy Proposals contain a statement as to whether the proposal requires legislative change in order to be lawfully implemented, as distinct from legislative change to authorise expenditure.

Recommendation 15.2: Include legal advices with New Policy Proposals

The Budget Process Operational Rules should include a requirement that any legal advice (either internal or external) relating to whether the proposal requires legislative change in order to be implemented be included with the New Policy Proposal in any versions of the Portfolio Budget Submission circulated to other agencies or Cabinet ministers.

Recommendation 15.3: Australian Government Solicitor statement in the NPP

The Budget Process Operational Rules should include a requirement that where legal advice has been given in relation to whether the proposal requires legislative change in order to be implemented, the New Policy Proposal includes a statement as to whether the Australian Government Solicitor has reviewed and agreed with the advice.

Recommendation 15.4: Standard, specific language on legal risks in the NPP

The standard language used in the NPP Checklist should be sufficiently specific to make it obvious on the face of the document what advice is being provided, in respect of what legal risks and by whom it is being provided.

Recommendation 15.5: Documented assumptions for compliance Budget measures
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.

Recommendation 15.6: Documentation on the basis for assumptions provided to Finance
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.

Data-matching and exchanges

Recommendation 16.1: Legal advice on end-to-end data exchanges
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.

Recommendation 16.2: Review and strengthen governance of data-matching programs
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:

- reviews to ensure that all steps and operations relating to existing or proposed data-matching programs are properly documented
- a review of all existing framework documents for existing or proposed data-matching programs
- a review of the operations of the ATO/DHS Consultative Forum and the ATO/DHS Data Management Forum
- a review of the existing Head Agreement/s, Memoranda of Understanding and Services Schedule
- 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.

Automated decision making

Recommendation 17.1: Reform of legislation and implementation of regulation
The Commonwealth should consider legislative reform to introduce a consistent legal framework in which automation in government services can operate. Where automated decision-making is implemented:

- there should be a clear path for those affected by decisions to seek review
- departmental websites should contain information advising that automated decision-making is used and explaining in plain language how the process works
- business rules and algorithms should be made available, to enable independent expert scrutiny.

Recommendation 17.2: Establishment of a body to monitor and audit automated decision-making
The Commonwealth should consider establishing a body, or expanding an existing body, with the power to monitor and audit automate decision-making processes with regard to their technical aspects and their impact in respect of fairness, the avoiding of bias, and client usability.

Debt recovery and debt collectors

Recommendation 18.1: Comprehensive debt recovery policy for Services Australia

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:

- ensure any debt recovery action is always ethical, proportionate, consistent and transparent
- treat all recipients fairly and with dignity, taking each person's circumstances into account before commencing recovery action
- 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
- in accordance with legal authority, consider and respond appropriately and proportionately to cases of hardship.

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.

Recommendation 18.2: Reinstate the limitation of six years on debt recovery

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 *Budget Savings (Omnibus) Act (No 55) 2016* (Cth). There is no reason that current and former social security recipients should be on any different footing from other debtors.

Lawyers and legal services

Recommendation 19.1: Selection of chief counsel

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.

Recommendation 19.2: Training for lawyers – Services Australia

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:

- 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.

Recommendation 19.3: Legal practice standards – Social Services

DSS should develop Legal Practice Standards which set out the core duties and responsibilities of all legal officers working at DSS.

Recommendation 19.4: Training for lawyers – Social Services

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.

Recommendation 19.5: Draft advice – Social Services

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.

Recommendation 19.6: Draft advice – Services Australia
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.

Recommendation 19.7: The Directions 1
The Legal Services Directions 2017 should be reviewed and simplified.

Recommendation 19.8: Office of Legal Services Coordination to assist agencies with significant issues reporting
The OLSC should provide more extensive information and feedback to assist agencies with the significant legal issues process.

Recommendation 19.9: Recording of reporting obligations
The OLSC should ensure a documentary record is made of substantive inquiries made with and responses given by agencies concerning their obligations to report significant issues pursuant to para 3.1 of the Directions.

Recommendation 19.10: The Directions 2
The OLSC should issue guidance material on the obligations to consult on and disclose advice in clause 10 of the Legal Services Directions 2017.

Recommendation 19.11: Resourcing the Office of Legal Services Coordination
The OLSC should be properly resourced to deliver these functions.

Recommendation 19.12: Chief counsel
The Australian Government Legal Service's 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.

Recommendation 19.13: Review of the Bilateral Management Agreement
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.

Administrative Appeals Tribunal

Recommendation 20.1: AAT cases with significant legal and policy issues
Services Australia should put in place a system for identifying AAT1 cases which raise significant legal and policy issues and ensuring that they are brought to the attention of senior DSS and Services Australia officers.

Recommendation 20.2: Training for DHS legal officers
Services Australia legal officers whose duties involve the preparation of advices in relation to AAT1 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.

Recommendation 20.3: Identifying significant AAT decisions

DSS should establish, or if it is established, maintain, a system for identifying all significant AAT decisions and bringing them to the attention of its secretary.

Recommendation 20.4: Publication of first instance AAT decisions

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.

Recommendation 20.5: Administrative Review Council

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.

The Commonwealth Ombudsman

Recommendation 21.1: Statutory duty to assist

A statutory duty be imposed on departmental secretaries and agency chief executive officers to ensure that their department or agency use its best endeavours to assist the Ombudsman in any investigation concerning it, with a corresponding statutory duty on the part of Commonwealth public servants within a department or agency being investigated to use their best endeavours to assist the Ombudsman in the investigation.

Recommendation 21.2: Another power to obtain information

The Ombudsman Act be amended to confer on the Ombudsman a power in equivalent terms to that in s 33(3) of the Auditor-General Act.

Recommendation 21.3: Oversight of the legal services division

Departmental and agency responses to own motion investigations by the Ombudsman should be overseen by the legal services division of the relevant department or agency.

Recommendation 21.4: Log of communications

The Ombudsman maintain a log, recording communications with a department or agency for the purposes of an own motion investigation.

Recommendation 21.5: Powers of referral

The AAT is soon to be replaced by a new administrative review body. S 10A and s 11 of the Ombudsman Act should be amended so as to ensure the Ombudsman has the powers of referral and recommendation of referral in respect of that new administrative review body.

Improving the Australian Public Service

Recommendation 23.1: Structure of government departments

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.

Recommendation 23.2: Obligations of public servants

The APSC should, as recommended by the Thodey Review, deliver whole-of-service induction on essential knowledge required for public servants.

Recommendation 23.3: Fresh focus on "customer service"

Services Australia and DSS should introduce mechanisms to ensure that all new programs and schemes are developed with a customer centric focus, and that specific testing is done to ensure that recipients are at the forefront of each new initiative.

Recommendation 23.4: Administrative Review Council

The reinstated Administrative Review Council (or similar body) should provide training and develop resources to inform APS members about the Commonwealth administrative law system. (see Automated Decision-Making and the Administrative Appeals Tribunal chapters)

Recommendation 23.5: "Knowledge College"

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.

Recommendation 23.6: Front-line Service

SES staff at Services Australia should spend some time in a front-line service delivery role and with other community partnerships.

Recommendation 23.7: Agency heads being held to account

The Public Service Act should be amended to make it clear that the Australian Public Service Commissioner can inquire into the conduct of former Agency Heads. Also, the Public Service Act should be amended to allow for a disciplinary declaration to be made against former APS employees and former Agency Heads.

Recommendation 23.8: Documenting decisions and discussions

The Australian Public Service Commission should develop standards for documenting important decisions and discussions, and the delivery of training on those standards.

Closing observations

Section 34 of the Cth FOI Act should be repealed

The Commonwealth Cabinet Handbook should be amended so that the description of a document as a Cabinet document is no longer itself justification for maintaining the confidentiality of the document. The amendment should make clear that confidentiality should only be maintained over any Cabinet documents or parts of Cabinet documents where it is reasonably justified for an identifiable public interest reason.

Overview of Robodebt:

This section examines how and why it came into being, how it operated and why it continued to operate, and what was wrong with it.

Key points include:

- The beginning of 2017 was the point at which Robodebt's **unfairness, probable illegality and cruelty became apparent**. It **should then have been abandoned or revised drastically, and an enormous amount of hardship and misery (as well as the expense the government was so anxious to minimise) would have been averted**. Instead the path taken was to **double down**, to go on the attack in the media against those who complained and to maintain the falsehood that in fact the system had not changed at all. The government was, the DHS and DSS ministers maintained, acting righteously to recoup taxpayers' money from the undeserving (page **xxvii**).
- DSS **obtained cover** in the form of what was called a "legal" advice" (page **xxvii**).
- Meanwhile, the Scheme trundled on, with the government engaging PricewaterhouseCoopers to assist with some of its clumsier components (although never taking receipt of a critical report prepared by the consultancy). It had to accept that the Scheme was not functional in many respects.

One was that the online component was an abject failure, with the result that large numbers of employees had to be drafted on short-term contracts or by way of labour hire into the DHS to cope with enquiries. And it became apparent, partly as a result of that factor, but also because of the overestimation in the first place of the numbers of debts and their average amount, that the touted savings would never be reached (page **xxviii**).

- 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 (page **xxix**).

Chapter 1 – Legal and historical context of the Scheme (pages 1 – 17)

Chapter 1 gives some context for the Robodebt Scheme (the Scheme) with:

- a brief history of the departments and agencies which administered the social security law
- some relevant details of that law, and
- an account of how data matching, (including the *Data matching Program (Assistance and Tax) Act 1990*) (page 11) and income averaging were used to identify and raise debts before the Scheme came into being.

It references the different incarnations of the Department of Social Services, history of Centrelink, and the beginnings of Human Services. It also outlines **the relationship between the Department of Social Services (DSS) and the Department of Human Services (DHS)**. It provides an outline of the social security benefits and pension scheme, covering reporting requirements and debt recovery.

The chapter further outlines **the history of data matching and income averaging** in the social security context, including that income averaging is **not, *per se*, unlawful** as outlined by some provisions of the *Social Security Act 1991* (the Social Security Act) in limited circumstances (page 14).

It states that before the Robodebt Scheme, income averaging was **used relatively seldom**, usually by agreement with the recipient, and in the context of other information which provided some assurance that it would give a reliable answer. The report provides that **averaging was a legitimate course of action if there were other evidence to show that the amount arrived at through it was representative of actual income; which might be the case if the recipient were able to confirm that they had, indeed, received a regular income for the period in question** (page 17).

Section 2: Chronology of the Robodebt Scheme

Chapter 2 – Overview of the origins of Robodebt (pages 23 – 31)

Chapter 2 provides an overview of the origins of Robodebt, from concept to Budget measure, referencing the roles of Mr Jayson Ryman, Ms Tenille Collins and Mr Mark Withnell (page 26).

The report characterises the environment in which the scheme was developed as involving **a powerful drive for savings, strongly expressed ministerial policy positions, cultural conflicts on an inter and intra-departmental level and intense pressure experienced by public servants**, including those in positions of seniority. It was not an environment which was conducive to instances of careful consideration, well-reasoned decision making, and proper scrutiny and supervision (page 28).

The report states an enthusiasm for savings would seem an anathema to the underlying policy and rationale for social security spending, of supporting those in need; however, it appears that the social security portfolio was generally perceived as a reliable source for such savings (page 28). It references that there were **misgivings at some levels of DHS about whether the PAYG proposal had been developed to a point where it could be progressed to the NPP stage** (page 29). There was also a **level of reluctance in DHS to share information** about the proposal with DSS (page 30).

Chapter 2 ends with conclusions on why the issues in relation to the origin and implementation of the Robodebt scheme. The conclusions include:

- The proposal was **precisely responsive to the policy agenda** that had been communicated to the social security portfolio departments, both in private meetings and in the public sphere, by the Minister for Social Services.
- It **came into being against the backdrop of a drive for savings**, in a pressured public service where officers were acutely aware of the importance of those savings to the government.
- The perceived need to "just get it done" meant that **concerns about the immature level of development of the proposal went either unexpressed or unheard**.
- The **relationship between DSS and DHS meant that the sharing of information about the proposal had been somewhat inhibited**, and this was further complicated by the sometimes direct communications between DHS and the Social Services Minister.

Chapter 3 – 2014 – Conceptual development (pages 35 – 50)

Chapter 3 provides Robodebt **originated as an idea from within the Customer Compliance Branch of the Department of Human Services of which Mr Ryman and Mr Britton were part**. By 2014, members of the Customer Compliance Branch, including Mr Britton and Mr Ryman, were under increasing pressure to increase the volume of the branch's compliance activity.

The primary driver seems to have been a general perception that the social security portfolio, and particularly the compliance areas within that portfolio, were **fertile ground for the generation of savings** and "efficiencies" for the government (page 37). A June 2014 Minute by the Customer Compliance Branch proposed the use of averaging of PAYG income data to determine social security entitlement. The Minute identified some possible obstacles to the proposal, but said "…legislation itself is not a barrier as we are able to average income as per section 1068-G8 of the Social Security Act 1991". That was a **complete misunderstanding of that provision's effect**. Section 1068-G8 of the Social Security Act authorised a form of averaging to calculate entitlement in specific circumstances which were expressly outlined in the terms of the section.

Both Mr Britton and Mr Ryman explained that they believed that there was no inconsistency with the requirement to use fortnightly amounts, because using averaging resulted in a notional fortnightly income amount, and had "always been used" to calculate debts. The problem with this is that averaging, in the absence of other information, was liable to produce inaccurate fortnightly amounts, which were not representative of actual income. **Neither Mr Britton nor Mr Ryman are lawyers, and there is no evidence that they knew then that the use of income averaging, as it was later used in the Scheme, was unlawful. That was part of the reason why close collaboration with DSS, whose officers had expertise in general social security policy and legislation, was critical to the development of the proposal**. The Minute suggested that in order for the proposal to progress, income averaging would need to be used in a wider range of circumstances than DHS policy currently allowed, and the way to overcome that obstacle was to promote the proposed process' potential to relieve the regulatory burden on third parties. **DHS officers subsequently used the phrase "last resort" with metronomic regularity when they sought to defend the use of income averaging** in the face of sustained public criticism of the practice in late 2016 and 2017 (page 38).

Chapter 3 outlines a number of meetings between Department of Human Services and Department of Social Services officers in October 2014, that were informal and were not conducted according to any agenda and no minutes were taken. **DSS's reaction to the concept was negative** and it was **recognised that the proposal was inconsistent with the legislative requirement that social security entitlement be based on fortnightly**

income. A 2014 legal advice second counselled by Anne Pulford (a DSS lawyer) provided that "a debt amount derived from annual smoothing [ie averaging] over a defined period of time may not be derived consistently with the legislative framework" (pages 40 – 41).

While officers of DSS sought internal legal and policy advice that could have resulted in the end of the DHS proposal, momentum towards its development accelerated in DHS. Analysis by the DHS in 2014 demonstrated that just over 95% of the debts calculated using income averaging differed from the manually calculated amount. **The work to date had shown that using an income averaging methodology to calculate debts overwhelmingly resulted in an inaccurate result** (page 42).

By December 2014, **initial drafts of an NPP** for what would become the Scheme were being circulated within DHS. Mr Britton referenced pressures to get the measure through (page 46).

The chapter also covers that Scott Morrison was appointed as Social Services Minister on 23 December 2014 and his responsibilities under the Administrative Arrangements Order (AAO) at the time. Kathryn Campbell (then Secretary of DHS) had a meeting with Mr Morrison on 30 December 2014. Ms Campbell recalled that, at the time of the meeting with Mr Morrison, **significant media attention was focused on "the integrity of welfare outlays**" a phrase which she said meant "payments to [sic] which the recipient may not be eligible" (page 49). Mr Morrison gave evidence that he considered the brief prepared by DHS following his meeting with Ms Campbell, Executive Minute B15/125 (the Executive Minute) (page 50).

Chapter 4 – 2015 – Articulations of the Scheme (pages 55 – 107)

Chapter 4 provides an outline of the drafting of the Executive Minute in early 2015 when Ms Campbell met with Malisa Golightly (then Deputy Secretary at DHS) and asked for a brief to be prepared in response to a request from Mr Morrison. DHS communicated its intention to develop the Executive Minute to DSS at an early stage, and a meeting on for 12 January 2015 between representatives of the two departments was held (pages 57 – 58).

DSS's view that legislative change was required to implement the DHS proposal presented a significant problem for the viability of the proposal (page 59).

On 16 January 2015, Serena Wilson's (former Deputy Secretary at DSS) received advice from Mr Whitecross. In his email to Ms Wilson, Mr Whitecross strongly advised against the DHS proposal. Mr Whitecross set out that proposal, as DSS understood it, which involved identifying and raising employment income related debts based upon data received from the ATO. He understood that the ATO data would be assumed to have been earned evenly, or "smoothed," across a financial year to calculate a debt (page 62).

On 19 January 2015, Ms Wilson replied to Mr Whitecross she was concerned when Ms Golightly described it to her. Ms Wilson stated she would go back to Ms Golightly and let Finn Pratt (Secretary, DSS) know. In her evidence, Ms Wilson agreed that the legal advice described by Mr Whitecross "was unequivocal". Mr Pratt did not recall receiving Mr Whitecross's advice at the time, but after having the opportunity to peruse it briefly in oral evidence, remarked that "frankly, the advice is excellent advice". **The Commission accepts that the conversation occurred as Ms Wilson described, probably at a high level of generality. However, it is more likely than not that it involved Ms Wilson conveying to Mr Pratt the fact of the proposal and DSS's concerns with it, which would logically have included the information that DHS was seeking to advance the proposal in a way that did not require legislation** (page 63).

On 20 January 2015, Ms Halbert sent a draft of the Executive Minute around DSS. Ms Wilson amended the document and it was sent to DHS with the comment **that DSS feel strongly about the clean up PAYG measure** with dot points outlining the comments (pages 64-65). Mr Withnell sought assistance from DHS officers in responding to the DSS Dot Points, and sent Ms Halbert's email with the DSS Dot Points to Mr

Britton and Mark Brown for their consideration. His email said, "DO NOT FORWARD." Mr Ryman drafted response to the DSS Dot points to Mr Britton (page 66).

Mr Britton emailed Mr Ryman's dot points to Mr Withnell, noting the email was "in response to the points raised by DSS and added that there would be no requirement to seek and/or apply retrospective legislative change. **Mr Ryman, Mr Britton and Mr Withnell all accepted in oral evidence that Mr Ryman and Mr Britton's response to the DSS Dot Points did not provide any sensible response to the legal advice in the DSS Dot Points.** Mr Withnell does not appear to have further communicated Mr Britton's (and Mr Ryman's) response to the DSS Dot Points. Instead, Mr Withnell emailed Ms Golightly a revised new draft brief to Minister Morrison (page 67).

On 23 January 2015, Mr Britton sent a further email to Mr Withnell quoting section 1068-G8 of the Administration Act, the same provision that Mr Ryman had relied on in the June 2014 Minute, and stating his (misconceived) view that "it supports our proposition of averaging earning over the period of employment. **Mr Withnell's oral evidence to the Commission was that he understood the message that had been communicated to him by Ms Halbert and the DSS advice at all times**. Both Mr Britton and Mr Ryman gave evidence they had been unaware of the DSS legal and policy advice prior to giving evidence to the Commission (page 68). **The Commission concludes Mr Ryman was aware of the DSS Dot Points, so it follows that he was aware that DSS had advised that the proposal was inconsistent with social security legislation and policy. There is no doubt that Mr Britton received and read the DSS Dot Points which Mr Withnell emailed to him (page 69).**

The chapter refers to Scott Morrison's "welfare cop" approach to the Social Services portfolio (page 70). It states that **by 22 January 2015 Mr Morrison had clearly communicated to the public, the secretaries of DSS and DHS and deputy secretaries Wilson and Golightly his intention to achieve budget savings through his portfolio** (page 70).

On 23 January 2015 Ms Wilson took leave until 9 February 2015. Ms Halbert acted in her role as deputy secretary. Ms Golightly sought a further response from DSS on the PAYG proposal that day, it included the draft of the Executive Minute in which Mr Withnell had changed the wording of the PAYG proposal to remove any reference to "smoothing," "averaging," "apportioning" or the need for legislative change. **The Commission states that it seems that, DSS having raised legal and policy issues with income averaging, DHS's solution was simply to remove reference to income averaging in the brief (page 72)**. DSS obtained advice and on 23 January 2015, Ms Halbert had collated the DSS advice which referred back to the 2014 legal advice. She further softened the language in the introduction to the brief.

The Commission concludes that the proposal in the Executive Minute contemplated the use of income averaging of PAYG data as the sole basis for determining social security entitlement, and it was for this reason that legislative change was required. However, on the face of the document itself, the use of income averaging in the proposed process, and the fact of its being the reason for the need for legislative change, was not immediately obvious. **Those officers who had been involved in its drafting – Ms Campbell, Ms Golightly and Mr Withnell – knew that income averaging was intended (page 79). Mr Morrison signed the Executive Minute on Friday 20 February 2015** (page 80)

The chapter canvases meetings between DHS and DSS officials and the drafting of the NPP**. It references changes made by Mr Ryman to the NPP which removed the reference to income averaging.** It reports that Mr Ryman's evidence was that he made the amendments at either the direction of either Mr Withnell or Mr Britton (page 85).

The description of the PAYG proposal in the NPP that was submitted to the ERC on 25 March 2015 **omitted any explicit reference to the use of income averaging** and contained the representation that "there would be no change to how income is assessed or overpayments calculated as part of this proposal." **The Commission finds that the language used in the NPP that was submitted to the ERC on 25 March 2015 had the effect of obscuring the fact that, in substance, the PAYG proposal contemplated a process involving the use of income averaging** (page 88). **Consequently, those members of Cabinet who had no knowledge of the proposal's development were likely to be misled as to the true nature of the proposed measure and the legal and policy impediments associated with it** (page 89).

The Commission is unable to conclude that either Mr Ryman or Mr Britton intended to mislead Cabinet when they were involved in the removal of the reference to income averaging from the NPP and the insertion of the "no change" statement (page 89).

In the Commission's view, based upon (a) Mr Withnell's knowledge that averaging was intended to be a feature of the proposal, (b) his awareness of the DSS advice and (c) his awareness of the language used in the NPP, Mr Withnell knew that the description of the measure in the NPP would be apt to mislead Cabinet as to the true nature of the Scheme. There is no evidence of Mr Withnell taking any steps to ensure that Cabinet was properly informed of the averaging component of the measure. To the contrary, Mr Withnell was a central figure in formulating the language used in the NPP ultimately considered by the ERC on 25 March 2015. **The Commission's view is that Mr Withnell engaged in deliberate conduct designed to mislead Cabinet**.

Ms Golightly was responsible for the development of the NPP, and was a senior public servant. She was heavily involved in clearing the draft NPP, and engaging with Mr Withnell in developing the NPP. **The Commission concludes that she was aware that, as presented to Cabinet, it was misleading (page 91).**

The NPP arrives at Social Services: On Wednesday 4 March 2015, Ms Wilson, Ms Halbert, Mr McBride and others at DSS received a copy of the NPPs developed by DHS for the DSS portfolio budget submission. The NPPs included a draft of the Strengthening the Integrity of Welfare Payments measure (page 93).

Social Services knowledge of the continued proposal for the use of averaging: The Commission concludes that there is **no basis to conclude that Mr McBride knew at the time the NPP went to Cabinet that, in fact, there had been no change to the substance of the proposed measure**, and that it still contemplated income averaging (page 94). The Commission accepts that Ms Wilson's evidence that she did not know that DHS would proceed using income averaging, and that she was not involved in any misleading of Cabinet. But **the Commission also concludes that Ms Wilson refrained from enquiring too closely into how the measure was to be implemented without the use of income averaging, or returning to the question later, because DHS was resistant to DSS advice and the Minister wanted the proposal to proceed**. Her later conduct points to that conclusion (page 95).

The Expenditure Review Committee meeting: Ms Campbell was copied to emails to Ms Payne's office attaching drafts of the NPP on 3 March 2015. It is more likely than not that Ms Campbell reviewed at least one of those drafts because she both had access to the Secretary's Office email address to which they were sent and was routinely provided print outs of documents emailed to her or her office (page 96).

In oral evidence, **Ms Campbell accepted that the NPP was apt to mislead Cabinet**. She contended that her failure to eliminate its misleading effect was an "oversight." That would be an extraordinary oversight for someone of Ms Campbell's seniority and experience. **The weight of the evidence instead leads to the conclusion that Ms Campbell knew of the misleading effect of the NPP but chose to stay silent, knowing that Mr Morrison wanted to pursue the proposal and that the Government could not achieve the savings which the NPP promised without income averaging** (page 98).

Knowledge of Ms Payne: Weighing up all the considerations, **the Commission concludes that Ms Payne was entitled to regard the assurance she received in the NPP as sufficient. There was no reason for her to anticipate that DHS officers intended to implement the NPP by the use of income averaging contrary to the language of the NPP**. There is, of course, the broader question of **ministerial responsibility**. Ms Payne was responsible for a department which instituted the flawed Scheme and officers of which misled Cabinet as to what it involved. Those are matters for Parliament and the electorate, not this Commission (page 100).

Knowledge of Mr Morrison: In relation to Mr Morrison the report states (pages 100 – 107):

- The Commission rejects as untrue Mr Morrison's evidence that he was told that income averaging as contemplated in the Executive Minute was an established practice and a "foundational way" in which DHS worked.
- The Executive Minute informed Mr Morrison that the use of income averaging in the DHS proposal required legislative change.
- The Commission accepts Mr Morrison's evidence that the third answer in the checklist could extend beyond the issue of whether authorisation was needed for expenditure, and could involve the advice of the relevant department. **However, Mr Morrison was not entitled without further question to rely upon the contradictory content of the NPP on the question of the DSS legal position when he proposed the NPP to the ERC. Mr Morrison allowed Cabinet to be misled because he did not make that obvious inquiry.**
- The failure of DSS and DHS to give Mr Morrison frank and full advice before and after the development of the NPP is explained **by the pressure to deliver the budget expectations of the government and by Mr Morrison, as the Minister for Social Services, communicating the direction to develop the NPP through the Executive Minute**.

Chapter 5 – 2015 to 2016 - Implementation of the Scheme (pages 119 – 144)

The lead up to the pilot: The chapter details steps taken following the ERC meeting of 25 March 2015, noting that given the proposed 1 July 2015 start date included in the NPP, it is perhaps not surprising that the focus of DHS officers was fixed on overcoming any remaining barriers to the launch of the Scheme on 1 July 2015, rather than on undertaking any critical analysis of its underpinnings that might reveal its fundamental flaws.

This Chapter references that on 24 April 2015, policy advice was sought from Emma Kate McGuirk, who then held the position of Director of DHS's Income Support Means Test Section, in relation to the income test for the program. Notwithstanding that the email clearly indicated a proposed departure from "last resort" use of income averaging, **Ms McGuirk gave her advice that as long as the customer is given the opportunity to correctly declare against each fortnight and apportionment is the last resort, there was support**.

The initial pilot program: Between May and June 2015, a pilot program was conducted to test the effectiveness of the manual process that was being used while the online platform used for the Scheme was under development. The pilot was undertaken in two phases, the first involving 1000 recipients, and the second involving 1600. About **60 per cent of income support recipients involved in the pilot did not respond to DHS's attempts to contact them**, **a much higher proportion than had been assumed for the measure during the budget process** (page 123).

Following the pilot, a draft brief to the Secretary of DHS was prepared. An email dated 25 November 2015 advised "GM [Mr Withnell] advised this brief is not progressing to the Secretary…." One possible explanation for this is that Ms Campbell was informed of the results orally, preferring not to receive them in writing. The other possibility is that the results were not given to her because of the same **fear of delivering "bad news**"

that Mr Britton described in his evidence. Neither reflects well on Ms Campbell's management of the department (page 124).

The PAYG Manual Compliance Intervention program commenced operation on 1 July 2015. The operation of the Manual Program resulted in a dramatic increase in the scale of DHS' use of income averaging.

Staff concerns: In 2015, Colleen Taylor was a compliance officer at DHS. Ms Taylor became concerned about the inability of the process to identify all of the information necessary to properly investigate a discrepancy and calculate any subsequent debt. In early 2016, Ms Taylor raised some of her concerns with departmental officers including her supervisor and the "Compliance Help Desk." (page 126). She escalated her concern to her director and assistant director.

The Online Compliance Intervention (OCI) system: On 11 July 2016, the OCI system when live into a production environment. In March 2016, a new Division was created in DHS to deal with the area of customer compliance.

The Commission **concludes that the workplace environment was an intense one, in which departmental staff were under a high level of pressure**. Given the circumstances in which the system commenced full operation, it is not at all surprising that there were multiple system issues. But the continued focus on savings and numbers, and fulfilling the promises made under the measures, meant that it was never an option to stop (page 136).

The Minister for Human Services: Alan Tudge commenced as the Minister for Human Services on 18 February 2016 (page 137). At that time the SIWP and EWPI measures were in place. In an approach that was entirely consistent with the policy direction and messaging of recent years in the social security portfolio, Mr Tudge adopted an approach to media that focused on "cracking down" on non-compliance by income support recipients (page 138).

In December 2016, the NPPs that had been developed earlier in the year, and had formed the basis of part of the Coalition's election commitments, were approved by the government and announced in the 2016- 17 MYEFO under the *Better Management of the Social Welfare System measure*. The savings made a significant contribution to the Coalition's plan for a balanced Budget (page 139).

Mr Tudge know that conflation of fraud and inadvertent overpayment occurred…He know that fraud represented a very small proportion of welfare compliance. Despite this, he took no action to issue a media release to clarify and emphasise the distinction (page 141).

Increasing concern and criticism: Throughout December 2016, public expressions of discontent with the OCI system began to gather momentum (page 142).

Chapter 6 – 2017, part A - A crescendo of criticism (pages 153 – 192)

The opening to this Chapter notes that in the beginning of 2017 the chorus of criticism was deafening and that one of the most remarkable aspects of the Scheme's saga is how it continued, albeit in a modified form, after the early months of 2017.

The Chapter references the role of the Acting Minister for Human Services, Mr Porter in late 2016 and early 2017.

The report states Mr Porter may not completely have understood what the OCI process was, but he did know it involved income averaging. It did not take a genius to see that averaging a person's annual income to arrive at a fortnightly figure was likely to produce inaccurate results unless the person was on a consistent income (page 157). Mr Porter could not rationally have been satisfied of the legality of the Scheme on the

basis of his general knowledge of the NPP process, when he did not have actual knowledge of the content of the NPP, and had no idea whether it had said anything about the practice of income averaging. As Minister for Social Services, Mr Porter should at least have directed his department to produce to him any legal advice it possessed in respect of the legislative basis of the Scheme (page 157).

The Chapter outlines the steps taken by Mr Tudge on his return from leave in early January 2017. By the time of his return, the *Budget Savings (Omnibus) Act 2016* had been passed. One of the effects of that Act was to remove the six-year limitation period on the recovery of social security debts. Another was that it enabled the department, in particular circumstances, to issue Departure Prohibition Orders, to prevent people with outstanding debts from going overseas.

During this time, Mr Tudge made numerous requests to DHS and his advisors for information about the Scheme and associated DHS processes, and he was provided with a steady stream of information in response. **Not all of the information provided by DHS to their minister and his advisors during this time was accurate, or reflective of the actual state of affairs** (page 159).

The report references that many of the process refinements Mr Tudge instituted reflected his drive to improve the system and its usability, but it is apparent from his communication with Mr Turnbull that **a large part of Mr Tudge's motivation for focusing on those refinements was to allow him, as minister, and the government, to "save face" and to minimise public embarrassment; not surprisingly, given his full-throated public endorsement of the system the previous year** (page 160).

The report goes on to state that much of the focus within DHS was similar to that of the minister. **It is obvious from the evidence before the Commission that the early months of 2017 were a frenetically busy and stressful period for many members of DHS staff**.

In February 2017, the OCI program became the Employment Income Confirmation (EIC) program. From February until August 2017, the application of averaged ATO data was suspended for reviews in which a recipient had received an initial letter but had not commenced or finalised the review process (page 162).

The rebranding to EIC represented the symbolic end of the first automated, online iteration of the Scheme. During the operation of the OCI program, DHS consistently and staunchly denied accusations of an "error rate" in the initial letters that were issued to recipients. The department had released information that, of the initial letters sent to recipients between July to December 2016, approximately 80 per cent had ultimately resulted in a debt following finalisation of the review. This resulted in public criticism in which this figure was characterised as a "20 per cent error rate." (page 163).

Mr Tudge instituted a number of process refinements, and **the Commission accepts that he was, in part, motivated to improve the implementation of the system and its usability**. One of those was the removal of some level of automation in the system, by requiring a manual step prior to the calculation of a debt using averaging. **But it was also for the purpose of attempting to repair the public perception of the Scheme, and to avoid transparent and open scrutiny of those aspects of the Scheme that were fundamental to its operation**. Mr Tudge was not open to considering any significant alteration, or cessation, of processes underlying those fundamental features. **The Commission accepts he believed he was bound by the Cabinet decision to implement them, but that did not mean he could not have investigated the problems with them and raised any concerns with the appropriate senior minister** (page 166).

Missed opportunities: The report covers the interactions with the Australian Council of Social Service (ACOSS). The Commission finds that Mr Tudge took some steps to address the problems that Dr Goldie, CEO of ACOSS had raised, and responded to those parts of her correspondence that dealt with those

implementation issues but he did nothing about the fundamental concerns: reversal of the onus and income averaging (page 167).

On 25 January 2017, Ms Campbell sent an email to staff referring to misrepresentations in the media and assuring them that there had been no change to the way DHS assessed income or calculated and recovered debt. **The use of that representation was both false and non-responsive to the substance of the concerns that were raised** (page 171).

Ms Taylor emailed Ms Campbell on 25 January 2017 about concerns with the program. **The Commission finds that Ms Campbell failed to engage with the concerns that both the whistle-blower and Ms Taylor had raised (page 174).**

The use of the Media: The reports states that **a particularly mean-spirited aspect of the government's defence of the Scheme in 2017 was the employment of the media in a form of counter-attack against criticism, which included singling out recipients who complained** (page 177).

As a minister, Mr Tudge was invested with a significant amount of public power. Mr Tudge's use of information about social security recipients in the media to distract from and discourage commentary about the Scheme's problems represented an abuse of that power. It was all the more reprehensible in view of the power imbalance between the minister and the cohort of people upon whom it would reasonably be expected to have the most impact, many of whom were vulnerable and dependent on the department, and its minister, for their livelihood (page 179).

On 2 January 2017 Ms Golightly sought "options and advice" on a proposed media strategy to deal with the media reporting on the OCI program. Bevan Hannan subsequently signed off on a "Communication Plan" for the OCI program, and commenced development of a "script…from the standard words" and talking points "drawn from the ones sent to the minister.

Part of DHS's engagement with the media involved its spokesperson, Hank Jongen. Mr Jongen's role included releasing "official statements" to the media and participating in broadcast interviews to represent the department. DHS's approach to the media, particularly during the period of intense publicity in the early months of 2017, was to respond to criticism by systematically repeating the same narrative, underpinned by a set of talking points and standard lines. There was no critical evaluation of this messaging, or its accuracy, because the "gatekeepers" of its content were more concerned with "getting it [the media criticism] shut down as quickly as possible," and "correcting the record" with standard platitudes that failed to engage with the substance of any criticisms (page 180).

Suicides associated with the Scheme: The Commission is aware that **a number of people who had alleged debts raised against them under the Scheme have died by suicide**. While each of those deaths may have prompted an internal review of the particular case, **they did not galvanise either DHS or DSS into a substantive or systemic review of the problem of illegal, inaccurate or unfair debt-raising**. An exchange between Ms Campbell and Ms Golightly, the exchange demonstrates that Ms Campbell and Ms Golightly were, first and foremost, preoccupied with distancing Mr Cauzzo's death from the OCI program and to "**work on a narrative**." (page 181).

There was a DHS investigation into the circumstances of Mr Cauzzo's case, which was initiated at the request of Mr Tudge. The conclusions were drawn, on the basis of a superficial examination of procedural and operational compliance by DHS. The investigation should have identified that a "vulnerability indicator" ought to have been recorded on Mr Cauzzo's Centrelink record, given that (as the investigation report attached to the brief recorded) in September 2015 DHS was made aware he suffered from anxiety and depression and had reported suicidal ideation (page 182).

By July 2017, Mr Tudge knew that at least two people had died by suicide, and that their family members had identified the impact of the Scheme as a factor in their deaths. Nonetheless, Mr Tudge failed to undertake a comprehensive review into the Scheme, including its fundamental features, or to consider whether its impacts were so harmful to vulnerable recipients that it should cease (page 182).

The issue of lawfulness: During the first week of January 2017, the Office of Legal Services Coordination (OLSC) raised with Mr Menzies-McVey whether the Scheme gave rise to a significant issue in the provision of legal services which was required to be reported to the OLSC or the Attorney-General.

In that context of media coverage and ministerial inquiries, Mr Jackson (acting DHS Secretary) had received repeated assurances from DHS officials, especially Ms Golightly, that income averaging was a longstanding practice. Despite this, Mr Jackson sought to satisfy himself that there was a proper legal basis for income averaging, by requesting legal advice about it. At the time of Mr Jackson's request, on 6 January 2017, DHS had not obtained internal or external advice about the lawfulness of income averaging as used in the Scheme (page 186).

On the basis of Mr Jackson's evidence, the Commission is satisfied that Ms Campbell was made aware of Mr Jackson's request for advice and its progress. **The Commission finds that Ms Campbell instructed DHS officers to cease the process of responding to Mr Jackson's request for advice, motivated by a concern that the unlawfulness of the Scheme might be exposed to the Ombudsman in the course of its investigation** (page 189).

On 21 January 2017, Ms Golightly sent Ms Musolino and Mr Hutson an email which in turn forwarded an email from the DHS media unit, detailing various media reporting about DHS, with a line in the email from Ms Golightly stating "not scare the horses". There is no sensible reason why Ms Golightly would not want external legal advice if she genuinely wanted a definitive legal view on that question; but instead it appears from her email that what she wanted was internal legal advice, from the Legal Division of DHS, confirming the lawfulness of income averaging. Ms Musolino provided a response. **The report states that Ms Musolino failed to acknowledge in her email was what must have been clear to her by that time; that the Legal Services Division had only managed to develop "weak" and "unconvincing" legal arguments in support of income averaging, that the legal position of DHS with respect to it was therefore uncertain and involved substantial legal risk, and that the only prudent and sensible course for it to adopt was to seek independent legal advice**.

The Commission infers that **she did not do so because she knew that DHS executives, particularly Ms Campbell and Ms Golightly, did not want to be told they should seek independent advice because of the likelihood of its confirming that income averaging was unlawful and the professional consequences that they would face in that event**. If she did give written advice pointing out the weakness and legal risk of DHS's position on averaging and recommending independent advice be sought, they would have difficulty in explaining why they did not get it (page 190).

The Commission rejects Ms Musolino's evidence that she relied on Mr Stipnieks to collate the responses to her 23 January 2017 email, and therefore did not read the Fiveash advice. Mr Stipnieks has no recollection of being asked to collate, or collating, the advices in the manner described by Ms Musolino, and Ms Musolino does not point to any other documentary evidence to support her oral evidence. Having made the request, it is likely that Ms Musolino read the email from Mr Fiveash and the attached advice. This could only have reinforced in her mind the weakness and legal risk of the DHS position on averaging, and the need for her to clearly advise DHS executives in writing to that effect. However, at no stage did she do so (page 191).

Chapter 7 – 2017, part B – Inquiries and Investigations (pages 205 – 243)

The DHS received a significant number of complaints about the Scheme, particularly in late 2016 and early 2017. The volume of Robodebt-related complaints imposed stress on DHS's complaint management systems.

The investigation by the Commonwealth Ombudsman in early 2017 into the Scheme was a significant event. The report states that this part of the report '**is the chronology of how two government departments acted to deceive the Ombudsman's office, avoid effective scrutiny of the Scheme and, in doing so, thwart one of the best opportunities that existed to bring the scheme to an end** (page 208).

This Chapter references Ms Golightly, Mr Robert Hurman, Ms McGuirk, Mr Russell de Burgh, Mr Kimber, Mr McBride, Ms Halbert, Ms Wilson, Ms Harfield, Ms Mussolino and Mr Britton.

The Commission does not accept the evidence of Ms McGuirk, Mr McBride and Ms Wilson that they were unaware that averaging was being used under the Scheme prior to January 2017.

In submissions made on behalf of Ms McGuirk, it was said that in providing her advice, she was "focussed on the calculation of a rate for a social security payment, not the raising and calculation of a debt." Her advice was said to have been "directed at a limited issue" and did not disclose "some broader understanding of how income averaging was being used to raise a debt nor the legitimacy of doing so." (page 211). The Commission does not accept these arguments.

On 9 March 2016, a DSS Payments Forum meeting was held. The Commission is satisfied that Mr McBride, Ms Wilson and Ms McGuirk attended the Forum and that they were present during Mr Britton's presentation, in which he used slides disclosing the use of averaging to determine social security entitlement under the Scheme. **The Commission does not accept that the three individuals, Ms McGuirk, Ms Wilson and Mr McBride, had no awareness or suspicion that under the Scheme averaging was being used to determine social security entitlement prior to the 15 January 2017 meeting.**

Following Mr McBride's participation in the meeting on 15 January 2017, he took no step to ensure that the behaviour of DHS and the unlawfulness of the Scheme was raised with either Mr Pratt or Mr Porter (page 213).

On 16 January 2017, the scheduled meeting occurred between officers of DSS, DHS and the Ombudsman's office. Attendees from DSS included Ms Wilson, Ms Halbert and Ms McGuirk. By the time of the 16 January 2017 meeting with the Ombudsman representatives, **all DSS officers in attendance had knowledge that the Scheme involved the use of averaging to determine social security entitlement**. Additionally, they had knowledge of the 2014 DSS legal advice that, in clear terms, said that the use of averaging in this way was unlawful.

At the 16 January 2017 meeting, **DSS failed to disclose to the Ombudsman the 2014 DSS legal advice or that there were any doubts as to the legality of the Scheme**. This was in circumstances where DSS had been made aware that the scope of the Ombudsman's investigation included, among other things, the Scheme's "adherence to relevant legislative requirements." **This was, in and of itself, misleading behaviour by Ms Wilson, Ms Halbert and Ms McGuirk**. DSS subsequently sought further advice from Ms Pulford (an author of the 2014 DSS legal advice) (page 214).

Fundamentally, **the 2017 DSS legal advice was not only inconsistent with the 2014 DSS legal advice**; **it was wrong**. Averaged ATO PAYG data did not, as Ms Pulford argued, "justify the Secretary lawfully taking action" to raise a debt. This was so regardless of whether averaging was used "as a last resort."

The Commission is satisfied that Ms McGuirk sought this advice in circumstances where she was aware of the 2014 DSS legal advice and its conclusion that, in effect, the use of income averaging as the sole basis to determine social security entitlement was unlawful (whether it was done as a "last resort" or otherwise).

Submissions made on behalf of Ms McGuirk that she was genuinely uncertain as to the legal position expressed in the 2014 DSS legal advice are not accepted. The Commission makes no finding that Ms McGuirk, as it was framed in submissions made by her solicitors, "dictated to Ms Pulford what the advice needed to say." **However, in the Commission's view, Ms McGuirk's request for advice from Ms Pulford was not motivated by any genuine interest to resolve the legal question framed in her 18 January 2017 instructions. It is more likely than not that the impetus for DSS's seeking the further advice from Ms Pulford was the Ombudsman's investigation and a perceived need to justify the continuation of the Scheme** (page 215).

Given Ms Pulford's experience in social security law, it should have been, and most likely was, obvious to her that the 2017 DSS legal advice was incorrect. She was aware that the distinction drawn by Ms McGuirk (and others within DSS) between averaging as "a last resort" and averaging in other circumstances was entirely artificial and had no bearing on the question of whether the practice was lawful. The Commission is satisfied that Ms Pulford's advice was influenced by pressure placed upon her by Ms McGuirk.

In an email on 19 February 2017, Louise MacLeod (acting senior assistant Ombudsman) sought information from DSS about the legal basis for the use of averaging to determine social security entitlement. Mr Hurman sought advice from MS Pulford as to whether the 2017 DSS legal advice should be provided. Ms Pulford replied the 2014 DSS legal advice was also in scope of the Ombudsman's request. Mr Hurman asked Ms Pulford to provide an explanation that could be provided to the Ombudsman as to why the 2014 and 2017 DSS legal advices "appear different but don't contradict each other." **The Commission finds that contrary to the representations made by Ms Pulford, the 2014 and 2017 DSS legal advices were inconsistent.**

On 23 February 2017, Mr Hurman emailed Mr De Burgh a draft response to the Ombudsman. The draft response referred to, and attached, both the 2014 DSS legal advice and the 2017 DSS legal advice (page 216).

At 3:35 pm on 23 February 2017 an email was sent by Ms Halbert's executive assistant to Ms Wilson enclosing a version of the 2017 DSS legal advice. In evidence, both Mr Hurman and Mr de Burgh said they could not recall why the 2014 DSS advice was not initially provided to the Ombudsman. In evidence, Ms Wilson could not recall who decided to withhold the 2014 DSS legal advice from the Ombudsman. It was possible, Ms Wilson said, that either she or Ms Halbert made the decision. **The Commission is satisfied that it was Ms Wilson who, on 23 February 2017, decided to withhold the 2014 DSS legal advice from the Ombudsman** (page 217).

DSS's withholding of the 2014 DSS legal advice from the Ombudsman constituted a failure to comply with the Ombudsman's 19 February 2017 request for information (page 217).

In the Commission's view, Ms Wilson's conduct in instructing that the 2014 DSS legal advice be withheld from the Ombudsman was not motivated by doubt as to whether the opinion fell within the scope of the Ombudsman's request for information. Rather, it was motivated by a concern that the Ombudsman might be made aware that averaging was being used to determine social security entitlement under the Scheme Royal Commission into the Robodebt Scheme in circumstances where DSS had obtained advice that the practice was unlawful. Ms Wilson's behaviour in this regard was an attempt to conceal critical information from the Ombudsman (page 218).

By the time of DSS's response to the Ombudsman's 19 February 2019 request for information, DHS had independently provided the Ombudsman with an Executive Minute signed by the Hon Scott Morrison MP on 20 February 2015. On 24 February 2017, Ms MacLeod sent a further information request to DSS referring to the Executive Minute and the notion of legislative change. DSS emailed a response on 1 March 2017 with an explanation (page 219).

Attached to the 1 March 2017 correspondence was a document that combined the 2014 and 2017 DSS legal advices. **The DSS explanation was dishonest**. The assertion to the Ombudsman that, in developing the measure, "DHS took DSS's concerns into account and made adjustments to the process" was **plainly false** (page 219).

DSS attempted to and did conceal critical information from the Ombudsman and represented that the Scheme was lawful (page 220). **The Commission is satisfied that the behaviour of Mr de Burgh, Ms Wilson and Ms Halbert in making the false representations and concealing critical information was designed to, and did, mislead the Ombudsman in the exercise of his functions** (page 221).

At 5:16 pm on 1 March 2017 Mr de Burgh sent a copy of the DSS response to the Ombudsman to Mr Stipnieks of DHS, copied to Ms Halbert and Mr Hurman, and said "Thanks for the conversation earlier today." Mr Stipnieks replied and copied in Ms Musolino and Michael Robinson (National Manager, Ombudsman and Information Release Branch, DHS). Ms Musolino must also have suspected that the 2017 legal advice referred to in Mr De Burgh's email was sought and obtained by those involved in the development and implementation of the Scheme to gain legal cover as a result of the adverse media publicity about the Scheme and the Ombudsman inquiry (page 221).

As chief counsel of DHS, Ms Musolino was responsible for the accuracy and completeness of information provided to the Ombudsman on matters of a legal nature. The Ombudsman requested legal advices about income averaging for the 2017 investigation into the Scheme by his office. Ms Musolino was aware that the Ombudsman had done so. Ms Carmody's draft advice and the Fiveash advice were within the scope of the Ombudsman's request, as Ms Musolino knew. However, she took no steps to ensure that those advices were produced to the Ombudsman.

On 10 March 2017, Ms MacLeod sent a copy of the draft report of the Ombudsman to Mr Pratt with a letter inviting comments from DSS by 27 March 2017. DSS officers prepared various drafts of a response to the Ombudsman on behalf of Mr Pratt. (page 222). The letter became an appendix to the final report, "Centrelink's automated debt raising and recovery system", which was published in April 2017. Mr Pratt said he did not take any steps to satisfy himself that the Scheme was "operating in line with legislative requirements."

It can be readily accepted that as secretary of DSS Mr Pratt was entitled to rely on the expertise of DSS staff in developing draft correspondence for him to sign. However, that does not absolve Mr Pratt of any responsibility to make inquiry before making a public, positive assertion about the lawfulness of an entire Scheme. His Department held legal advice about the Scheme which demonstrated it was unlawful. Mr Pratt was not aware of that advice, but he did not take any steps to inquire about that prior to asserting the legality of the Scheme. He failed to make inquiries to satisfy himself that the representation made with respect to the legality of the Scheme in the letter he signed was correct.

The effect of Mr Pratt's letter to the Ombudsman was significant. The Ombudsman placed substantial weight on Mr Pratt's assurance that DSS was satisfied that the Scheme was operating in line with legislative requirements.192 Both DHS and DSS continued to cite the Ombudsman's report, including Mr Pratt's statement as to the Scheme's meeting legislative requirements, to defend the Scheme (page 223).

The report states that while DSS was engaged in conduct designed to avoid providing the Ombudsman with the 2014 DSS legal advice, **DHS was also avoiding giving responses to inconvenient requests for information from the Ombudsman and taking an approach designed to obtain validation of the DHS narrative about the Scheme** (page 224).

The report states that despite being aware that the Ombudsman's report did not provide an answer to the concerns raise relating to the fundamental features of the Scheme, **Mr Tudge took advantage of the language used in the report to deflect criticism of the Scheme and in doing so avoided engaging with the substance of those concerns** (page 226).

Other inquires: Two further inquiries indicative of heightened scrutiny of the Scheme took place in late 2016 and early 2017: a report conducted by the Australian National Audit Office and an inquiry by a Senate Committee. Parliamentary privilege limits the uses to which evidence of those matters may be put (page 227).

External consultants: On 31 January 2017, Ms Campbell contacted Mr Terry Weber, Partner at PricewaterhouseCoopers (PwC). The Commission finds that, throughout PwC's engagement with DHS, from February 2017 until the first week of June 2017, PwC employees were of the understanding that the report that they prepared over the course of the engagement was the deliverable component of the engagement described as a "report."

The Commission concludes that **Ms Campbell made the decision that a report that had been prepared by PWC should not be finalised and delivered to DHS. The rational inference is that although the report was contracted for and all but finalised, Ms Campbell formed the view that its detail as to the deficiencies of the Scheme was damaging and that it would be better for the department's reputation, and her own, if it were not produced** (page 237).

Administrative Appeal Tribunal (AAT) Cases: The report references that there were a number of decisions of the AAT in 2016 and 2017 that set aside DHS decisions involving income averaging. It refers to the decision of 8 March 2017 as a significant decision relevant to Robodebts more generally. Relevantly, the 8 March 2017 decision concluded that income averaging was unlawful because it provided an insufficient evidentiary basis for the calculation. There was no appeal from the 8 March 2017 decision. As Elizabeth Bundy (National Manager of Appeals) accepted, so much is an admission of the correctness of the decision.

It may be inferred that it was obvious to Ms Bundy that the 8 March 2017 AAT decision and the others identified in the AAT OCI Case Summaries document were significant. One might expect that, consistently with her role as National Manager of the Appeals Branch, she would have read the 8 March 2017 decision and taken steps to understand its implications, including, if necessary, obtaining legal advice about whether it had significance for the lawfulness of debt decisions made under the Scheme. Ms Bundy did not do those things. The Commission regards this as another instance of DHS officers failing to critically reflect on serious challenges to the fundamental underpinnings of the Scheme. **This was a function of the culture within DHS which did not allow for those officers to undertake any such reflection (240).**

Ms Bundy provided Ms Musolino with the AAT OCI Case Summaries on 19 April 2017 and an update on 18 May 2017. Accordingly, the Commission finds that Ms Musolino became aware of the 8 March 2017 decision by no later than 18 May 2017 when she received the further updated version of the AAT OCI Case Summaries document containing reference to it, which stated that there were no grounds for appeal of that decision.

It was Ms Musolino's responsibility to ensure that systems were put in place that would enable monitoring by the Legal Services Division of legal issues arising from AAT decisions so that DHS and DSS were properly advised about those issues. **Ms Musolino accepts that she failed to do so** (page 240).

2017 AIAL conference: At the AIAL conference, on 20 July 2017, Peter Hanks KC presented a paper about the Scheme. At DHS, Mr Stipnieks provided Ms Musolino with a summary of what Mr Hanks said in his presentation in a series of emails sent in real time during the delivery of the paper at the conference. Ms

Musolino provided Ms Campbell and Mr Hutson a summary of what Mr Hanks had said, based on Mr Maris Stipnieks's (DHS) summary, by email at 8:41 pm that evening.

In submissions made by her solicitors, it was said that Ms Campbell had not actively chosen not to take further action in light of Mr Hanks' criticisms; no such proposal was raised with her by the lawyers responsible for doing so. The Commission does not accept these submissions. **It is the apparent lack of interest by Ms Campbell in the arguments expressed by Mr Hanks that is of concern** (page 242).

Ms Musolino's **duty as general counsel of DHS was to ensure that appropriate and documented legal advice was provided to DHS executives, including Ms Campbell and Ms Golightly. That advice would have been that the arguments articulated by Mr Hanks raised serious questions as to the legality of the Scheme and that external legal advice ought to be sought by DHS. The only rational explanation for Ms Musolino's failure to give that advice is that she knew DHS executives, including Ms Campbell, did not want advice of that nature**.

Mr Porter gave evidence that in his view the matter "ought to have been brought to at least Mr Tudge's Secretary [at the time of the presentation] or even to [his own] attention." Mr Tudge's evidence was that consideration ought to have been given to raising the matter with him. It seems that both ministers accept that the matter was not properly dealt with. That is a symptom of DHS's lack of engagement with the arguments raised and DSS's apparent ignorance that they had even been made (page 242).

Transition to secretary Leon at DHS: Ms Campbell was the secretary of DHS from March 2011 to 17 September 2017 and the secretary of DSS from 18 September 2017 to July 2021. Renee Leon was appointed secretary in September 2017 and commenced in that role in October 2018. Ms Leon's appointment to the role as secretary of DHS represented the end of Ms Campbell's tenure in that role. **Ms Campbell had been responsible for a department that had established, implemented and maintained an unlawful program. When exposed to information that brought to light the illegality of income averaging, she did nothing of substance. When presented with opportunities to obtain advice on the lawfulness of that practice, she failed to act** (page 243).

Chapter 8 – 2018 – the Robodebt Scheme rolls [sic] (pages 257 – 279).

This Chapter outlines that Michael Keenan became Minister for Human Services on 21 December 2017. He was provided with the Executive Summary of the 2017 Investigation Report of the Commonwealth Ombudsman in a briefing pack for January meetings with the secretary and deputy secretaries of his department. In evidence, Mr Keenan confirmed that he "would have read the Ombudsman's report;" indeed, he said that he had placed reliance on it. If he had considered the Ombudsman's report closely, Mr Keenan would have seen that it did not at all say what was attributed to it in the Incoming Minister Brief (page 260). The report notes that ACOSS raised concerns with Mr Keenan (page 261).

Introduction of labour hire workers: During the Scheme, DHS increased its reliance on employing short-term contract ("non-ongoing") employees and in 2018 began using the services of labour hire companies to fill staffing shortfalls. Renée Leon, Secretary of DHS from September 2017, explained that the government was forced to abandon the idea that almost all the reviews in the Robodebt reviews would take place online, and had instead to put in place capacity for recipients to call and speak to a staff member. At the same time, the government did not want to increase APS numbers for this role, so the work of departmental staff was to be undertaken by labour hire, referred to in some documentation as the "C1000". Ms Leon, gave evidence of the difficulties associated with the introduction of labour hire staff (page 262).

Another 2018 development in the Scheme was the expansion of the scope of interest charges on debts raised under the Scheme. It was something which had been decided on before Mr Keenan commenced as

Minister for Human Services. In the 2015-16 MYEFO, the Government had decided to apply interest charges (which had previously applied to some recipients of student payments) to social welfare recipients to encourage them to pay their debts or enter repayment arrangements. The report states it **does not appear that the minister, or anyone in his department, turned their mind to whether the Commonwealth was doing the right thing (or even the legal thing) by demanding payment of the debts in the first place** (page 264).

On 29 June 2018, Mr Keenan approved a proposal to enable the imposition of departure prohibition orders on individuals with debts raised under the Scheme, saying, in giving his approval, "We can go harder with this measure." (page 266).

In October 2018, the Ombudsman commenced an implementation investigation into the extent to which the recommendations contained in the 2017 Ombudsman's report had been implemented by DHS, and the extent to which the intended outcomes had been achieved. As part of that investigation, the Ombudsman's office sought a detailed update from the Department about the application of the 10% penalty fee.

Questions about legality – the Professor Carney's decision: Throughout 2018, Professor Terry Carney continued in different ways to oblige DHS to consider (and dodge) the question of legality. Ms Musolino sent Ms Leon an email about the case on 26 February 2018, noting that it contained comments critical of the OCI process. Ms Leon responded by email dated 1 March 2018, asking "Did we make an error?" and requested a copy of the decision. Ms Musolino answered Ms Leon by email dated 6 March 2018, attaching a copy of Professor Carney's decision. Her opinion was that DHS had not made any error; it had based its decision on the information that it had at the particular time. This was at a time when Ms Musolino was aware that DHS' own analysis in January 2017 had not identified any convincing argument in favour of income averaging and knew that DSS had conflicting advices about it in the form of the 2014 DSS legal advice and the 2017 DSS legal advice. Ms Leon relied upon Ms Musolino's opinion. This was early in her tenure as Secretary; it was reasonable to rely on her chief counsel's advice about the implications of AAT decisions (page 268).

On 4 April 2018, an article by Professor Carney, The New Digital Future for Welfare: Debts Without Legal Proofs or Moral Authority, was published (page 269).

At about the same time, during one of their regular monthly meetings, Ms Leon said, she sought reassurance from Ms Musolino, asking more than once whether "… [we] were confident that the program was lawful?" to which Ms Musolino replied in the affirmative. On Ms Leon's account, when pressed for a basis for that confidence, Ms Musolino informed her "… that it was a long-standing principle of administrative law that a decision-maker is entitled to rely on the best available evidence at the time." People were given the opportunity to update their information.

The expression "best evidence available," as has already been pointed out, has no particular legal status and illuminates nothing; what is necessary is the best evidence which can actually support the decision to be made. **As an experienced lawyer, Ms Musolino should have known better**.

Unlike Ms Campbell and Ms Golightly, Ms Leon had not been involved in the development and implementation of the Scheme. As a relatively new DHS secretary she needed, and may have welcomed, frank and candid advice about the weakness of the legal position regarding income averaging and the need to obtain independent legal advice. Ms Musolino, however, was in a difficult position. **In 2017, she had represented to Sara Samios that there was no "significant legal issue" arising from the Robodebt Scheme; she had not put in place systems to ensure that legal issues arising from AAT decisions were monitored; and she had not advised DHS executives of the weakness of the DHS legal position and of the need to obtain independent legal advice. Appropriate advice to Ms Leon now would give rise to questions as to why it was not provided in 2017, with the prospect of criticism and possible discipline by her employer.**

Instead, Ms Musolino emphatically represented to Ms Leon that the DHS legal position in respect of income averaging was strong, when she had no reasonable basis to do so (page 270).

The Carney article also caught the attention of DSS employees, one of them Kristin Lumley (Assistant Director, Payment Integrity, Payment Conditionality, Design and Policy Branch, DSS). Ms Lumley had held concerns about the lawfulness of income averaging in the Robodebt Scheme since early 2017, and those concerns had strengthened in April 2018 when she became aware of Professor Carney's article. She had sought approval to seek external legal advice, which was declined.

However, by May 2018 Allyson Essex (Branch Manager, DSS) also had concerns that the process of income averaging as it was used in the Robodebt Scheme might not be lawful. Somewhere around 9 July 2018, while she was Acting Group Manager of DSS's Welfare and Housing Group, Ms Essex instructed that legal advice be obtained on the lawfulness of income averaging.

Ms Lumley gave the necessary instructions to two DSS lawyers, Anne Pulford and Anna Fredericks, on 11 July 2018. Clayton Utz provided its advice, in draft, by email to Ms Fredericks on 14 August 2018. According to Ms Essex, she discussed the Clayton Utz advice with Nathan Williamson (DSS) during one of their regular meetings, within a week of the meeting with her own team (page 272). Mr Williamson gave different evidence, denying that he had made the statements Ms Essex attributed to him. He did not become aware of the Clayton Utz advice until November 2019 (page 273).

On 11 September 2018, prompted by Ms Lumley, James Kemp, who was then Acting Branch Manager, raised the Clayton Utz advice with Ms Essex. Ms Essex agreed that a ministerial submission should be prepared outlining the advice and the issues that it raised (page 273). Ms Essex in turn handed over the Group Manager role to Brenton Philp, and claimed in evidence that she raised the Clayton Utz advice, and the fact that a ministerial submission was to be prepared, with him during the handover. Mr Philp said he did not recall ever being informed of, discussing, or reading the Clayton Utz advice, which he said he would have recalled, given its significance to the Robodebt Scheme. He pointed to an email Ms Essex sent him on 28 November 2018 with the subject matter "robo debt – context," in which she recounted the Government's enthusiasm for ensuring the integrity of the welfare system and described enhancements to the Scheme, without a word of the Clayton Utz advice.

At some time, possibly in November 2018, Ms Lumley provided Ms Essex with a hard copy folder containing a chronology she had prepared, listing various legal advices related to Robodebt, and all the advices, including the Clayton Utz advice. On 11 December 2018, Ms Lumley became more concerned about the fate of the Clayton Utz advice she emailed Philip Moufarrige her Director who forwarded her email to Ms Essex on 11 December 2018.

The evidence before the Commission suggests that by the time of the 11 December email, nothing was in fact being done with the Clayton Utz advice (page 274).

The Commission accepts the evidence of Mr Philp and Mr Williamson that they were not told about the Clayton Utz advice. **There is a pattern of inconsistency and evasiveness which emerges from Ms Essex's evidence. She had done nothing to have the advice finalised and briefed to those who most needed to know about it: the Minister for Social Services, Mr Fletcher, the secretary, Ms Campbell, and the deputy secretary, Mr Williamson**. It may be that, having been responsible for procuring an advice she must have realised would be highly problematic for Ms Campbell, Ms Essex dithered about what to do with it for months until she left the Department and it was no longer her problem.

The Clayton Utz advice was never finalised, despite the firm's invoice being paid by DSS. **Consistent with what appears to be the usual practice within the Australian Public Service, the DSS legal unit left it to the**

officers within DSS who had requested that the advice be obtained to decide what to do with it. Ultimately, that was nothing. **More than a year after DSS received the Clayton Utz advice in draft, the Scheme was continuing and debts were still being raised unlawfully against social security recipients on a massive scale** (page 275).

The Check and Update Past Income (CUPI) program: Compliance reviews within the system, which had come to be known as the Check and Update Past Income platform, commenced on 2 October 2018.Under the EIC, the percentage of recipients that were issued with an initial letter, but did not have a debt raised against them, was approximately 48 per cent. Over the EIC and CUPI iterations of the program, across the 2017/18, 2018/19 and 2019/20 financial years, the percentage rate at which averaging was used in the calculation of debts ranged between approximately 52 per cent to 66 per cent (page 276).

Mr Keenan's performance as minister: During his tenure as Minister for Human Services, Mr Keenan became aware that, under the Scheme, averaging was being used to determine social security entitlement, and he knew it could produce inaccurate debts. DHS did not properly brief him, however, on the controversies associated with the lawfulness of averaging. He was told, instead, that the legal basis for the Scheme was "sound" and that the Ombudsman had endorsed the capacity of the Scheme to accurately determine debts (page 278). Given that there was reason to question the Scheme's legality, the implications of illegality were dire, and further hardship was being inflicted by his department on those affected, Mr Keenan failed in his responsibility as minister to satisfy himself that his department was acting lawfully (page 279).

Chapter 9 – 2019 – The end of Robodebt (pages 285 – 317).

The Robodebt Scheme remained just as troubled in 2019. A number of events demonstrate that although some years had passed since the Scheme's inception, it continued to be plagued by problems (page 287). On 4 February 2019, Ms Masterton filed an originating application for judicial review in the Federal Court. Her application challenged a decision by the secretary of DHS to raise and recover from her an alleged debt resulting from overpayment of social security benefit.

Shortly after the filing of Ms Masterton's application, on 9 February 2019, DHS conducted a recalculation of Ms Masterton's debt

On 22 February 2019, Mr Manthorpe sent Ms Leon the Draft Implementation Report, which concerned the implementation of recommendations in the Ombudsman's April 2017 Report. Mr Manthorpe gave Ms Leon an "opportunity to comment" on the Draft Implementation Report including on the legality. Ms Leon met Mr Manthorpe on 1 March 201921 to discuss the matters raised in his 21 February 2019 correspondence and DHS' attitude in respect of the Draft Implementation Report. Ms Leon's evidence was that she expressed views to Mr Manthorpe consistent with the recommendation in the brief she had been given – that is, that Part 4 should be removed from the Draft Implementation Report (page 290).

There is evidence that, in a meeting on 7 March 2019, Ms Leon agreed to the suggestion from Mr Ffrench, that comprehensive advice from AGS in relation to prospects in the Masterton litigation should be soughtOn 8 March 2019, Ms Leon sent email correspondence, prepared by Mr Ffrench and others, to Mr Manthorpe. In it, Ms Leon made comments about the Draft Implementation Report and expressed concern about the inclusion of Part 4 including that "our position is and remains that the legal position in relation to the program is not uncertain." Those representations were significant. Firstly, Ms Leon was placing pressure on Mr Manthorpe to refrain from commenting on the legality of the Scheme on the basis that doing so had the capacity to influence or prejudice the Court's decision-making process. Secondly, she had represented to Mr Manthorpe that DHS was satisfied there was no doubt or uncertainty about the legal position of the Scheme: that is, that it was lawful.

The **pressure that Ms Leon had placed upon the Ombudsman had the desired effect**. By email to Ms Leon dated 13 March 2019, Mr Manthorpe indicated that he had decided to remove the "section on the 'legality' issue" from the report (page 291).

In the Commission's view, Ms Leon's request to Mr Manthorpe to remove comments concerning legality from the Draft Implementation Report was not borne of any genuine concern to preserve the integrity of the Court's decision-making processes in the Masterton litigation. **Rather, it was designed to avoid public and political scrutiny of the Scheme**. Ms Leon's representations to the Ombudsman about the possible effect of those comments on the Masterton litigation were misleading and made without any proper basis (page 292).

In the Commission's view, Ms Leon represented to Mr Manthorpe that the lawfulness of the Scheme was "not uncertain" in circumstances where:

- there was no legal or factual basis for that position
- Ms Leon had been in receipt of information prior to her representations to Mr Manthorpe that would have been sufficient to raise doubts in the mind of any reasonable person that the lawfulness of the Scheme was certain, and
- Ms Leon had not made proper inquiries to satisfy herself that there was sufficient basis to make that assertion to Mr Manthorpe.

The representation made by Ms Leon to Mr Manthorpe in March 2019 that the lawfulness of the Scheme was "not uncertain" was misleading.

On 27 March 2019, AGS provided the Draft AGS advice. It was sent to Ms Leon on the same date (page 294).

In accordance with the recommendation in the Draft AGS Advice, DHS set about briefing the Solicitor-General to provide advice on the lawfulness of averaging to determine social security entitlement.

On 29 March 2019, Mr Manthorpe provided Ms Leon with an embargoed version of the Implementation Report concerning "Centrelink's Automated Debt Raising and Recovery System" ("Embargoed Implementation Report"). What had appeared as Part 4 to the Draft Implementation Report had vanished from the final report. Ms Leon failed to advise Mr Manthorpe after she received the 27 March 2019 advice from AGS on 29 March 2019 that her description of the position in relation to the legality of the Scheme was wrong.

In the Commission's view, Ms Leon's failure to advise Mr Manthorpe that her previous representation to him in relation to the legality of the Scheme had no proper basis was, in its effect, misleading, and denied him any opportunity to reconsider his findings. It was not sufficient for Ms Leon to rely upon other DHS officers to bring to her attention the need to correct the record (page 295).

The Commonwealth's approach to the Masterton case revealed a good deal about its motives and designs. The fundamental question in the proceeding was whether averaging could be used to determine social security entitlement. Through the Draft AGS Advice, DHS had been given a strong indication of what the answer to that question was. Armed with this knowledge, it was for DHS to decide how it wished to proceed. To fall on its sword and concede was one option. To allow the Court to decide the issue upon a contested hearing was another. Both scenarios would likely have exposed the unlawfulness of the Scheme to the world, vindicating those who had been critical of the program since its inception.

But DHS's strategy not only to avoid a judicial determination of the fundamental question, but also to ensure that the Commonwealth was not forced to show its hand.

The Commission does not ascribe any bad faith to Ms Leon in the making of this decision. She was acting upon advice from DHS officers. **But in a broader sense, the Commonwealth's behaviour in using its powers in an attempt to frustrate Ms Masterton's objective was disingenuous. It was consistent with the Commonwealth's continuing desperation to paper over the fissures in the Scheme's foundations; fissures that were becoming more and more difficult to conceal** (page 297).

On 6 June 2019, Deanna Amato filed an originating application for judicial review in the Federal Court. As in the Masterton case, the Commonwealth took steps in the Amato case to avoid a determination on the lawfulness of averaging (page 298).

On 11 June 2019, the Hon Stuart Robert MP, Minister for Human Services, was given a brief on the Masterton case.

Mr Robert was not, at any point, provided with a copy of the Draft AGS Advice. In evidence, Mr Robert emphasised that it would be extraordinary if an advice of such significance as the Draft AGS Advice were not presented to him as minister as a part of a written brief. The Commission's view is that, remarkable though the failure to provide the Draft AGS Advice in written form to Mr Robert was, he was nonetheless informed of its existence and effect on 4 July 2019 (page 300).

Mr Robert explained his interview statements as being part of his duty to defend the government's programs, which Cabinet solidarity required ministers to do whether they agreed with the programs or not (page 301). It **can be accepted that the principles of Cabinet solidarity required Mr Robert to publicly support Cabinet decisions, whether he agreed with them or not. But Mr Robert was not expounding any legal position, and he was going well beyond supporting government policy. He was making statements of fact as to the accuracy of debts, citing statistics which he knew could not be right. Nothing compels ministers to knowingly make false statements, or statements which they have good reason to suspect are untrue, in the course of publicly supporting any decision or program** (302).

On 27 March 2019, Ms Leon had been provided with the Draft AGS Advice, which while expressing the view that Ms Masterton had good prospects of succeeding her claim based on averaging, recommended that, before any decision about the implications for and the steps to be taken in respect of the Scheme as a whole, senior counsel's advice, possibly from the Solicitor-General, be obtained. There was a five-month delay in preparing and delivering the brief (page 303).

Given her position as secretary of DHS and then Services Australia, it was Ms Leon's responsibility to ensure that the Solicitor-General was briefed as a matter of urgency (page 303).

Services Australia received the advice of the Solicitor-General (the Solicitor-General's Opinion, or the Opinion) on 24 September 2019. Ms Musolino gave Ms Leon a copy of the advice the same day. Given the significance of the Solicitor-General's Opinion to the Scheme and to Government more broadly, it was imperative that the Opinion be acted upon as soon as practicable. Instead, there was substantial delay before Services Australia acted on the Solicitor-General's Opinion in any meaningful way. Mr Robert was not made aware of the Opinion until 29 October 2019 and DSS received it on 7 November 2019 (page 305).

On receipt of the Solicitor-General's Opinion, according to Ms Leon, Mr Robert responded: "Legal advice is just advice." Mr Robert said he did not recall any conversation with Ms Leon on 29 October 2019. The evidence points to Mr Robert's recollection being flawed on this point. Nevertheless, the Commission does not consider that the evidence justifies attaching any significance to it (page 307).

What is more important is Ms Leon's delay in telling Mr Robert and Ms Campbell about the Solicitor-General's Opinion. Ms Campbell was not told it had been received until 7 November 2019. Having received the Solicitor-General's Opinion, Services Australia was obliged to do two things as a matter of urgency. The

first was to provide Mr Robert with a copy of it. He was the minister responsible for Services Australia and had to deal with the significant implications that the advice posed for Services Australia's activities. The second was to provide the Solicitor-General's Opinion to DSS. It was the owner of the legislation under which the Scheme had been established. Services Australia's obligation to provide DSS with the Solicitor-General's Opinion was codified by paragraph 10.4 of the *Legal Services Directions 2017* (page 208).

In relation to the delay of informing DSS and Mr Robert, the Commission stated that there is no suggestion that Ms Leon was acting in bad faith at any time. It is possible that her hesitance in passing on the Opinion to the minister and her colleague at DSS **was, at least in part, symptomatic of a culture at Services Australia and DSS that discouraged the conveying of adverse information; a culture that existed long before Ms Leon's tenure as Secretary** (page 311).

Mr Robert's diary note for 8 November 2019 records that on that day, Mr Robert met with Ms Leon, formally instructed her to cease the use of PAYG data "for the sole or partial use of raising welfare debts" and informed her that he would be noting the instruction and putting it in writing.

Ms Leon gave a different account of the 8 November meeting. According to her, she said to Mr Robert words to the effect, "[T]he best course is to apologise to our customers, to admit the error, and to inform customers and staff of the steps we will take to correct the error." She alleged that Mr Robert responded, "We absolutely will not be doing that, we will double down" and expressed an intention to "…find other means or other sources of data that could enable decisions to continue to be taken to identify debts."

Before the ERC meeting on 12 November 2019, Mr Robert, Ms Leon, Dr Baxter, Mr Ffrench and others met in the Cabinet anteroom. The evidence of all those present, including Mr Robert, was that he asked the Attorney- General whether he agreed with the Solicitor-General's Opinion and the latter answered that he did (page 312).

The expression "double down" (which the Commission finds probably was used) should not be taken as Mr Robert's or the Government's rejection of the Solicitor-General's Opinion in respect of income averaging. It is likely to have been used in the sense that the Government would find other means of debt recovery and had no intention of admitting error, let alone apologising (page 315).

On 11 October 2019, DHS obtained advice from Counsel in relation to the Solicitor-General's Opinion and its impact on the Masterton proceeding. That advice said:

- that there was no "material factual difference between the circumstances applicable to Ms Amato's case and those upon which the opinions in the SG Advice were expressed," and
- that the Commonwealth did not have "a properly arguable defence to Ms Amato's claim" and that "every endeavour should be made to resolve the matter." (page 316).

The cessation of averaging in November 2019 represented the beginning of the end for the Scheme. On 19 November 2019, the day on which Mr Robert announced that debts would no longer be raised solely on the basis of income averaging, a class action, *Prygodicz v Commonwealth* of Australia, was commenced, seeking various forms of relief in respect of debts raised unlawfully under the Scheme. The Scheme was closed altogether on 30 June 2020. The Government's decision to halt the Scheme signalled the end of a "shameful chapter in the administration of the Commonwealth social security system" and "a massive failure of public administration (page 317).

Section 3: Effects of the Scheme

Chapter 10 – Effects of Robodebt on individuals (page 325 – page 342)

This Chapter outlines the effect of the Scheme on individuals including:

- the barriers to engagement with the Scheme
- the general stigma associated with the receipt of social security payments
- the effect of unfair accusations
- the financial effects of the Scheme
- the effect of withholdings, garnishees and departure prohibition orders
- the Scheme's emotional and psychological effects, including distress, trauma, anxiety, suicidal ideation and suicide, and
- the loss of faith in government which the Scheme generated.

It states that at the heart of the "**massive failure of public administration**" which was the Robodebt Scheme were the social security recipients who were targeted by what the former Minister for Social Services, the Hon Alan Tudge described as the "new tool… making a major contribution to the Government's fraud and non-compliance savings goals," a "great example of the Government using technology to strengthen our compliance activities with faster and more effective review systems." (page 326).

Social security recipients include some highly vulnerable groups: people who need access to the system at times of crisis because they are experiencing disadvantage, which might be due to physical or mental ill-health, financial distress, homelessness, family and domestic violence, or other forms of trauma (page 326).

While DHS made some attempt to exclude or deal differently with people classified as "vulnerable" in the operation of the Scheme, using vulnerability indicators, it was **a hopelessly inadequate means of protecting that cohort** (page 326). Government agencies failed to consider the additional challenges for recipients who lived rurally or remotely when designing and implementing the Scheme.

In the context of the Scheme, stigma was exacerbated by the political narrative. Ministers did not distinguish between fraud cases and inadvertent overpayments which were inevitable in a system where reporting was complicated by the fact that most recipients' income was irregular and employment periods did not align with social security reporting periods (page 330).

Many recipients experienced severe and long-lasting effects of being wrongly accused of owing a debt under the Scheme. They described feeling vilified and worn-down. That distress compounded the stigma generally experienced by recipients of social welfare (page 331).

Some witnesses reported that the stress of a debt demand actually led them to consider suicide. (page 337).

The Commission heard evidence from the mothers of two young men caught up in the Scheme. They gave evidence on their sons' behalf, **because their boys had died by suicide**. The Commission is also aware of another tragic death which appears to have resulted from a discrepancy letter issued under the Scheme in 2017; it is discussed in the chapter – 2017, part A: A Crescendo of Criticism (page 337).

The Commission is confident that these were not the only tragedies of the kind. Services Australia could not provide figures for the numbers of people who committed suicide as a result of the Scheme. To be fair, it is difficult to see how such information could be reliably gathered. In any case, it does little for the families of those who have died to speak of their loss in terms of numbers. What is certain is that the Scheme was responsible for heartbreak and harm to family members of those who took their own lives because of the despair the Scheme caused them. It extends from those recipients who felt that their only option was to take their own life, to their family members who must live without them.

DHS had a responsibility to deal sensitively with those people relying on its services, and to provide support rather than inflicting distress (page 337).

The harmful effects of the Scheme were not confined to the raising of inaccurate or non-existent debts**. The blunt instrument of automation used to identify and communicate the possibility of overpayment was inept at determining vulnerability. Empathy could not be programmed into the Scheme**. (page 340).

Chapter 11 – the concept of vulnerability (page 347 – page 356)

This chapter considers **the approach of DHS in identifying and dealing with vulnerability in the context of the Scheme** and the **effect that this had on current and former income support recipients**. It will also address changes that should be made to Services Australia's practices in order to ensure that vulnerabilities are properly identified and managed (page 349).

The evidence before the Commission suggested that there were **deficiencies in the identification of vulnerable recipients** and the assistance offered to those recipients who were identified as having vulnerabilities (page 352).

Although DHS used vulnerability indicators as a method of identifying recipients who might require additional support under the Scheme, not all vulnerability indicators were considered to be relevant for this purpose. For instance, it was decided within DHS that vulnerability indicators for released prisoners and people with significant caring responsibilities were not relevant in the context of compliance reviews (page 353).

Although a recipient's record displayed historical vulnerability indicators, the evidence suggests that at least during some periods of the Scheme's operation, recipients were only offered a staff-assisted review where they had a current vulnerability indicator (page 354).

During the OCI phase of the Scheme, vulnerable recipients who were offered a staff-assisted review received an initial letter which was different from the standard version issued under the Scheme (page 354).

It is an unfortunate reality that Services Australia must be selective in providing additional assistance to only those recipients who are most in need of it. That makes it all the more important to give careful consideration to determining who will require that additional assistance and what it must entail so that it provides real, practical support (page 355).

Chapter 12 – the role of advocacy groups and legal services (page 361 – 378).

Once the Scheme was operational, and problems with the Scheme were becoming increasingly apparent, advocacy groups began to direct feedback and complaints about the Scheme to Ministers and senior officers at DHS. Those complaints fell on deaf ears (page 363)

The Commission heard from a number of advocacy organisations and groups about how they had tried to be heard and were ignored or dismissed. They included:

- Australian Council of Social Service (ACOSS)
- #NotMyDebt
- Economic Justice Australia (EJA)
- Council of Single Mothers and their Children (CSMC)
- Victoria Legal Aid (VLA).

The lack of consultation with relevant advocacy groups, before and during the Scheme, exemplifies one of many instances in which a possible safeguard against the catastrophic results of the Scheme was rendered ineffective. It evidently suited the government's agenda in pursuing the Scheme to not engage with advocacy groups who might – and did – raise the fundamental failings of the Scheme (page 373).

Current state of engagement with advocacy bodies - Accounts from DSS and Services AU:

The Commission received a statement from Raymond Griggs AO CSC, the current secretary of DSS. According to Mr Griggs, DSS regularly engages with key stakeholders, including ACOSS, EJA and the Federation of Ethnic Communities' Councils of Australia (FECCA).

The Commission also received a statement from the Chief Operating Officer of Services Australia, Rebecca Skinner. Ms Skinner assured the Commission that: Services Australia has continued to mature its approach to the research and design of our services, embedding the customer voice in the earliest stages of our decision making, working in partnership with our Policy partners and listening to feedback to improve our services (page 374).

Though the Commission acknowledges that regular engagement between Services Australia and peak advocacy bodies, such as EJA and ACOSS, does exist, **there is room for improvement** in how such consultation is managed: for example, both EJA and ACOSS highlight challenges in dealing with Centrelink directly, with enquiries only able to be filtered through the Civil Society Advisory Group, and then only by email. **The government should consider establishing a customer experience reference group**, with membership nominated by national peak bodies representing people in vulnerable cohorts who have had the experience of claiming and receiving social security income support payments (page 377).

Chapter 13 – Experiences of Human Services Employees (page 383 – 394).

The Chapter lists those who gave evidence and were frontline staff.

This chapter discusses the impacts of the Scheme on DHS employees, including its effects in:

- increasing staff work load,
- imposing a cultural shift which placed pressure on staff,
- elevating the level of welfare recipient distress,
- requiring specific training, which some staff considered was not provided adequately,
- involving an increase in labour hire arrangements, and
- resulting in a deterioration in staff morale.

The chapter also considers the criticisms of the Scheme raised by staff, and the Department's reaction to those criticisms.

The Commission does not assume that the evidence it received from staff is indicative of the universal experience of staff during the Scheme, and the findings in this chapter should be viewed through the lens of this qualification. However, the Commission must base its findings on the evidence before it. **The theme of submissions received by, and evidence given to, the Commission is that staff were impacted by the introduction and sustained implementation of the unlawful Scheme** (page 386).

A number of DHS staff gave evidence to the Commission of particularly disturbing or upsetting recipient interactions in relation to the Scheme: "**[I] experienced listening to multiple suicide attempts over the phone and I have been diagnosed with PTSD since I finalised my work with Centrelink"** (page 388).

The evidence indicated that these staff members felt they were at risk of making incorrect decisions and providing incorrect advice to clients about their rights and obligations (page 389).

The experience of some staff was that they felt ill-prepared to support vulnerable, disadvantaged and at-risk recipients, and ill-equipped to deal with recipients who presented with mental health concerns, including the intention to self-harm or suicide (page 389).

Following the implementation of the Scheme, and in response to increased demand for compliance services as a result, labour hire staff were brought in by DHS. The Commonwealth has told the Commission that the government has committed to reducing reliance on contractors, consultants and labour hire staff as part of its APS Reform agenda (page 390).

There was a lack of consultation with DHS frontline employees and stakeholder groups prior to the implementation of the Scheme (page 392).

From early 2017 onwards, the CPSU were informed by their members of their serious concerns about the Scheme and the treatment of employees in DHS. The CPSU's advocacy involved media releases, open letters, and formal correspondence with ministers and DHS executives, **with little meaningful response received** (page 393).

The evidence before the Commission suggests that the Scheme had a deleterious impact on the well-being and morale of some of the employees who were involved in its implementation and operation (page 394).

The Commonwealth has told the Commission that **since the conclusion of the Scheme, Services Australia has made some improvements, including by looking to focus on customer-centred design; reducing the use of labour hire staff; improving Agency culture and leadership, including by the implementation of leadership sessions and training on escalating issues; and introducing internal mechanisms for making and resolving complaints** (page 394).

The Commission notes this response from the Commonwealth. These improvements may go some way to avoiding a repetition of the difficulties and distress that employees experienced under the Scheme (page 394).

Chapter 14 – Economic costs (page 399 – 416).

This chapter reviews the economic costs of the Scheme, as required by the Commission's terms of reference. This encompasses the intended and actual outcomes of the Scheme, including the approximate costs of implementing, administering, suspending and winding back the Scheme, as well as costs incidental to those matters, such as obtaining external advice and legal costs.

Over the period of 2014-15 to 2021-22 the Scheme was budgeted to generate savings of $4.772 billion, but is estimated to have delivered a saving of $406.196 million. The **Commonwealth incurred estimated total costs of $971.391 million** in implementing, administering, suspending and winding back the Scheme (including incidental costs) (page 401).

The **net cost of the Scheme is approximately $565.195 million**, which represents the net impact of its estimated total costs of $971.391 million offset by the estimated savings of $406.196 million. The Commonwealth accepts that figure as correct, based upon the information and evidence before the Commission (page 401).

Chapter 15 – Failures in the Budget process (page 420 – 437).

The chapter begins with an overview of the Budget process, including how the assessment of legal risk in the Budget process occurs.

In the context of the 2015–16 Budget timetable, the development of the Strengthening the Integrity of Welfare Payments (SWIP) measure took place within an accelerated timeframe. A number of people involved in the creation of the SIWP measure accepted that the measure was developed within tight timeframes, and email exchanges in the period in which the measure was developed confirm as much.

However, the evidence before the Commission also indicates that this was not unusual in the development of new government policies (page 427).

The Commission accepts that constrained timeframes may not be unusual in the Budget process. However, it is clear that the interval during which the SIWP measure was developed and approved was too compressed, given its scale and complexity (page 427).

Some DHS employees sought to minimise the significance of the SIWP measure by reference to the breadth of the 2015–16 Budget and the number of other measures that were put forward by the Social Services Portfolio in that Budge (page 429).

The Budget process is designed to safeguard Cabinet decision-making by ensuring the rigorous assessment of new government proposals and the identification of associated risks and impacts (page 430).

In the case of the SIWP measure, it is clear that the Cabinet process did not meet these expectations. There were several failures in the process that meant that Cabinet was not in a position to properly understand the nature of the proposal and the legal, financial and policy risks associated with in (page 430).

With respect to the identification of legal risks associated with the SIWP proposal, the Budget process fell down in two interrelated respects.

1. The SIWP proposal was able to proceed to the ERC without the NPP indicating that legislative change would be required to implement the proposal, despite the existence of legal advice to that effect.
2. The question "is legislation required" within the Checklist was relied upon as meaning that legal advice had been obtained and was to the effect that the implementation of the proposal would not require legislative change.

The 2014 DSS legal advice concluded that the proposal to use income averaging to determine and raise debts would not be consistent with the existing legislative scheme (page 430).

Had DSS been required to include the relevant legal advices in the Portfolio Budget Submission alongside the NPP, this may have prompted questions as to whether the advice still applied and if not, what had changed in the mechanics of the proposal. This would have required DSS and DHS to explain the departure from the legal advice, and it may well have become obvious at that time that there had been no material change to what was proposed and legislative change was in fact still required. If DSS had instead procured advice of the quality of the 2017 DSS legal advice and sought to rely on it, it is unlikely that it would have withstood scrutiny by AGS, other agencies and Cabinet (page 431).

Evidence given to the Commission suggests that there were reservations within DSS about circulating the 2014 DSS legal advice outside of the Department. It was common practice within DSS not to share legal advice unless it was asked for, which stemmed from a general view about the need to maintain legal professional privilege over the advice.

The legal soundness of this position seems doubtful, as the privilege over advice provided to a department is held by the Commonwealth, and advice can therefore be shared between departments without any waiver of privilege. It follows that there is no reason that legal advice given to a department could not be provided to other departments as part of the Budget process (page 431).

There was considerable focus in the course of the Commission on the questions which appeared under the heading "Legislation" in the Checklist, and in particular, the third of those questions – "Is legislation required?"

The **ambiguity of the Checklist and seriousness of the matter with which the question is concerned – the legality of a proposal – necessitates that any identifiable uncertainty is resolved**. That is particularly so where, as here, subsequent ministers may assume that a high degree of rigor attended the Cabinet process when it otherwise did not (page 431).

The Standard, specific language on legal risks 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 (page 432).

There were a number of underlying flaws in Budget assumptions which can be readily identified (page 432 – 434).

What has become clear on the evidence before the Commission is that **those projected savings to government were a fundamental driver in the inclusion of the measure in the 2015-16 Budget**, although the proposal was in an embryonic stage of development and had not been the subject of adequate testing or consultation (page 434).

Mr Pratt said that the selection of which savings proposals to pursue would involve a degree of "political consideration" as to which measures would be likely to pass the Senate and the extent to which the projected savings from the measure would be "worth the political pain associated with them." (page 435).

The pressure to deliver savings offsets in the 2015-16 Budget dictated the course of the Budget process in respect of the SIWP measure and ultimately resulted in the measure being brought forward when those involved in its design did not consider it to be ready (page 346).

Section 4: Automation and Data Matching

Chapter 16 – Data matches and exchanges (page 445 – 463).

This chapter is about data matches and exchanges under the Scheme.

The Scheme was underpinned by a data-matching program involving the ATO and DHS. The program was designed to identify former and current income support recipients with alleged discrepancies between their earnings as reported to DHS and their employment income annually reported by employers to the ATO. In this chapter, the Commission considers the data-matching processes which underpinned the Scheme (page 447).

In late 2016, following a spike in media stories and complaints about the Scheme, the ATO started asking for information about how DHS was handling the data that the ATO had disclosed to it under the Scheme (page 455).

Despite these events and the concerns raised by the ATO, the data-matching program continued. Open and transparent communication between Commonwealth entities engaging in data-matching programs is necessary to ensure that each participating entity understands, and undertakes proper scrutiny and evaluation of, the legal and administrative framework in which is operating with respect to data-matching activities. There were, as Services Australia acknowledged, limitations to the inter-agency collaboration in relation to the data-matching under the Scheme; and, as it also accepted, better lines of communication and transparency between DSS, DHS and the ATO would have aided DHS's understanding of its legislative obligations in relation to its processes (page 456).

In late 2016 and early 2017, DHS received repeated media requests to disclose or publish the 2004 Protocol. This prompted DHS officers to review the 2004 Protocol, at which point it was realised that it had not been

updated to reflect the OCI program and consequently was not compliant with the Information Commissioner's Guidelines.

DHS received internal legal advice to the effect that there was no legal obligation to publish the 2004 or the 2017 protocols, but it would be appropriate to publish both. The ATO was not consulted about or informed of the publication of the 2017 Protocol (page 456).

Dr Wurth found that historical data was migrated by DHS. DHS also used historic data (or at least a subset of the original matched data) which, according to the 2004 Protocol, it should have destroyed, to form the basis of its proposal to "clean up" 860,000 discrepancies under the Scheme.

The Commission accepts Dr Wurth's findings and infers from this evidence that DHS warehoused the PAYG matched data it collected from the ATO to use under the Scheme instead of destroying it (page 457).

Services Australia told the Commission that with improved technology options, DHS was able to store greater volumes of data and consider how a greater volume of discrepancies could be addressed. Because DHS had made no decision to take action on the available data matches, and as such, it continued to hold the data pending action.

DHS was also **not complying with the 2004 Protocol** because under the Scheme, it was no longer undertaking manual review of discrepancies resulting from the data-matches (page 458).

The 2017 Protocol amended the document retention clause to read: All external data received from the ATO that is no longer required is destroyed in line with Guideline 7 of the Information Commissioner's Guidelines on Data-matching in Australian Government Administration.

The Voluntary Data-matching Guidelines do not permit retention and storage of data for undefined periods of time on the basis that no decision has made to take further action. Guideline 7.5 provides that where a match occurs in the data matching cycle, a decision as to further action should be taken within 90 days of the data matching cycle. That makes it clear that an entity cannot, consistently with that Guideline, hold data "awaiting action." (page 458).

Dr Wurth **reported that there was a lack of proper governance, controls and risk management measures in place under the Scheme**. She found the governance, controls and risk management instruments were inadequate to ensure PAYG program compliance with the Framework Documents (page 460).

The Commission was advised that since the Scheme, **the ATO has introduced an operational risk management framework for data sharing, including a data ethics framework. The Commission has not received that framework into evidence and makes no findings as to its adequacy**. However, given that Services Australia and the ATO continue to engage in a data exchange programs (see below), **the Commission considers that it is incumbent on Services Australia and the ATO to ensure that that program has in place adequate governance, risk management and controls** (page 460).

Section 355-25 of TAA53 provides that it is an offence for an ATO officer to disclose information about a taxpayer's affairs unless that disclosure is permitted by one or more of the exceptions in Division 355 of TAA53. Consequently, an ATO officer responsible for a disclosure is required to assure themselves that a proposed disclosure is lawful (i.e. supported by an exception in Division 355 of TAA53 (page 460).

The ATO has argued that its use of the data collected from DHS, the matching and disclosure of matched data back to DHS under the Scheme were all lawful because of the general exception in section 355- 65 of TAA53 (page 461).

In submissions, the Commonwealth's approach in relation to this provision was that:

The ATO was not obliged to be certain as to the precise manner in which DHS subsequently used data provided by the ATO and whether all the activities conducted by DHS with the data were compliant with social security law (being legislation which DSS administers, not the ATO).

The Commission has doubts as to the correctness of that proposition. Given the protective object of section 355-25 of TAA53, it seems strongly arguable that an ATO officer could not be lawfully satisfied that the use of the information disclosed to DHS was "for the purposes of administering…the social security law" without being informed by DHS of how the information was to be used. It is open to doubt that the ATO was so informed with respect to the Scheme (page 461).

The Commission considers that there is a serious question as to whether information was lawfully disclosed by the ATO to DHS for the purpose of data matching under the Scheme (page 461).

The evidence before the Commission also suggests that there may have been breaches of the APPs under the Privacy Act, in relation to disclosures/collections by the ATO and DHS for the purpose of data matching in the Scheme (page 461).

PAYG data matching between the ATO and Services Australia no longer occurs as it did under the Scheme. In July 2019, the STP (Single Touch Payroll) Interim Solution commenced (page 462).

The Robodebt Scheme manifested many flaws across the period in which it operated, and the examples outlined above demonstrate that the data-matching process was no exception. Some of those problems were confined to processes which were in place at the time of the operation of the Scheme. **Some of those processes still operate today** (page 463).

Chapter 17 – Automated decision-making (page 469 – 488).

Within six months of the Scheme being launched, it was being heralded as a technological triumph (page 471).

Evidence before the Commission shows the degree to which income support recipients found themselves bewildered by, and unable to navigate, DHS processes relating to debt raising. At times it was impenetrable (page 477).

The Commonwealth Ombudsman, in his 2017 Investigation Report into Centrelink's automated debt raising and recovery system, highlighted the principles from the ARC's 2004 Report Automated Assistance in Administrative Decision-Making: "good public administration requires that administrative decision making is consistent with the administrative law values of lawfulness, fairness, rationality, transparency and efficiency." He found that, in the context of the Scheme, "risks could have been mitigated through better planning and risk management arrangements at the outset" and that "**DHS did not clearly communicate aspects of the system to its recipients and staff which led to confusion and misunderstanding** (page 481).

The Chapter refers to single touch payroll (STP) and advice from the Australian Government Solicitor (AGS). It states that the Commission has not undertaken a comparative analysis of the STP process as compared to the process that existed under the Scheme and accordingly draws no conclusions as to the extent of the applicability of the findings in the AGS STP advice to that process. However, it notes **that there are similarities in the data exchange process that raise the possibility that the issues identified in the AGS STP advice may have been present prior to the introduction of the STP** (page 482).

The complexity and incohesiveness of the legislative landscape in respect of automated decision making **indicates that oversight is warranted**, and the Robodebt experience demonstrates the need beyond argument. This was a massive systemic failure, on which the availability of individual recourse to review could make no impression (page 484)

To date, there has been inconsistency in the legal status of automated decision making in Australian government agencies. Numerous Commonwealth laws have been amended to establish a basis for automated decision making, but these amendments have been piecemeal, across a wide body of legislation, and without the necessary further amendments establishing standards for which decisions should be automated and which should not; and appropriately designed systems for transparency, review and appeal (page 485).

The Commission considers that transparency regarding the use of automation in decision making, and the ability of affected persons to review such decisions, are vital safeguards in the use of automated decision making (page 486).

The automation used in the Scheme at its outset, removing the human element, was a key factor in the harm it did. The Scheme serves as an example of what can go wrong when adequate care and skill are not employed in the design of a project; where frameworks for design are missing or not followed; where concerns are suppressed; and where the ramifications of the use of the technology are ignored. The current practice of amending individual pieces of legislation when needs arise – when a new program is implemented, for example – is an exercise in patching over problems rather than addressing the fundamental need for a consistent approach. Government is currently considering questions of regulation and governance to mitigate potential risks from AI and automated decision-making and enable trust in AI and automation; which is in turn "needed for our economy and society to reap the full benefits of these productivity-enhancing technologies."

A strong theme in submissions received by the Commission – more explicitly put by some submitters, and implicit in the submission of others – **is that the rule of law must not be derogated from in the pursuit of efficacy through automation.**

In designing and operating systems using automation, government must conform with the legal framework in place at the time. The not very startling proposition is that government programs must be lawful and lawfully administered. While the fallout from the Robodebt scheme was described as a "massive failure of public administration," the prospect of future programs, using increasingly complex and more sophisticated AI and automation, having even more disastrous effects will be magnified by the "speed and scale at which AI can be deployed" and the increased difficulty of understanding where and how the failures have arisen (page 488).

Section 5: Debts

Chapter 18 – Debt recovery and debt collectors (page 497 – 509).

This Chapter outlines the role of debt collectors in the scheme and the involvement of DHS in these debt collectors carrying out services they were engaged to provide.

It notes that: DHS routinely engaged the services of the external debt collectors to recover debts raised under the Scheme and DHS was closely involved with the external debt collectors that it engaged, and some of the practices that it **encouraged were insensitive and ill considered** (for example, mandating that recipients be warned of the severe measures that could be taken against them if they failed to pay), particularly for the cohort of people that it affected (page 499).

The Commission outlines when debts were referred to debt collectors (page 500).

The report notes that DHS engaged each debt collector on a commission basis under the deeds. This meant that they earned more money the more debt they recovered. DHS also afforded the collection agencies additional time to try to recover the balance of a referred debt in circumstances where they managed to secure partial recovery (page 506).

The Commission has found that it was DHS which designed and managed the Scheme's debt recovery process and it was DHS which closely managed every aspect of the collection agencies' engagement with people under the Scheme.

It is now proposed that the same agency conduct that process in house. It would be understandable, given what transpired under the Scheme, if people found it difficult to trust that Services Australia will sensitively and lawfully manage its debt recovery processes. The Commission expects that Services Australia will deliver training to its debt recovery staff which is appropriately adapted to the circumstances and vulnerabilities of the population it serves, and which will not use training material and call scripts that place too much emphasis on the consequences for non-compliance (page 508).

Section 6: Checks & balances

Chapter 19 – Lawyers and legal services (page 517 – 543).

This Chapter outlines considerations with respect to government lawyers. It states that it is apparent that **the professional independence of both agencies in-house lawyers was compromised in relation to the Scheme**. The Commission agrees with Chris Moraitis' (former Secretary of AGD) observation in the 2016 Secretary's Review of Commonwealth Legal Services that: 'little progress has been made to develop a single unifying professional ethos and this has undermined the efforts that in-house legal areas have taken to support their lawyers.'

This chapter also considers the many failures of DSS and DHS to disclose significant legal advices to each other and to report the question of the legality of income averaging in the Scheme as a "significant issue" to the Office of Legal Services Coordination (OLSC) in 2017 (page 519).

DHS lawyers gave evidence of their perception that, even where they sought to act independently, they were constrained by the culture of the department which discouraged this behaviour (page 521).

The Report notes that the position that income averaging was a long-standing lawful practice was so entrenched within DHS that lawyers at all levels were unable to question it in accordance with their professional obligations.

Ms Musolino demonstrated a tendency to accommodate DHS's policy position in the face of conflicting advice and to advocate for the department's position rather than independently considering it (page 522).

The Commission considers the culture at DSS prevented lawyers from being independent.

The most significant manifestation of this was the provision of the 2017 DSS legal advice. The Commission had found (in chapter 2017, part B: Inquiries and Investigations) that the conduct of the principal legal officer who provided that advice was influenced by pressure to meet "the departmental business need" for a legal justification for what it was doing, placed upon her by Ms McGuirk (page 523).

The Commission supports the establishment of the AGLS, however, notes the AGLS General Counsel charter says nothing about professional independence. At Services Australia, the chief counsel is now included as a member of the Executive Committee, thus reinforcing the office holder's role as the legal adviser to the Executive. At DSS, the chief counsel has been upgraded to an SES Band 2, supported by two deputy chief counsels (page 524).

The Commission is concerned that these developments **do not guarantee there is sufficient separation between the head of the agency and the chief counsel to ensure there is no expectation of loyalty by the chief counsel to the agency head**. It is important that the chief counsel of an agency is appointed by an independent and robust process, to guard against the possibility that the secretary favours the appointment

of someone who will be compliant and protect their (the secretary's) position. **The Commission supports a specialist panel member from the AGS for the selection of chief counsel** (page 525).

In-house lawyers took a **remarkably passive approach** to the provision of legal advice in relation to the Scheme.

What is truly striking about the advices and legal commentary the Commission has seen is that for all the many DHS and DSS lawyers involved, so little attention was paid to the provisions of the social security legislation which actually governs entitlement, payment, authority to require information, debt recovery and imposition of penalties.

Another alarming feature is **the practice of leaving advices in draft form** rather than finalising them and ensuring that senior departmental officers saw them. As agencies with the high volume of intersecting work, you would think that advice prepared by DSS and DHS on common topics would be disclosed between the two agencies, at the very least to avoid duplication of work. Indeed, it was required to be disclosed under the Legal Services Directions (page 526).

The Commission recognises that there may be circumstances where it is reasonable to obtain advice in draft to allow further clarification of facts, issues and instructions. However, unless there is very good reason, the advice should always be finalised, and if it is not, that very good reason should be documented (page 527).

The evidence before the Commission demonstrated a number of failures by DSS and DHS to comply with the requirements set out in the Legal Services Directions (Directions), particularly in relation to:

- The requirement for agencies to report as soon as possible significant issues that arise in the provision of legal services, especially in conducting litigation, to the Attorney-General or the OLSC and to regularly update the OLSC on any developments involving that significant issue.
- The requirement for agencies in particular circumstances to consult with each other on advice, and disclose it once received (page 529).

In relation direction 10.1 of the Directions DSS was at all relevant times the agency which administered the *Social Security Act 1991* and *Social Security (Administration) Act 1999*. Under the Directions, if DHS wished to obtain legal advice on the interpretation of that legislation, it was required to consult with DSS (page 530).

Direction 10.8 of the Directions requires an agency which receives legal advice that it considers likely to be significant to another agency to take reasonable steps to make that legal advice available to that agency The purpose of the requirements in the Directions to disclose and consult on advice is to promote consultation between Commonwealth agencies on the interpretation of legislation with the aim of reaching consistency in statutory interpretation across the Commonwealth and to facilitate a whole-of government approach. There is no published guidance on these obligations.

This is not a new problem. The Blunn Kreiger Report also noted that there is evidence of agencies withholding information and advice from other agencies, regardless of any wider Commonwealth interest, where they perceive sharing it may not be in the particular interest of the agency.

This kind of disconnect persisted between DHS and DSS throughout the Scheme. The Commission heard that there had been historic difficulties about which agency had control or ownership of information that was shared between DHS and DSS and that there was frequently tension between the two departments around advice concerning the social security law. This lack of cooperation had significant consequences for the Scheme (page 531).

The 2014 DSS legal advice was clearly significant to DHS. Given the significance of the 2014 DSS legal advice to DHS and to the DHS proposal, it was imperative that DSS took reasonable steps to promptly make the

2014 DSS legal advice available to DHS in accordance with directions 10.8 of the Directions. It did not do so (page 532).

The controversy about the accuracy of, and legal basis for, the use of averaging to determine social security entitlement under the Scheme constituted a "significant issue" in the provision of the aforementioned legal services for the purposes of para. 3.1 of the Legal Services Directions. The Commonwealth agreed in its submissions that DHS and DSS should have collaborated in or about January 2017 to ensure that a significant issue report was submitted to OLSC about the Scheme (page 533).

In the Commission's view, the controversy about the accuracy of, and legal basis for, the use of averaging to determine social security entitlement under the Scheme constituted "significant issue" in the provision of the aforementioned legal services for the purposes of para. 3.1 of the Directions.

The Commission's view is that there was a preliminary view formed within the OLSC that the Scheme involved a relevant significant issue. That was despite the fact that the OLSC had not been informed of any specific provision of legal services (page 537).

In light of this, there was cause for alarm within OLSC that DHS considered there were no legal issues and that there was no legal advice pertaining to the Scheme. This was a major missed opportunity. Both DHS and DSS had taken steps to obtain legal advice about the lawfulness of averaging in January 2017 (page 538).

The Commission acknowledges that had the OLSC pursued the matter further, the answer may have remained the same. In any event, the OLSC is not a regulator with investigative functions or the power to compel the production of a significant issues report. The decision not to pursue DHS for a significant issues report was made following a conversation Ms Samios recalls having with Ms Musolino. This was in keeping with OLSC's facilitative approach to supporting agency compliance. The conversation was not recorded in an email or file note. As Ms Samios agreed when asked, it would have taken two minutes to type an email to confirm what was discussed. Such an email would at least have required Ms Musolino to confirm her view in writing.

The Commission considers a further obligation should be imposed on the chief counsel to ensure the Directions are complied with and to document significant interactions with OLSC about inquiries made, and responses given, concerning reporting obligations under the Directions (page 538).

The OLSC did not seek to ask questions of DSS as the agency responsible for social security policy and legislation. Had DSS been engaged, it would have been difficult for lawyers from that department to assert that 'there were no legal issues' and no legal advice, given the existence of the 2014 DSS legal advice and the understanding of some DSS staff that income averaging as it was being used in the Scheme, was unlawful. The Commission appreciates, however, that the OLSC may not have been familiar with the relationship between the agencies and the division of responsibility between them (page 538).

Had the high-level emerging issues associated with the Scheme been reported to the OLSC as a significant issue in early 2017, the Scheme may have ended earlier than it did (page 539).

The Secretary's Review recommended that the Directions be reviewed and simplified, and noted that there is an opportunity to provide greater certainty of the OLSC's authority to enforce compliance with the Directions, with clearer consequences for non-compliance.

More significant advices not disclosed included**:**

- Clayton Utz from 2018 advice (page 541)
- The draft AGS advice on Masterton (page 541)
- The Solicitor-General's Opinion (page 542).

Both DSS and Services Australia drew the Commission's attention to changes under way following the recommendations of a review conducted by the Australian Government Solicitor (AGS) into the legal functions of DSS and Services Australia (page 543). That review made 38 recommendations, the implementation of which is continuing. The Commission endorses increased collaboration between the agencies.

Chapter 20 – The Administrative Appeals Tribunal (page 551 – 566)

The Commission's terms of reference require it to inquire into how the Australian Government responded to adverse decisions made by the Administrative Appeals Tribunal (the AAT), how the government responded to legal challenges or threatened legal challenges and whether the government sought to prevent, inhibit or discourage scrutiny of the Scheme, whether by moving departmental or other officials or otherwise (page 553).

The report notes there is no obvious reason that AAT1 decisions involving significant points of law or policy in social security matters should not have been published, anonymised to preserve the privacy of applicants. Publishing reasons in such cases would promote uniformity in decision-making, and allow public scrutiny and wider community understanding of how the AAT was applying law and policy (page 554).

Standing Operational Statements – Social Security Litigation (SOS) described a process that was largely aimed at managing individual AAT decisions between the DHS and DSS.

The Commission considers that the SOS process was inadequate to monitor AAT decisions for referral in any effective way and that there was no system or policy in place to allow DHS or DSS to systematically review AAT decisions; monitor statements of legal principle emerging from AAT decisions; consider how any guidance the AAT gave could improve decision-making; raise significant cases with senior officers in DHS or DSS; or generally exchange information about AAT decisions with each other (page 555).

On 8 March 2017, Professor Carney handed down his decision, in which he set aside the DHS decision, having reached a reasoned conclusion that income averaging based on PAYG data could not provide a sufficient evidentiary basis to prove an overpayment or give rise in law to a debt. DHS did not appeal the decision. In the AFAR concerning it, a DHS lawyer concluded that there was no error of law that affected the decision and that there were no grounds for appeal and a PGL agreed with it (page 558).

The report provides that 'one is entitled to be cynical about the proposition that the failure to appeal sprang from concern for the wellbeing of applicant recipients. It does not, for example, really seem to have been foremost in the mind of the legal officer who prepared the Advice on Further Administrative Review (AFAR) on the 4 May 2018 decision. But assuming it was genuinely a factor in decision making, it could not be a "paramount" consideration; the Litigation Principles required that it be weighed against the wider concerns identified above. Here the legality of a government program was at stake, but DHS appears to have disregarded that aspect altogether.' (page 559).

Consistent with DHS's obligation to act as model litigant in proceedings before the AAT, officers of the Commonwealth must use their best endeavours to assist the AAT to make its decision in relation to the proceeding. That includes ensuring that the AAT has all relevant information and bringing the AAT's attention to arguments of the other side where it appears the AAT has overlooked them.

The fact that DHS did not pursue appeals of AAT1 decisions was also relevant information for AAT members; it would have provided a strong indication of DHS's level of confidence in the lawfulness of income averaging. It was a fact that would not generally be known to AAT members. **DHS's failure to inform the AAT of the decisions, and that it had not pursued appeals of them, deprived AAT members of information relevant to the discharge of their function and undermined consistency in AAT decision-making**. It also

advantaged DHS by rendering members of the AAT and the public, including social security recipients, less likely to be aware of the reasoning in the decisions and of the fact (from the absence of appeal) that DHS lawyers likely considered that reasoning to be legally correct.

The Commission does not accept the Commonwealth's submission that DHS's failure to inform the AAT of the decisions was not a breach of the model litigant obligation (page 559).

DHS was required to report to OLSC proceedings concerning debts raised under the Scheme and its preparation of legal advice in the form of AFARs following AAT decisions but DHS did not report any of the AAT decisions concerning the Scheme to the OLSC (page 560).

The report provides that 'DHS felt free to reject the reasoning in those decisions because it was not uniformly adopted by all AAT members, and DHS considered itself entitled to continue its practice of income averaging under the Scheme' (page 561).

The Commission notes: section 43(1)(c)(ii) of the AAT Act empowers the AAT to set aside the decision under review and remit the matter for reconsideration in accordance with any directions or recommendations of the Tribunal. The intent of the provision is plainly that the department or agency concerned will undertake any reconsideration in the way the AAT proposes (page 561).

The 8 March 2017 decision directed DHS not to recalculate the social security recipient's debt with income averaging but to recalculate it using fortnightly salary records obtainable in the exercise of DHS's statutory powers.

The directions of the AAT prohibited the use of averaging. That prohibition was clear and unqualified. Beyond those directions, it was clear from the reasoning of the decision, which found the practice of averaging to be unlawful.

The Scheme was launched in circumstances where the DSS legal advice was that income averaging, as it was used in the Scheme, was not in accordance with the legislation, and DHS had not obtained any relevant legal advice. The AAT1 decisions confirming that averaged PAYG data alone did not constitute evidence of fortnightly income earned, derived or received, as the Social Security Act required, should have reinforced that original advice and caused DHS and DSS to reconsider the legality of the Scheme.

Instead, DHS chose not to recommend any challenge to those decisions, explicitly or tacitly accepting them as legally correct, but implementing them only as far as was convenient and disregarding their effect for the purposes of the Scheme as a whole.

DSS took no active role, apart from discontinuing an appeal in the 4 May 2018 decision, which, as the AFAR astutely noted, would have brought the illegality issue into the public arena and undermined the "whole approach" of the OCI phase of the Scheme. Because the adverse decisions were not published, they were not publicly accessible. DHS was able to take advantage of that situation; in the narrower sense, by not bringing them to the attention of applicants or AAT members, and in the wider sense by continuing with a Scheme based on unlawful debt raising. DSS was shielded from the adverse publicity which would certainly have followed a public understanding of what these decisions were saying and how many of them there were. Clearly, to avoid repetition of that situation, publication of significant decisions in an accessible form is desirable (page 563).

Services Australia says its Legal Services Division launched a strategy in March 2022 that entails regular liaison meetings about AAT and court outcomes with "internal business areas and external policy clients" and the circulation of a quarterly newsletter containing updates on topical issues and litigation trends, including recent AAT and Federal Court decisions.

DSS says it has strengthened its litigation management processes to include monthly litigation reports provided to the secretary which cover all merits and judicial review matters managed by Services Australia, significant litigation and secretary-initiated applications for review or appeal and prosecutions. The secretary is, the Commission is told, made aware of adverse comments made by a court or tribunal about the conduct of a matter or decisions made in the secretary's name and the secretary has meetings with the president of the AAT to discuss improvements in DSS's general dealings with the AAT. These are encouraging developments (page 564).

The report recommends reinstatement of the Administrative Review Council (ARC) (page 565).

Chapter 21 – The Commonwealth Ombudsman (page 571 – 599)

This Chapter outlines the role of the Commonwealth Ombudsman, commencing in January 2017. It notes that 'this was the time when effective scrutiny by the Commonwealth Ombudsman might have made the continuation of the Scheme untenable, or at least thrown it into serious question' (page 573).

The report discusses how information was sought from DHS for the investigation, and how it should have been sought. In particular, it notes that where palpably incomplete and inconsistent information is provided on important matters, it may be necessary to use the powers available under section 9, to compel answers as to why the obvious inconsistencies and deficiencies in production of information were occurring and to require production of the documents which were so obviously missing.

It also notes that officers at DHS took the view that the process was one of negotiation between DHS and the Ombudsman's Office as to what should be included in the 2017 Investigation Report. There is no evidence of anyone from the Ombudsman's Office dispelling that view.

The Commission does not propose to make any formal recommendation as to how the Ombudsman's Office should use section 9 in general, given the evidence of Iain Anderson, the current Commonwealth Ombudsman.

In light of the evidence of the readiness to conceal and mislead exhibited by certain departmental staff in relation to the Scheme, the Commission considers that there ought to be a clearly stated statutory duty reposed in departmental secretaries and agency chief executive officers to ensure that their departments or agencies use their best endeavours to assist in Ombudsman investigations and a corresponding duty on the part of Commonwealth public servants to use their best endeavours to assist in Ombudsman investigations. The obligation, which might be imposed in the form of an amendment to the Ombudsman Act or, alternatively, to the *Public Service Act 1999* (Cth) (PS Act), would not be dissimilar to that imposed on decision-makers and parties appearing in the Administrative Appeals Tribunal (AAT), to assist the AAT (page 581).

Section 14 of the Ombudsman Act enables an "authorised person" of the Ombudsman's Office to enter premises occupied by a department to carry on an investigation in that place. The provision is expressed in similar terms to s 32 of the Auditor-General Act 1997 (Cth) (Auditor-General Act), but there is no equivalent in the Ombudsman Act to s 33(3) of the Auditor-General Act, which compels the occupier to provide the authorised person with all reasonable facilities for the effective exercise of powers.

A power equivalent to that in s 33(3) of the Auditor-General Act would not, of course, be necessary if one could assume good faith participation in Ombudsman investigations. The departmental responses to the 2017 own motion investigation make it abundantly clear that good faith cooperation cannot be assumed, although it might reasonably be expected, and that greater power is needed in what one would hope would be the exceptional case where a department or agency sets out to thwart the investigation through non-

compliance or deliberate misleading. In the Commission's view, the Ombudsman should be given the additional power (page 582).

The report goes on to discuss a number of failures in conducting these investigations, these being:

- The failure to examine the Scheme's legality in the 2017 investigation report (page 586)
- The failure to obtain legal advice (page 589)
- The failure to refer (page 590)
- Failure to include draft text concerning legality (page 591)
- The failure of the 2017 Investigation Report to deal adequately with debt accuracy (page 582)
- Failure to correct the public record (page 594)

The report states, what is depressingly clear, however, is that the Ombudsman's Office was not able to fulfil its role in exposing maladministration over the almost three years it investigated Robodebt complaints; it took litigation to do that. Individuals who were the victims of unfair debt raising could not look to the Ombudsman's Office for relief (page 594).

It can be accepted that it is important for the Ombudsman to work cooperatively with the departments it is investigating, but it is also necessary that the Ombudsman be capable of taking a stand. Maladministration is much less likely to occur where there is an Ombudsman who is known to impose limits on the cooperative approach in an appropriate case. s

In 2017 the Ombudsman knew, from the information provided pursuant to s 8 notices, that it was affecting tens of thousands of people. There had been an outcry from the public, the media, academia, advocacy groups and some politicians about its unfairness. By mid-2017 there was respectable and publicly-available legal opinion in the form of Mr Hanks' paper that it did not meet the legislative requirements (to say nothing of the less accessible AAT decisions to the same effect (of which the Ombudsman seems not to have been aware). However, successive holders of the Ombudsman's Office were hesitant to use the investigative and reporting powers the Ombudsman Act conferred when the circumstances clearly warranted it. The Scheme demonstrates the importance of a properly resourced and, more importantly, an independent and robust Ombudsman. It exemplifies the social importance and economic sense of having such a person in the role. **The Ombudsman could have played an important part in stopping a poorly thought-through and, worse, illegal program from proceeding at grave personal cost to thousands of individuals and at enormous public expense** (page 599).

Chapter 22 – The Office of the Australian Information Commissioner (page 607 – 627)

The chapter considers the roles that the Office of the Australian Information Commissioner (OAIC) and the former and current Information Commissioners played in overseeing the Scheme's compliance with the *Privacy Act 1988* (Cth) (the Privacy Act), the voluntary Data-matching Guidelines and the *Privacy (Tax File Number) Rule 2015* (TFN Rule).

By way of background, the report notes that in the 2015–16 mid-year economic forecast (MYEFO), the OAIC received funding of $4.7 million across the years 2015-16, 2016-17, 2017-18 and 2018-19, to provide oversight of privacy implications arising from 'DHS's Enhanced Welfare Payment Integrity – non-employment income data matching' (NEIDM) Budget measure.

As part of the OAIC's oversight role under the 'Enhanced Welfare Payment Integrity – non-employment income data matching' Budget measure, the OAIC conducted six privacy assessments over three years, three of which were relevant to the Scheme:

- a DHS assessment of Pay-As-You-Go (PAYG) data-matching program under Australian Privacy Principle (APP) 10 and APP
- a Services Australia assessment on its handling of personal information in respect of the PAYG and NEIDM programs under APP 11 and
- an ATO assessment of its handling of personal information by the PAYG and NEIDM programs under APP 11.
- The Report outlines the scope, interaction with agencies during these investigations and the findings from these assessments (page 609).

The Commission's terms of reference required it to investigate and report on "how risks relating to the Robodebt scheme were identified, assessed and managed by the Australian Government."9 Both Timothy Pilgrim, the former Information Commissioner and Privacy Commissioner, and Angelene Falk, the current Information Commissioner and Privacy Commissioner, declined to provide witness statements and to attend the Commission and give evidence (page 609).

The Information Commissioner's decision to conduct three limited scope assessments (rather than investigations) of DHS's and the ATO's processes under the Scheme meant that the Information Commissioner did not have the power to:

- compel production of records or information, or
- investigate potential interferences with privacy and if appropriate make enforceable determinations.

It also meant that the Information Commissioner had limited opportunity to consider whether the various collections and disclosures of personal information which attended the data-matches and data exchanges under the Scheme were compliant with:

- the APPs in the Privacy Act
- the *Guidelines on data matching in Australian Government Administration 2014* and/or
- the TFN Rule (page 609).

The Commission does not propose to make any findings in relation to Ms Falk or Mr Pilgrim personally (page 610).

The Information Commissioner and Privacy Commissioner told the Commission that the OAIC's preferred regulatory approach is to facilitate voluntary compliance with privacy obligations and to work with entities to ensure compliance and better privacy practice and prevent privacy breaches (page 627).

The Commission appreciates the OAIC's preference for educative and preventative action by conducting assessments under the Privacy Act. However, as noted in the ALRC Report,116 the OAIC needs to be prepared to adopt a more formal regulatory posture where there is a "reasonable" apprehension of possible interferences with the privacy of an individual.

The Information Commissioner could have decided to undertake an own motion investigation into either or both of DHS or the ATO on the basis of a reasonable apprehension that one or more interferences with the privacy of individuals was suspected, but did not do so. Instead, the Information Commissioner decided to proceed wholly by way of assessment of limited aspects of the Scheme on the assumption that this was the preferable course for achieving its aims in terms of compliance and education about the APPs in the Privacy Act. In conducting the three assessments under the Privacy Act, the Information Commissioner did not have the power to compel DHS to produce documents.

The Commission's findings about the possible breaches of the APPs in the Privacy Act in the Datamatching and exchanges chapter are significant and arise in the context of repeated and voluminous exchanges of personal information and data matches conducted by DHS and the ATO under the Scheme (page 627).

With the benefit of hindsight, it is apparent now that the OAIC approach, particularly in light of the substantial media attention and criticism around the Scheme, was too muted to meet the circumstances. Its three assessments, each with a narrow scope, were of little real consequence. What was occurring in the data matching under the Scheme was not given the examination which it needed and which could, with the use of the OAIC's full investigative powers, have occurred (page 627).

Section 7: The Australian Public Service

Chapter 23 - improving the APS (page 635 – 647)

Chapter 23 discusses the failures of public administration that led to the creation and maintenance of the Scheme.

The current state of public service reform

The report notes that the Thodey review, published on 20 September 2019:

- affirmed the "basic role" of the APS is to provide robust and evidence-based advice to Ministers, frankly and freely;
- included the codification of new "principles" in the Public Service Act to complement the existing APS values, and further training concerning the roles and responsibilities regulating interactions between ministers, their advisers and the APS;
- recommended the implementation of a more robust set of processes relating to the appointment, termination and performance management of secretaries.

The Report outlines the implementation of the recommendations of the Thodey Review thus far, including the proposed amendments to the PS Act through the Public Service Amendment Bill 2023 (Cth).

The Report welcomes the establishment of the National Anti-Corruption Commission (NACC) and notes the establishment of the APS Integrity Taskforce on 8 February 2023.

The Thodey Review also recommended that the Public Service Act be amended to give the APS Commissioner own-motion powers to initiate investigations and reviews. It envisaged that the expansion of the responsibilities and functions of the Australian Public Service Commissioner (APSC) would complement the NACC, which will have been established by the time this report is published. The Commission agrees with this recommendation (page 638).

Structural relationships between Social Services and Services Australia

The Report provides an outline on the division of responsibilities of DSS and DHS during the life of the Scheme, noting fundamentally, DSS was responsible for policy while DHS was responsible for service delivery. It also discusses the division of portfolio responsibilities from 2004 that led to 'creative tensions' between portfolios (page 639).

The Commission expresses the view that a chasm between DSS and DHS, and a lack of clearly identified responsibilities was, in the Commission's view, a contributing factor to the Scheme's establishment and continuation. Despite the prescribed division of their responsibilities and how the relationship between agencies was defined, the Scheme and its underlying policy was developed primarily by DHS, with DSS kept on the periphery (page 639).

The Report cites evidence from Rebecca Skinner, CEO, Services Australia and Secretary Griggs, DSS, in relation to 'tension' between the respective agencies. In particular, that Mr Griggs' view was that if the NPP (that informed Cabinet's decision to approve funding for the Scheme) had been led by DSS, "the chances of the right advice being provided to Government would have been higher".

The Commission notes that the creation of Services Australia as an executive agency in February 2020 went some way in reversing those circumstances and that the present government has undertaken to implement a number of the recommendations made by the Thodey Review, although it is not clear to what extent any formal organizational review is underway (page 639).

The Commission recommends that the government undertake an immediate and full review of the structure of the social services portfolio, and of Services Australia as an entity (page 639).

Public Service employees

The Commission notes that:

- the idea for the Scheme was conceived by employees of DHS who failed to recognise its inconsistency with social security legislation, its incompatibility with an underlying policy rationale of that legislation and the cohort of people it was likely to affect.
- Its continuation was enabled and facilitated by employees who disregarded the considered views of the Administrative Appeals Tribunal, deceived the Commonwealth Ombudsman and failed to give frank and fearless advice to the executive.

The findings in this report evidence a failure of members of the APS to live up to the values and standards of conduct expected of them by the Australian community, which are expectations set out in the Public Service Act, the APS Code of Conduct, the PGPA Act and the PID Act.

The Commissioner agrees with Andrew Podger's statement that more needs to be done to ensure APS employees (in particular Secretaries, the SES and Executive Level officers) appreciate their statutory and other responsibilities.

The Commissioner also agrees with the recommendation of the Thodey Review that the APSC should deliver whole-of-service induction on essential knowledge required for public servants, with participation required to pass probation (page 641).

Senior executives and secretaries

The Commission heard evidence about APS leaders (both Secretaries and SES leaders) being excessively responsive to government, undermining concept of impartiality and frank and fearless advice. For example, when the Scheme was developed in 2015, the New Policy Proposal was apt to mislead the Expenditure Review Committee and Kathryn Campbell (Secretary, DHS) did not take any steps to correct that misleading effect

The Commission notes that the current government has emphasized that the public service must be empowered to be honest and truly independent. It has asked the Public Service Commissioner to ensure that SES performance assessments cover both outcomes and behaviours. In the Commission's view, this does not go far enough.

The Commission endorses a number of recommendations made in the Thodey Review in relation to Secretarial appointments which should be revisited, including:

- that the PM&C Secretary and APS Commissioner agree and publish a policy on processes to support advice to the Prime Minister on appointments of secretaries and the APS Commissioner
- that the PM&C Secretary and APS Commissioner undertake robust and comprehensive performance management of secretaries
- that the PM&C Secretary and APS Commissioner publish the framework for managing the performance of secretaries under the Public Service Act, and
- that the PM&C Secretary and APS Commissioner ensure that robust processes govern the termination of secretaries' appointments.

The Commission notes that the extent to which these recommendations have been endorsed by the government is unclear (page 643).

Former employees

The report discusses the power of section 41B to empower agencies to determine alleged breaches of the Code by former APS employees.

It notes: The Public Service Commissioner may inquire into a former APS employee's conduct, but given that sanctions relating to a breach of the APS Code of Conduct can only be imposed on current APS employees, no meaningful consequence would flow from any found breach.

It notes that in Queensland, section 95 of the Public Sector Act 2022 (Qld) provides for a disciplinary declaration if employment as a public sector employee ends, and a disciplinary ground arises in relation to that person. The declaration includes a statement of the action that would have been taken against the former public sector employee had their employment not ended. A similar consequence for APS members would be relevant and appropriate if the individual wished to re-join the APS or seek consulting work from it.

However, the position is less clear in relation to former agency heads. Section 41A of the Public Service Act, which enables inquiry into conduct by agency heads, unlike s 41B, does not use the term "former". The Commission notes the uncertainty as to the meaning of s 41A should be resolved by further amendment (page 644).

Record-keeping failures

The Report notes the following record-keeping failures:

- The decision not to proceed with the acting secretary's request
- The DHS chief counsel handover meeting
- The discussion between OLSC and chief counsel, DHS
- The decision that the PwC report should not be finalised and delivered to DHS
- The decision to pay for, but not to finalise, the Clayton Utz advice (pages 645-646).

It notes that while there is no specific policy requiring important decisions and conversations to be documented by public servants, the APS values include that the APS is open and accountable to the Australian community under the law and within the framework of ministerial responsibility, which requires:

- being open to scrutiny and being transparent in decision making
- being able to demonstrate that actions and decisions have been made with appropriate consideration
- being able to explain actions and decisions to the people affected by them

Ministerial staff Code of Conduct

The role of the APS is properly distinguished from the role of ministerial staff, who provide political and policy advice to ministers and whose employment is governed separately under the *Members of Parliament (Staff) Act 1984* (Cth) (MOP(S) Act).

The inherently political nature of ministerial advisers' roles sets them apart from the APS and their separation is designed to enable and protect the political impartiality of the APS.

Ministerial staff are employed under MOP(S) Act and are not subject to the APS Code of Conduct. They are employed to assist a parliamentarian to carry out duties as a Member of Parliament and not for party political purposes.103 In his report to the Commission, Andrew Podger AO pointed to the "steadily increasing role and number of ministerial staff" which may lead to "excessive responsiveness by APS leaders (both Secretaries and the SES who report to them) to the wishes of ministers." Such responsiveness may undermine "public confidence in the non-partisanship of the APS."

> The Thodey Review and the Jenkins Review both recommended that the MOP(S) Act be amended to include a legislated code of conduct for ministerial staff and a statement of values that clarifies their distinct role from that of the APS (and the Parliamentary Service); and that the code clarify that such staff do not have authority to direct the APS.

The Commission supports this recommendation, and understands that it will be implemented by the Parliamentary Leadership Taskforce (page 647).

From: s 22(1)(a)(ii)
Sent: Tuesday, 20 February 2024 1:55 PM
To:
Subject: FW: A message to all staff - APS Integrity Taskforce Report [SEC=OFFICIAL]

OFFICIAL

From: PM&C Secretary and APS Commissioner <apscommissioner@apsc.gov.au>
Sent: Friday, November 17, 2023 1:08 PM
To: Roderick Brazier <Rod.Brazier@dfat.gov.au>
Subject: A message to all staff - APS Integrity Taskforce Report

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Colleagues,

Today the Secretaries Board published the APS Integrity Taskforce report 'Louder than Words: An APS Integrity Action Plan'.

Integrity is deeply important to our work in the public service. It underpins the trust of the Australian public, who rely on us to serve their interests and deliver the best outcomes for Australia.

The Secretaries Board is committed to promoting a pro-integrity culture where all staff feel confident to contribute ideas, provide frank and independent advice and report mistakes. In this spirit, Secretaries Board set up the APS Integrity Taskforce.

The Taskforce was asked to take a 'bird's-eye' view of the APS integrity landscape, to identify gaps and look for opportunities to learn from and build upon the important work already progressing across the service. The work of the Taskforce complements the Integrity pillar of the government's APS Reform agenda and the establishment of the National Anti-Corruption Commission. It is particularly pertinent in the context of the release of the Government's Response to the Robodebt Royal Commission this week.

We encourage all staff to reflect on how integrity shapes our work for the Australian public. The 'Integrity Good Practice Guide' includes a range of practical examples of how you can contribute to a pro-integrity culture.

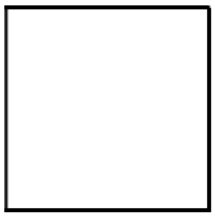
Work to implement the Taskforce's recommendations is already underway and will ensure we have the right frameworks in place to recruit and to recognise people whose behaviour is consistent with the public service values. A revised SES Performance Leadership Framework

gives equal weighting to leadership behaviours as well as outcomes. The APS Academy's Integrity Masterclass is running regularly for SES leaders. There are also measures to focus on ensuring legality across APS practices and government policies, programs and services, reinforcing the importance of good recordkeeping, and enhanced contract management and procurement practices.

Thank you for your ongoing commitment to embodying the APS Values in every aspect of your work.

Professor Glyn Davis AC
Secretary
Department of the
Prime Minister and Cabinet

Dr Gordon de Brouwer PSM
Australian Public Service Commissioner



s 22(1)(a)(ii)

From: Roderick Brazier
Sent: Tuesday, 20 February 2024 1:55 PM
To:
Subject: FW: **Media Alert** ASSISTANT MINISTER PATRICK GORMAN - SPEECH - COMMONWEALTH AWARDS FOR EXCELLENCE IN RISK MANAGEMENT 2023 - CANBERRA - TUESDAY, 21 NOVEMBER 2023 [SEC=OFFICIAL]

OFFICIAL

From: Media <media@dfat.gov.au>
Sent: Tuesday, November 21, 2023 6:28 PM
To: s 47E(d) @dfat.gov.au>
Subject: **Media Alert** ASSISTANT MINISTER PATRICK GORMAN - SPEECH - COMMONWEALTH AWARDS FOR EXCELLENCE IN RISK MANAGEMENT 2023 - CANBERRA - TUESDAY, 21 NOVEMBER 2023 [SEC=OFFICIAL]

OFFICIAL

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PATRICK GORMAN MP
ASSISTANT MINISTER TO THE PRIME MINISTER
ASSISTANT MINISTER FOR THE PUBLIC SERVICE
FEDERAL MEMBER FOR PERTH

SPEECH

COMMONWEALTH AWARDS FOR EXCELLENCE IN RISK MANAGEMENT 2023

TUESDAY, 21 NOVEMBER 2023

NATIONAL PRESS CLUB, CANBERRA

*** CHECK AGAINST DELIVERY ***

Acknowledgements omitted

I am here to thank each of you as risk management professionals.

Public servants who give Australia a safer, more certain world.

It is my pleasure to celebrate these awards with you today at this iconic venue in our Nation's Capital.

Stepping onto the stage at the National Press Club comes with great risk.

This Club is now 60 years old.

Starting as a lunch club.

And before too long the journalists got bored of grilled food.

They moved on to grilling politicians.

And ever since, political careers have been made, and broken, on this stage.

They say the most dangerous place is between a politician and a microphone.

So, in this dangerous place I am pleased to be here with you.

Public servants who protect the nation's people, and our finances.

And risk managers and journalists aren't that different.

Two of the world's most famous risk managers started in journalism.

Who saved lives and changed the world.

Who each made an impact that will long outlive them.

Now Peter Parker and Clark Kent never made it into the Australian Public Service.

Maybe Canberra just did not have enough skyscrapers and villains to make it worthwhile.

But we do need to be vigilant against corruption and misconduct.

As Superman put his mission:

"I am here to fight for truth, justice, and the American way."

Only to have Journalist Lois Lane remind him the danger of mission creep when she replied:

"You're gonna end up fighting every elected official in this country."

Now we don't want unnecessary conflict.

So maybe we will instead go with the advice from Uncle Ben to Spiderman:

"With great power comes great responsibility."

Bob Hawke and calculated risk

From superheroes to political heroes.

Three days before his historic victory in the 1983 Federal election, Bob Hawke, then Leader of the

Opposition addressed the National Press Club.

Hawke's decision to participate was a calculated risk.

An opportunity to directly connect with the Australian public and articulate his vision for our nation's future.

As Hawke took the stage, he knew that he was not just addressing journalists or the public.

He was also speaking to the public servants he hoped to work alongside should he become Prime Minister.

His speech shows us this.

"Beyond specific policies, this election was about the restoration of hope.

The restoration of confidence and unity to the Australian community.

And the need for a new direction for Australia."

Hawke's appearance at the National Press Club was more than just a political ritual.

It set the tone for the government he would lead.

APS REFORM

We know that being explicit about your vision is important.

That is clear in our ambitious APS Reform agenda.

1. An APS embodies integrity in everything it does;

2. One that puts people and business at the centre of policy and services;

3. Ensuring the APS is a model employer; and

4. A service that has the capability to do its job well.

PILLAR 1: INTEGRITY

Pillar one is integrity.

This year the lessons for the APS were unmissable.

The Robodebt Royal Commission report highlighted a costly failure of public administration.

Costly in economic terms.

And unquantifiable and tragic human cost too.

All of you in this room are part of the front line ensuring this never happens again.

In December last year, the Minister for Finance Katy Gallagher released the revised Commonwealth Risk Management Policy.

The Policy demands systems and internal controls for the management of risk.

And it talks to the culture of how risk is managed.

A culture where risk is communicated across all levels of the entity.

Culture where individuals adopt positive risk behaviours.

This was an unacceptable omission in the Robodebt Scheme.

We all must meet the expectation of the Australian people for a Public Service to embody integrity in everything it does.

PILLAR 2: PEOPLE AND BUSINESSES AT THE CENTRE OF GOVERNMENT POLICY AND SERVICES

The second pillar of our APS Reform agenda is putting people and business at the centre of policy and services.

A key part of this is trust.

Trust is one of the reasons why our Government has committed to publicly release results of the 2022-23

Survey of Trust in Australian public services.

This decision supports the Government's commitment to put integrity and trust at the centre of everything we do.

Transparency is a core part of Australian Public Service business to rebuild trust with the community.

That's why we made the decision to share the Survey results publicly each year.

Each public servant has a role to play in helping create trust and integrity in the service.

PILLAR 3: APS AS A MODEL EMPLOYER

The third pillar of the APS Reform agenda is to be a model employer.

Ensuring the APS is a great place to work and offers a quality employee experience is key to attracting and retaining the best and brightest.

The model employer vision encompasses cultivating a skilled workforce and developing a risk-aware culture.

We support this vision through the APS Academy.

The APS Academy stands as a beacon of excellence, preparing our employees to navigate complexities and uncertainties.

It offers specialised training programs enhancing technical and soft skills competencies.

Let me take a moment to do a little plug for the *Introduction to Risk in the Commonwealth* eLearning course offered by the APS Academy.

This course introduces participants to risk management principles and the Commonwealth Risk Management Policy.

PILLAR 4: APS CAPABILITY

Last month, we introduced the APS Strategic Commissioning Framework – a roadmap for the APS.

It guides us on when to use outside help and when to rely on our own APS team.

We've decided that the APS—the core workforce, our APS employees—will take charge of the main tasks.

With a lot of these tasks there is always some element of risk involved.

Instead of shying away from this risk, we are putting on our superhero capes and making sure we are really good at managing these risks ourselves

It is a crucial skill for everyone working in the APS.

Because this is not just about getting the job done.

It is about getting it done right, without compromising integrity or public trust.

We know that by getting good at dealing with risks, we are not just protecting ourselves, but we are making life better for all Australians.

TODAY'S RECIPIENTS

Today is not just about award recipients.

They might be the superheroes of this event.

But the Clark Kents are just as important.

I applaud and recognise the many quiet achievers.

We recognise and celebrate your work.

Achievements day in day out.

I encourage you to think about putting forward a nomination next year.

And for all to embrace the spirit of these awards.

A spirit of sharing success.

Working across the public service to encourage best practice.

And deriving outstanding value and outcomes to Australian taxpayers.

CONCLUSION

I started today by speaking about superheroes.

Clark Kent and Peter Parker managing a variety of risks; from local criminals to the evil of Lex Luthor.

Those in this room have managed risks ranging from small to large, although in this case very real.

As the classic line says:

"Not all heroes wear capes."

Thank you all for the important work you do.

CLOSE

Media Contact:

Assistant Minister to the Prime Minister and Assistant Minister for the Public Service's Office s 22(1)(a)(ii)

▪

Division Heads 10 July, 11am

Chair: Clare Walsh

s 22(1)(a)(ii)

- Adam McCarthy, FAS, Chief Legal Advisor – Robodebt

s 22(1)(a)(ii)

Division	Name	Position
~~EXEC~~	~~Jan Adams~~	~~Secretary~~
EXEC	Rebekah Grindlay	AS
TIG	Jonathan Kenna for Tim Yeend	A/g Associate Secretary
OTN	James Baxter	FAS
OTN (EU FTA)	Alison Burrows	FAS
TLD (CTLO)	Dene Yeaman for Jonathan Kenna	A/g FAS
TID	Helen Stylianou	FAS
FSD	Ravi Kewalram	FAS
~~FSD (Aus-India)~~	~~Frances Lisson~~	~~FAS, Chief Neg CECA~~
IGD	David Woods	FAS
TIB	John Watts	AS - observer
GSG	Elly Lawson	Deputy Secretary
EAD	Susan Dietz-Henderson	FAS
IPD	Peter Sawczak	FAS
NSD	Nick McCaffrey for Gary Cowan	A/g FAS
ACD	Sarah deZoeten	FAS
Amb for Arms Control ACD	Vacant	FAS
Director General ASNO	Geoff Shaw	FAS
PLB	Nigel Stanier	AS - observer
SGG	Michelle Chan	Deputy Secretary
SMD	Lauren Bain	FAS
SSD	Daniel Sloper	FAS
SRD	Robyn Mudie	FAS
ELD	Chris Cannan	FAS
MAD	Ridwaan Jadwat	FAS
OTP	Elizabeth Peak	Head, Deputy Secretary
PSD	Marcus Henry	A/g Deputy Head, FAS
PDD	Mat Kimberley	FAS
PMD	Danielle Heinecke	FAS
IED	Natalie Cohen	FAS
SID	Charlotte Blundell for Jamie Isbister	A/g FAS
DMG	Rod Brazier	Deputy Secretary
DPD	Elizabeth Wilde	FAS
GHD	Lucas de Toca	FAS
MPD	Natasha Smith	FAS
~~Amb Gender Equality~~	~~Stephanie Copus Campbell~~	~~AS~~
CSD	Mathew Fox	FAS
~~CSD Amb Climate Change~~	~~Kristin Tilley~~	~~FAS~~
PRD	Andrew Egan	a/g FAS
Amb First Nations People	Justin Mohamed	AS
HPD	Beth Delaney	FAS
ISG	Craig Maclachlan	Deputy Secretary
ISD	Ciara Spencer	FAS

Amb People Smuggling	Lynn Bell	FAS
Amb Cyber Affairs	Brendan Dowling	AS
LGD	Adam McCarthy	FAS
Amb Counter Terrorism	Richard Feakes	FAS
RLD	Andrew Walter	FAS
CCD	Kate Logan	FAS
APO	Troy Kaizik for Lucelle Veneros	A/g FAS
COG	Clare Walsh	Deputy Secretary
EXD	Lisa Wright for Paul Griffiths	A/g FAS
CTF	Andrea Faulkner for Michael Growder	A/g FAS
PPD	Natalie Roche for Belinda Casson	A/g FAS
FND	Donna Deden for Brad Medland	A/g FAS
DSD	Simon Johnston for Jo Talbot	A/g FAS
OPO	Suzanne Pitson	FAS
IMD	Matt Smorhun	FAS
PRB	Ian McConville	AS – observer
AUB	s 22(1)(a)(ii) for Samantha Montenegro	A/g AS – observer
CXB	Catherine Reid	AS – observer
CMB	Greg Wilcock	AS – observer

Apologies:

Jan Adams, Secretary

Tim Yeend, Associate Secretary, Trade and Investment Group *(leave)*

Michael Growder, FAS, Capability Taskforce

Frances Lisson, FAS, Chief Negotiator CECA

Lucelle Veneros, FAS, Australian Passport Office

Jamie Isbister, FAS, Strategic Infrastructure Division

Kristin Tilley, FAS, Amb Climate Change

Gary Cowan, FAS, North Asia Division

Paul Griffith, FAS, Executive Division

Belinda Casson, FAS, Chief People Officer

Brad Medland, FAS, Chief Financial Office

Samantha Montenegro, AS, Chief Auditor

Stephanie Copus Campbell, AS, Amb Gender Equality

From: PS News <subs@psnews.com.au>
Sent: Tuesday, 11 July 2023 12:35 AM
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The Royal Commission into the Robodebt Scheme's report has made various findings about the conduct, roles and responsibilities of individual Public Servants involved in the Robodebt Scheme. . . . *Read more*

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It's a sad news that the long-serving, free and positive PS News we're reading today could be in . . . *Read more*

First APS Academy Campus launched in Newcastle
Senator the Hon Katy Gallagher, Minister for Finance, Women and the Public Service, launched . . . *Read more*

Gender payment equity still days short
The Workplace Gender Equality Agency (WGEA) has announced that 2023's Equal Pay Day . . . *Read more*

School holiday ends lead to cyberbullying
As we prepare for children going back to school, eSafety has urged parents and carers to . . . *Read more*

APSC Directions go Circular for Regulations
The Australian Public Service Commission (APSC) has issued a Circular to advise APS agencies . . . *Read more*

DTA to uprate new year marketplace
The Digital Transformation Agency(DTA) has announced it is to replace its Digital Marketplace in . . . *Read more*

APSC reviewed to test capability
The Australian Public Service Commission (APSC) has completed the first Capability Review . . . *Read more*

ABF targeting migrant workers' month
Unscrupulous employers underpaying or exploiting migrant workers in Australian workplaces . . . *Read more*

PERSONAL DEVELOPMENT

Key decisions when the chips are down
By May Busch

Rising to the challenge of making a mistake
By Travis Bradberry

Don't make the mistake I keep on making
By Gretchen Rubin

MANAGEMENT MATTERS

How to bring out the best in your team
By Daisy Lovelace

What does it take to be a strong leader?
By Dennis Beaver

Strategies for retaining effective employees
By Melissa Ramos

FINANCE & SUPERANNUATION

Sweeping for new banks as branches close
By Elena Couper

How to dispute mistakes on your credit report
By Holly Johnson

Struggling for a 2023 house? Good ones still walk from 2021
By Aarthi Swaminathan

WOMEN IN LEADERSHIP

Sharing caring: Why more Australian men opt for parental leave
By Emma Walsh

How to get Diversity and Inclusion right at work
By Finance

How to be more comfortable being wrong
By Sade Jones

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Nuclear Plant and water – what could possibly go wrong?
By Jonathan Small

Leaders concerned about the future of generative AI
By Nicole Lewis

Computer problems are a big waste of time
By Michael Skov Jensen-Copenhagen

TALKING POINT

Thai political winds and the decline of the monarchy
Even if the electoral success of Thailand's Move Forward Party does not end in control of Parliament, Pavin Chachavalpongpun says the people have spoken, and their voice will be hard to stifle.

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Cheers,

Frank Cassidy

Group Editor - PS News

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