



Australian Government

Government Response | Royal Commission into the Robodebt Scheme

November 2023

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Ministerial Foreword

“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.”¹

With those words, the Royal Commission summed up the human tragedy that was the Robodebt Scheme – a Budget measure introduced by the Abbott Government, expanded by the Turnbull Government and defended, until the last minute, by the Morrison Government.

The Robodebt Scheme was not an innocent mistake.

The Royal Commission found that “[t]he beginning of 2017 was the point at which Robodebt’s unfairness, probable illegality and cruelty became apparent”². But, instead of abandoning or revising the Scheme, the Royal Commission found that the path taken by the former government “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”³.

It was not until mid-2020 that the Robodebt Scheme finally came to an end. Not because the former government saw the error of its ways or finally came to its senses – but because the Federal Court found that the Scheme was unlawful. And yet to this day, people who served as senior Cabinet ministers in the former government continue to maintain that “[w]hen the problems were brought to the attention of the government at the time, the program was stopped”⁴. Such claims are demonstrably false and an insult to the hundreds of thousands of Australians harmed by the Robodebt Scheme – most of whom were targeted after the point at which the Royal Commission found the Scheme’s “unfairness, probable illegality and cruelty became apparent”⁵. Those who shared their stories with the Royal Commission and who campaigned tirelessly to raise the alarm bells about the gross betrayal that was the Robodebt Scheme deserve better.

While ministers of the former government bear ultimate responsibility for the Robodebt Scheme, the Royal Commission found serious failings within the Australian Public Service and with the institutional checks and balances that should have put a stop to the Robodebt Scheme long before the Federal Court found it unlawful.

Commissioner Holmes AC SC made 56 recommendations for reform.

We have worked through the Commissioner’s recommendations carefully. The Australian Government has accepted or accepted in principle all 56 recommendations. This is backed up by resources to ensure we deliver meaningful change. For some recommendations, we have gone further than the

¹ Royal Commission into the Robodebt Scheme, Report, page xxix.

² Royal Commission into the Robodebt Scheme, Report, page xxvii.

³ Royal Commission into the Robodebt Scheme, Report, page xxvii.

⁴ [9news, 9 July 2023](#).

⁵ Royal Commission into the Robodebt Scheme, Report, page xxvii. Most people were targeted after early 2017: Royal Commission into the Robodebt Scheme Exhibit 8538 – Response to NTG-0097 (681,292 reviews for EIC program from early 2017 and 247,459 reviews from October 2018 for CUP program, compared to 220,439 reviews prior to 2017 for OCI program).

Commissioner recommended. For others, we are implementing them in a way that achieves the objective and ensures lasting effectiveness.

The Australian Government thanks Commissioner Holmes and her team for their dedication, professionalism and forensic work on the Royal Commission.

To those who shared their stories with the Royal Commission – thank you.

Throughout the Royal Commission we saw courage, leadership and ethics on display from victims, advocates and whistleblowers.

To the millions of Australians who interact with government services every day – we are committed to putting you back at the centre of policy design and service delivery. We are here to serve you respectfully and responsively, with your needs and aspirations at the heart of what we do.

To the Australian Public Servants delivering services, and to those developing policy and programs – your work matters. Your integrity matters. Each day dedicated to public service is a day dedicated to working for Australians and making their lives better.

The Australian Government and Ministers must act in the best interests of the Australian community. Many of the Royal Commission’s findings align with the priorities and reforms the Australian Government took to the Australian people at the last election – building trust in government, investing in a capable public sector, delivering strong institutions and ensuring humans are put back at the centre of human services and service delivery.

This Response reinforces the Australian Government’s reform agenda – an agenda founded on integrity and a commitment to leave no-one behind. We are putting in place changes that will deliver enduring benefits for all Australians. The Australian people deserve no less.

Attorney-General

The Hon Mark Dreyfus KC MP

Minister for the Public Service

Senator the Hon Katy Gallagher

Australian Government Response to the Report of the Royal Commission into the Robodebt Scheme

On 7 July 2023, the Royal Commission into the Robodebt Scheme delivered its Report to the Governor-General. It was tabled in the Australian Parliament the same day.

In the words of Commissioner Holmes AC SC, the Royal Commission “served the purpose of bringing into the open an extraordinary saga, illustrating a myriad of ways that things can go wrong through venality, incompetence and cowardice”⁶. The Commission produced 56 valuable recommendations, which are principally directed at strengthening the Australian Public Service and capability of oversight agencies. This document provides the Government’s response to those recommendations.

However, before turning to the recommendations, it is important to place the Government’s response in its proper context.

While important, the recommendations are not – in and of themselves – enough to prevent another Robodebt Scheme. As Commissioner Holmes notes in the Preface to the Report, “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*”.⁷

The Government agrees.

The former government’s neglect of, and at times open hostility towards, our public institutions was arguably unprecedented. Examples abound. The debasement of the Administrative Appeals Tribunal, the defunding of the Administrative Review Council and the attempted abolition of the Office of the Australian Information Commissioner and the Independent National Security Legislation Monitor. The contempt for journalists, public interest reporting and whistleblowers. The devaluing of the Australian Public Service. The list goes on and on.

Since the 2022 Federal Election, the Albanese Government has embarked on a series of reforms to restore the public’s trust and faith in government and its institutions – reforms that put people at the centre and promote integrity. This work includes:

- The establishment of the **National Anti-Corruption Commission** (NACC) with extensive powers to investigate Commonwealth public officials, Ministers, their staff, and any person that may adversely affect how a public official carries out their official duties honestly and impartially.

⁶ Royal Commission into the Robodebt Scheme, Report, page 659.

⁷ Royal Commission into the Robodebt Scheme, Report, page iii.

- The APS Reform agenda – putting strong foundations in place for a **world-class and future fit Australian Public Service** that delivers better outcomes for the community and contributes to a fairer and more inclusive Australia.
- The Prime Minister has put in place a **robust Code of Conduct**⁸ which requires Ministers to act with due regard for integrity and legality, fairness, accountability, responsibility and the public interest; and underscores that Ministers are accountable for the exercise of their powers and functions to the Parliament and to the public.
- Strengthening Australia’s public sector whistleblowing framework and achieving strong, effective and accessible **whistleblower protections** in two stages (with the first stage of reform commencing from 1 July 2023).
- The abolition and replacement of the Administrative Appeals Tribunal – a landmark reform that will lead to the creation of a **new system of administrative review** that is user-focussed, efficient, accessible and fair.

In addition, in response to recommendations of the Royal Commission, the Government is committed to:

- bringing forward legislative reforms to **enhance the powers of the Commonwealth Ombudsman** and impose statutory obligations on officials responding to Commonwealth Ombudsman investigations, and
- **reinstating the Administrative Review Council** to support ongoing improvements to administrative decision-making across government.

A Government committed to a strong social security safety net - Re-humanising the delivery of government payments

In the Royal Commission Report, Commissioner Holmes referred to the way in which Australians receiving income support payments have been stigmatised in recent years, explaining that they have been often made to feel “shame, oppression, isolation, and dehumanisation”⁹. By no means the only example, but perhaps the most infamous, occurred in December 2016 as the Robodebt scheme was being ramped up, when the then-Minister for Human Services Alan Tudge said on national television:

“We will find you, we will track you down, and you will have to repay those debts, and you may end up in prison.”¹⁰

The Royal Commission called for politicians to lead a change in attitudes to people receiving income support payments, including abandoning the simple narrative of the taxpayer versus

⁸ Australian Government [Code of Conduct for Ministers](#), 8 July 2022.

⁹ Royal Commission into the Robodebt Scheme, Report, page 330.

¹⁰ Royal Commission into the Robodebt Scheme, Report, page 140.

the welfare recipient.¹¹ The Commissioner remarked that the evidence before the Commission was that fraud in the 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”¹².

The social security system is a vital safety net, providing both income support and access to services for Australians who need it. Many Australians need this support at different times in their lives, for many different reasons. There is no shame in this.

The social security system safety net is also fundamental to our economy. The system allows Australians to get on with their lives in the understanding that support is available if circumstances change. This empowers people and helps build prosperity.

The Government is committed to putting people back at the centre of program design and service delivery. The Department of Social Services and Services Australia are investing in more training for officials and will seek regular feedback on service and program delivery from front-line staff and the community.

The Government will continue to implement administrative changes to improve payment accuracy and reduce the number of overpayments. The Government will also improve social security debt arrangements to ensure that debt raising and recovery practices are timely, fair and conducted with empathy and respect.

The deployment and adoption of safe and responsible automation and artificial intelligence presents significant opportunities for Australia to improve economic and social outcomes. Across society, the considered and ethical use of technology can help to deliver better services to the community, including government services.

The Government will continue to implement the Digital Service Standard, which sets out best practice principles for the inclusive, adaptable and ethical design and delivery of government services. The Standard includes criteria that promote a human-centred and inclusive approach to design.

In response to the Commission’s recommendations, the Government will also consider opportunities to progress legislative reforms to ensure that government decisions involving automation are made under a consistent legal framework which is clear and transparent, while harnessing the speed, cost and efficiency benefits of technological advances in artificial intelligence and automation. The Government has committed to developing a comprehensive and consistent legal framework to support automated decision-making, consistent with the principles recommended by the Royal Commission.

The Government also remains committed to ensuring Australians have greater control over their own personal information. In the Government response to the Privacy Act Review the Government has committed to reforms that will provide stronger privacy protections while encouraging digital innovation.¹³

¹¹ Royal Commission into the Robodebt Scheme, Report, page iii.

¹² Royal Commission into the Robodebt Scheme, Report, page iii.

¹³ [Government response to the Privacy Act Review Report | Attorney-General's Department \(ag.gov.au\)](#).

Government Response to Recommendations

The Royal Commission into the Robodebt Scheme made 56 recommendations and one closing observation.

In relation to the Commissioner's closing observation, the *Freedom of Information Act 1982* (Cth) (FOI Act) promotes accountability in government decision-making by providing the community with access to government documents, subject to some exemptions. The confidentiality of Cabinet documents is one of those exemptions.

The Australian Government believes that it is critical that the Cabinet, the key decision-making body of Government, is comprehensively informed in its deliberations. To achieve this, the Cabinet must have the benefit of frank and fearless advice from Ministers and senior public servants. The decisions taken by the Cabinet are collective. As set out in the Cabinet Handbook:

The principle of collective responsibility requires that ministers should be able to express their views frankly in Cabinet meetings in the expectation that they can argue freely in private while maintaining a united front in public when decisions have been reached. This in turn requires that opinions expressed in the Cabinet and Cabinet Committees, including in documents and any correspondence, are treated as confidential.¹⁴

For these reasons, the Government does not consider that section 34 of the FOI Act should be repealed.

In relation to the Commissioner's recommendations, **the Australian Government accepts or accepts in principle all 56 recommendations**. Where a recommendation has been accepted in principle, the Government is committed to achieve the objective of the recommendation but has either identified an alternative means of doing so, or considers that further consideration is needed.

¹⁴ [Cabinet Handbook - 15th edition | PM&C \(pmc.gov.au\)](#), para 21.

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 Government **accepts** this recommendation.

The Government recognises the importance of designing policies and government services that focus on the needs of recipients. This includes making services as accessible as possible and delivering them in a way that meets the needs of individuals and the community.

The Government will continue to improve the delivery of services for Australians. When considering a change to a service, before policy, investment and service delivery decisions are made, the Government will gather an evidence-based understanding of the needs of recipients, which is based on the views of recipients, and explore how the proposed changes may impact recipients. The Department of Social Services and Services Australia will work together to ensure customer and staff feedback is considered in the design of policy and processes.

Priority 2 of the Government's Australian Public Sector Reform agenda is to put people and business at the centre of policy and services.¹⁵ In partnership with the broader APS and government services users, Services Australia has developed a whole of service vision for user-centred service excellence: "reliable and accessible services when and how you need them"¹⁶. The vision supports coherent leadership in the design and delivery of government programs, services and payments; service alignment; and shared execution. It is intended to complement the service delivery principles, standards and charters of individual departments and agencies.

¹⁵ [APS Reform outcomes and initiatives \(apsreform.gov.au\)](https://apsreform.gov.au).

¹⁶ [APS Vision for user-centred service excellence | APS Reform \(apsreform.gov.au\)](https://apsreform.gov.au).

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.

The Government **accepts** this recommendation.

The Government supports the need for clear documentation that specifies the circumstances when an individual may be excluded from a compliance process.

Services Australia will produce clear documentation for any exclusion criteria when any cohort of recipients is intended to be excluded from compliance or debt related activities. This includes recording any associated exclusions within any compliance activity business process specifications and compliance program 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.

The Government **accepts** this recommendation.

The Government agrees that individual circumstances that might impact on an individual's capacity to engage with government services, or reviews of payments and services, should be taken into account during service delivery and customer engagements.

Disclosure of individual circumstances is voluntary in most cases, particularly when this detail may not be required to establish an entitlement to a payment or service. Noting this, in some circumstances it may not be possible for delivery agencies to proactively identify all circumstances that might affect a person's ability to engage with a compliance activity.

In recognition, Services Australia has developed internal guidance to support staff to engage with customers, build the agency's capability to identify customers experiencing vulnerability, and support customers to safely disclose their circumstances and access appropriate information, services and support. Issued in July 2021, the 'Our vulnerability strategy' is being implemented across Services Australia.

Where an individual discloses a vulnerability, this will inform the way the agency engages with the individual in the delivery of programs and services, including connecting the customer with any additional support services. To support this, information about circumstances affecting a recipient's capacity to engage is recorded on customer records. This information is also accessible to service delivery partners.

Services Australia will continue to engage with customers in a way that supports proper consideration of individual circumstances, and to support customers to disclose any vulnerabilities impacting them.

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.

The Government **accepts** this recommendation.

Operational guidance material and the 'Our vulnerability strategy' support Services Australia service officers to identify when customers' circumstances should be recorded and updated on a customer's record. This includes when vulnerabilities are identified, require updates due to a change in the customer's circumstances, or are no longer impacting the customer.

Records held by Services Australia contain notes that alert staff to circumstances where a recipient is experiencing difficulties that might affect their ability to meet mutual obligation requirements. Where an individual discloses a vulnerability, staff will use this knowledge to tailor the discussion and interaction, including the promotion of appropriate programs and services, and connect the customer to specialist supports and/or referrals to local service providers. To support this, information about circumstances affecting a person's capacity to engage in mutual obligation requirements is recorded on customer files.

Notes are generally applied on the basis of information provided by individuals through their engagement with the agency. A record of a person's circumstances is maintained on their customer file and accessible if they have future interactions with the agency.

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 Government **accepts** this recommendation.

The Government recognises the importance of considering an individual's capacity to engage with government services and any reviews of their circumstances that might impact eligibility for a payment or services.

Services Australia uses established forums to support engagements with advocacy groups including the National Multicultural Advisory Group, Disability Peak Bodies, Stakeholder Consultative Group and the Civil Society Advisory Group. Engagements through these forums have informed changes to the agency's service delivery and support services.

Services Australia will continue to seek advice and input from civil society stakeholders to improve service delivery, particularly where changes are being made and there are opportunities for co-design.

Recommendation 12.1: Easier engagement with Centrelink

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

The Government **accepts** this recommendation.

The Government recognises the important role advocates play in the administration of government services and undertakes regular engagements with peak advocacy groups.

Services Australia will actively identify opportunities to engage with advocacy groups. To support engagement between Services Australia and advocacy groups, the agency has a number of established forums through which advocacy groups can engage directly with the agency. These forums provide a channel for advocacy groups to raise concerns and provide feedback to the agency.

Services Australia will pilot an 'advocates' channel for legal advocates. This pilot will help inform the suitability of channels for advocacy groups acting on behalf of vulnerable customers, and to inform a longer-term scalable solution. The pilot will be progressed in conjunction with Economic Justice Australia (EJA).

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.

The Government **accepts in principle** this recommendation.

Government agencies provide vital services and information for the community. Service design should respond to community need, and the methods of service delivery should be as effective and efficient as possible.

In partnership with the broader APS and government services users, Services Australia has developed a whole of service vision for user-centred service excellence: “reliable and accessible services when and how you need them”¹⁷. This vision forms part of Priority 2 of the Government’s Australian Public Sector Reform agenda, and puts people and business at the centre of policy and services. The vision supports coherent leadership in the design and delivery of government programs, services and payments; service alignment; and shared execution. It is intended to complement the service delivery principles, standards and charters of individual departments and agencies.

The Australian Public Sector Reform Office and Services Australia are also partnering to develop whole-of-government Service Design Standards to support agencies to design, administer and improve new and existing services and payments. The Standards will be evidence-based and informed by the needs and expectations of the Australian community.

Recommendation 12.3: Consultation

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

The Government **accepts** this recommendation.

The Government will consult with peak advocacy groups when implementing modifications to the social security system.

Building and expanding on existing engagement mechanisms, including with organisations like Economic Justice Australia and the Australian Council of Social Service, the Department of Social Services and Services Australia will engage with peak advocacy bodies to determine the most effective way to seek their views on the design and implementation of projects where there are likely to be implications for users of the social security system.

¹⁷ [APS Vision for user-centred service excellence | APS Reform \(apsreform.gov.au\)](#).

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.

The Government **accepts** this recommendation.

Legal assistance plays a vital role in ensuring more equal access to the justice system which is fundamental to our democratic society and the rule of law. Not only does legal assistance facilitate improved outcomes for individuals, it also generates broader benefits to society.

The independent review of the National Legal Assistance Partnership 2020-25 (NLAP) commenced in June 2023.¹⁸ The Terms of Reference for the review are broad, and require the review to evaluate whether the objectives, outcomes and outputs of the NLAP have been achieved.¹⁹

The Issues Paper published by the independent reviewer states that recommendation 12.4 is within the scope of the Terms of Reference, and will be considered as part of the review.²⁰ The findings and recommendations of the review will inform future funding arrangements for legal assistance.

Recommendation 13.1: Consultation process

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

The Government **accepts** this recommendation.

The Government supports undertaking consultation with front-line staff when designing and implementing new programs, noting their expertise in engaging with customers.

Services Australia will ensure the experiences of front-line staff are sought and fed into design practice and service delivery policy.

¹⁸ [Independent Review of the National Legal Assistance Partnership \(ag.gov.au\)](https://www.ag.gov.au).

¹⁹ [The Independent Review of the NLAP \(nlapreview.com.au\)](https://www.nlapreview.com.au).

²⁰ [Issues Paper | NLAP review \(nlapreview.com.au\)](https://www.nlapreview.com.au).

Recommendation 13.2: Feedback processes

Better feedback processes should be put in place so that front-line 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.

The Government **accepts** this recommendation.

The Government commits to ensuring agencies have processes in place to gather feedback from front-line staff, noting their first-hand experiences in engaging with the community.

Services Australia has a variety of mechanisms in place for staff to provide feedback, given the variability of services provided by the agency. Services Australia is committed to supporting staff input into the delivery of programs, both specific and systemic delivery considerations, and insights on emerging issues for policy design and program delivery.

Recommendation 13.3: "Face-to-face" support

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

The Government **accepts in principle** this recommendation.

The Government recognises the importance of designing services to meet the needs of individuals, particularly vulnerable recipients. This includes making services as accessible as possible, including for individuals located in remote areas, through the preferred channel of the individual.

The Australian Public Sector Reform Office and Services Australia are partnering to develop whole-of-government service delivery attributes and Service Design Standards to support agencies to design and administer new and existing services and payments. The Standards will be evidence-based and informed by the needs and expectations of the Australian community.

The Government recognises the importance of having face-to-face services available to Australians when required. Services Australia has been transforming its face-to-face services since 2019-20. Improvements have been made to the service environment including in person and online. Services Australia will continue to adopt a customer-centred approach. The ongoing efforts to transform service delivery will be directed toward better assisting customers to navigate services tailored to their needs, including through identifying opportunities to engage and collaborate with government service delivery partners and support more customers to access government services from a single location.

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.

The Government **accepts in principle** this recommendation.

The Government recognises the important role social workers play in supporting our community, and connecting Australians with services that support their needs.

The Services Australia Social Work Servicing Strategy (2021-2025) outlines how the agency is transforming the way it delivers social work services. The Strategy was developed in consultation with Services Australia social workers, and draws on their expertise and experience. The vision identified in the Strategy is to ensure “a progressive social work service committed to social justice and helping individuals, families and communities so people can get on with their lives” consistent with the agency’s Master Plan, and to provide world-class services to citizens through increased social worker accessibility.

To maximise access to social work support for customers and staff, Services Australia is also exploring additional delivery methods to support connections with customers and continues to respond to customer needs through their preferred method of contact.

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.

The Government **accepts** this recommendation.

In providing advice to Cabinet, Ministers, departments and agencies should indicate whether a new policy proposal will require legislative change in order for it to be lawfully implemented, in addition to giving advice on whether legislation is required to authorise expenditure. In circumstances where it has not been possible to determine whether legislative change is required, this should also be clearly stated. Relevant Cabinet procedures will be updated to reflect this.

This recommendation will be implemented by the Department of the Prime Minister and Cabinet, the Department of Finance and the Treasury, in consultation with the Attorney-General’s Department.

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.

The Government **accepts in principle** this recommendation.

The Government agrees that Cabinet should be clearly informed of identifiable legal issues associated with the implementation of new policy proposals. The Government considers that clear, concise and succinct summaries of legal issues are likely to be of greater assistance to entities and Ministers than copies of entire legal advices. Relevant Cabinet procedures will be updated to reflect this.

This recommendation will be implemented by the Department of the Prime Minister and Cabinet, the Department of Finance and the Treasury, in consultation with the Attorney-General's Department.

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.

The Government **accepts** this recommendation.

Sponsoring Ministers and entities are responsible for ensuring that they present clear information on what is required to implement a new policy proposal. Where legal advice is provided on a new policy proposal, Cabinet should receive complete and accurate information, particularly regarding whether or not the Australian Government Solicitor has reviewed and agreed with any legal advice on whether legislative change is required. Relevant Cabinet procedures will be updated to reflect this.

This recommendation will be implemented by the Department of the Prime Minister and Cabinet, the Department of Finance and the Treasury, in consultation with the Attorney-General's Department.

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.

The Government **accepts** this recommendation.

Cabinet should receive clear and accurate advice on new policy proposals, to ensure it fully understands associated legal issues and risks. Relevant Cabinet procedures will be updated to make it clear what legal advice has been obtained, in respect of what risks, and by whom it was provided. The updates will provide clearer information on legislative authority issues relating to spending, and on legal issues relating to other aspects of the proposal.

This recommendation will be implemented by the Department of the Prime Minister and Cabinet, in consultation with the Department of Finance, the Treasury and the Attorney-General's Department.

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.

The Government **accepts** this recommendation.

All Ministers, departments and agencies are expected and required to comply with the rules outlined in the Cabinet Handbook and the Budget Process Operational Rules when developing new policy proposals and measures with financial implications.

The Department of Social Services and Services Australia will ensure budget initiatives are progressed in consultation with the Department of Finance, and in compliance with the Budget Process Operational Rules. Data sources will be identified, and assumptions will be required to be documented and provided in a transparent manner.

The Digital Transformation Agency is also assisting agencies articulate and measure the benefits of investment in technology, including as they relate to technology-enabled compliance measures.

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.

The Government **accepts** this recommendation.

All Ministers, departments and agencies are expected and required to comply with the rules outlined within the Cabinet Handbook and the Budget Process Operational Rules when developing new policy proposals and measures with financial implications.

The Department of Social Services and Services Australia will ensure budget initiatives are progressed in consultation with the Department of Finance, and in compliance with the Budget Process Operational Rules. Data sources will be identified, and assumptions and inputs will be provided for compliance measures. These will be required to be documented and provided in a transparent manner.

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.

The Government **accepts** this recommendation.

The collection, use, storage and disclosure of personal information is fundamental to the effective administration of government agencies and departments. It is therefore critical the public have trust and confidence that agencies and departments are adhering to the robust legislative frameworks in place which protect personal privacy.

Government agencies and departments have obligations to protect an individual's information under the *Privacy Act 1988* (Cth), the Australian Privacy Principles and relevant guidelines issued by the Office of the Australian Information Commissioner. Recognising the importance the protection of personal information has in the administration of the tax and social security systems, the *Taxation Administration Act 1953* (Cth) and *Social Security (Administration) Act 1999* (Cth) also contain provisions that protect an individual's information.

The Australian Taxation Office and Services Australia have obtained independent, external legal advice in respect of the Pay As You Go (PAYG) and Single Touch Payroll (STP) data exchange programs, which confirm that both agencies are complying with the required legislative frameworks governing each aspect of the data exchange, specifically, the confidentiality and Tax File Number (TFN) provisions in the *Taxation Administration Act 1953*, the confidentiality provisions of the *Social Security (Administration) Act 1999*, and the *Privacy Act 1988*.

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.

The Government **accepts** this recommendation.

The Government recognises the importance governance frameworks have in providing an effective level of oversight of joint programs operating between government agencies. These frameworks provide agencies with appropriate issues resolution pathways, clearly articulate the objectives of the arrangement and outline the expectations and responsibilities of each party.

The Australian Taxation Office and Services Australia are reviewing all existing data exchanges operating between the agencies to ensure all legal and ethical requirements are met, and that the governance arrangements and supporting framework documentation, including Memoranda of Understanding and joint forum terms of reference, are in place and accurately reflect the processes and procedures of the exchange.

The Australian Taxation Office and Services Australia will review new and existing data sharing arrangements in line with guidance material issued by the Office of the Australian Information Commissioner and the Office of the National Data Commissioner, and will consult with these oversight bodies where required.

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.

The Government **accepts** this recommendation.

The safe and responsible development and deployment of automated decision-making provides important opportunities to deliver timely and efficient services for Australians.

The Government will consider opportunities for legislative reform to introduce a consistent legal framework in which automation in government services can operate ethically, without bias and with appropriate safeguards, which will include consideration of:

- review pathways for those affected by decisions, and
- transparency about the use of automated decision-making, and how such decision-making processes operate, for persons affected by decisions and to enable independent scrutiny.

The reforms agreed to in the Government response to the Privacy Act Review Report, released 28 September 2023, will also increase the transparency and integrity of decisions made using automated decision-making that uses personal information. Privacy policies will be required to set out the types of personal information used in automated decision-making systems that have a legal or similarly significant effect on an individual's rights. There will also be a right for individuals to request meaningful information about how these decisions are made.²¹

²¹ [Government response to the Privacy Act Review Report](#), 2023.

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.

The Government **accepts** this recommendation.

The Government agrees that ethical considerations and principles of administrative law must be taken into account in the design of automated decision-making processes and there should be proper oversight of these arrangements.

The Government will ensure there is appropriate oversight of the use of automation in service delivery. This includes oversight of technical aspects to identify potential bias and ensure the use of automated decision-making or artificial intelligence is ethical and in accordance with legislative protections. In implementing this recommendation, the Government will consider establishing a body, or expanding the functions of an existing body, with the power to monitor and audit automated decision-making processes.

The Government will examine existing regulatory frameworks that provide safeguards for artificial intelligence and automated decision-making to ensure a consistent legal, ethical and governance framework in which automation in government services can operate with appropriate safeguards.

The Government commits to ensuring new technologies are integrated in a safe and responsible manner. The Government's Data and Digital Government Strategy²² includes a Government commitment to empower departments and agencies to safely engage with emerging technologies like artificial intelligence and ensure they remain transparent about how these technologies are used in the functioning of government and the delivery of government programs, payments and services. Governance of automated decision-making will also be further considered as part of current work to develop appropriate whole-of-government assurance and governance of artificial intelligence.

²² [Data and Digital Government Strategy](#), 2023.

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.

The Government **accepts** this recommendation.

The Government commits to ensuring income support and other services are available to vulnerable Australians when they need it, without stigma; and that debt recovery practices are undertaken in a manner that is fair, empathetic and respectful, and takes into account individual circumstances.

The Government will continue to implement changes to improve debt recovery policy and practice, within the underpinning legal framework.

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 subsections 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.

The Government **accepts in principle** this recommendation.

The Government will improve social security debt arrangements and is committed to ensuring debt raising and recovery is undertaken in a timely, fair and respectful manner.

Any reform to the approach of raising and recovering social security debts should be undertaken in a systematic way, with careful consideration of the unique circumstances of social security debtors. The Government will carefully consider options for legislative reform, including

appropriate statutory limitation periods for the raising and recovery of social security debts to comprehensively address the issues identified by the Royal Commission.

The Government is committed to improving social security debt arrangements to ensure that debt recovery practices are clear and conducted in a respectful manner.

The Government will continue to implement administrative changes to make the system fairer for those who incur debts, and to reduce the likelihood of recipients incurring a debt in the first place.

If social security recipients do not agree with a debt decision, they can seek an explanation from Services Australia and/or apply for a formal review. Information about opportunities for review is included in Services Australia debt notices and is also available on the Services Australia website. In addition, social security recipients may request an appointment with a Services Australia social worker who can refer them to financial counselling and support services.

Measures to improve the accuracy of social security payments are being implemented as a priority for the Government, reducing the likelihood of debts being incurred due to overpayments. These include the use of Single Touch Payroll (STP) for reporting of employment income. STP has now been implemented for the majority of employers, enabling the pre-filling of social security recipients' employment income reports, and supporting faster and more accurate actual income reporting.

The Australian National Audit Office has also recently completed a performance audit on the accuracy and timeliness of income support, and Services Australia and the Department of Social Services are implementing the agreed recommendations.

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.

The Government **accepts** this recommendation.

The Government recognises the specialist input the Australian Government Solicitor or their representative could provide in the selection of the chief legal officers of Services Australia and the Department of Social Services.

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.

The Government **accepts** this recommendation.

The Government recognises the importance of providing training and development to its in-house legal officers, to ensure that they are able to deliver services in line with Legal Practice Standards.

Services Australia legal staff are subject to Legal Practice Directions issued by the Chief Counsel which set out the obligations and requirements of agency legal staff, including a requirement to undertake regular training. In addition, performance agreements for all Services Australia legal staff will require staff to comply with the Legal Practice Directions.

Services Australia has also engaged with the Department of Social Services and other agencies within the Social Services portfolio on shared training for legal staff across the social services portfolio. Areas in focus include training on legal ethics, obligations of in-house lawyers and principles of advice writing. This training is additional to the obligations of in-house lawyers to complete mandatory Continuing Legal Education (CLE) to maintain their practising certificates.

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.

The Government **accepts** this recommendation.

The Government recognises the importance of having clear Legal Practice Standards in place that outline the core duties and responsibilities of in-house government lawyers.

The Department of Social Services (DSS) has developed a new package of legal practice governance documents, which include updates to the Legal Practice Manual issued by the Chief Counsel that set out the core duties and responsibilities of all legal officers working at DSS. Compliance with these duties and obligations will be included in the performance agreements for all legal staff.

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.

The Government **accepts** this recommendation.

The Government recognises the importance of providing training and development to its in-house legal officers, to ensure that they are able to deliver services in line with Legal Practice Standards.

The Department of Social Services (DSS) is establishing a regular training program for in-house lawyers that will include a focus on core studies and responsibilities laid down in DSS Legal Practice Standards. DSS is also actively taking steps to engage providers to deliver integrity and professional independence training for all lawyers in the Department. This training will be in addition to the lawyers' obligation to complete Continuing Legal Education (CLE) associated with maintaining the required Practising Certificate.

DSS has also engaged with Services Australia and other agencies within the social services portfolio regarding the opportunities for shared training for legal staff across the social services portfolio. Areas in focus include training on legal ethics, obligations of in-house lawyers and principles of 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.

The Government **accepts** this recommendation.

The Government agrees that legal advice cannot be disregarded because it is in draft form and it is never acceptable for legal advice not to be finalised on the basis that the advice may be inconvenient or unwelcome.

The Secretary of the Department of Social Services issued guidance on the practice of requesting, clarifying and finalising legal advice on 14 November 2022. The Chief Counsel of the Department of Social Services has also issued Legal Services Practice guidance on obtaining external legal advice, including draft advice, clearly articulating that external advice is not to be left in draft form indefinitely, but should be finalised as soon as is practicable.

The Government also considers it is important that the treatment of draft legal advice is consistent across agencies. On 15 May 2023, the Secretary of the Attorney-General's Department circulated initial guidance to all the heads of legal services functions across the APS on the use of draft legal advice within government, making it clear that legal advice cannot be

disregarded because it is in draft form and that it is never acceptable for legal advice not to be finalised on the basis that the advice may be inconvenient or unwelcome. The Attorney-General's Department is reviewing the guidance in light of the observations made by the Royal Commission.

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.

The Government **accepts** this recommendation.

The Government agrees that legal advice cannot be disregarded because it is in draft form and it is never acceptable for legal advice not to be finalised on the basis that the advice may be inconvenient or unwelcome.

The Chief Counsel of Services Australia has issued internal Legal Practice Standards on obtaining external legal advice, including draft advice. Legal Officers are required to have regard to the Chief Counsel's expectation that draft legal advice will ordinarily be finalised, that legal advice cannot be disregarded on the basis that it is in draft form, that it is never acceptable for draft legal advice not to be finalised because it may be unwelcome or inconvenient, and that draft legal advice should be finalised before it is relied upon to make decisions. Where finalisation of draft advice is not practicable, Legal Officers must place a file note on the relevant file confirming the reason the advice was not finalised.

The Government also considers it is important that the treatment of draft legal advice is consistent across agencies. On 15 May 2023, the Secretary of the Attorney-General's Department circulated initial guidance to all the heads of legal services functions across the APS on the use of draft legal advice within government, making it clear that legal advice cannot be disregarded because it is in draft form and that it is never acceptable for legal advice not to be finalised on the basis that the advice may be inconvenient or unwelcome. The Attorney-General's Department is reviewing the guidance in light of the observations made by the Royal Commission.

Recommendation 19.7: The Directions

The *Legal Services Directions 2017* should be reviewed and simplified.

The Government **accepts** this recommendation.

The *Legal Services Directions 2017* play an important function setting out the requirements for sound practice in the provision of legal services to the Australian Government.

The Government will review and redraft aspects of the *Legal Services Directions 2017* with a view to ensuring the Directions are fit-for-purpose in supporting agencies to undertake Commonwealth legal work and manage legal risk in an effective, consistent and whole-of-Commonwealth manner.

The Attorney-General's Department will lead implementation of this recommendation.

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.

The Government **accepts** this recommendation.

The Government recognises the important function that the Office of Legal Services Coordination performs for the APS and supports the provision of any guidance that would further strengthen the reporting of significant legal issues.

The significant issues reporting and settlement regime in the *Legal Services Directions 2017* allows the Attorney-General as First Law Officer to have visibility of, and the ability to influence, key legal matters across the Commonwealth. The Attorney-General's Department will review its practices to provide improved guidance and support to better enable agencies to identify significant issues arising in their legal work, and to provide the relevant information at the appropriate time to support the Attorney-General perform the functions of the First Law Officer.

The Government is providing \$5.2 million over the forward estimates and \$1.1 million per year, ongoing, including additional ongoing staff for the Attorney-General's Department, to provide improved support and guidance on the significant legal issues regime.

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.

The Government **accepts** this recommendation.

The Attorney-General's Department will build on existing work to ensure it has appropriate processes to document and record all inquiries with agencies on whether a legal issue is required to be reported.

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*.

The Government **accepts** this recommendation.

The Government recognises the important function that the Office of Legal Services Coordination performs for the Australian Public Service and supports the provision of any guidance that would further strengthen the reporting of significant legal issues.

The Attorney-General's Department will develop new guidance material to support agencies' understanding of and compliance with the obligations in paragraph 10 of the *Legal Services Directions 2017* on the consultation on and sharing of legal advices.

Recommendation 19.11: Resourcing the Office of Legal Services Coordination

The OLSC should be properly resourced to deliver these functions.

The Government **accepts** this recommendation.

The Government recognises the important function that the Office of Legal Services Coordination performs for the Australian Public Service and that it be properly resourced.

The Office of Legal Services Coordination in the Attorney-General's Department performs a critical function in supporting the Attorney-General as First Law Officer in having overarching responsibility for all Commonwealth legal work, and supporting agencies to manage legal risk in a collaborative and whole-of-Commonwealth manner. The Government will ensure that OLSC is adequately resourced to perform its functions, which will enable it to provide the support necessary for agencies to manage legal issues effectively.

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.

The Government **accepts** this recommendation.

The Government recognises that the General Counsel or Chief Counsel in a government agency plays an important role in the management of Commonwealth legal risk.

The General Counsel Charter, established in January 2022, establishes a set of common expectations for General Counsel, and creates a relationship between General Counsel and the Attorney-General's Department Secretary as the head of the Australian Government Legal Service (AGLS).

The Attorney-General's Department, in consultation with the AGLS Board and General Counsel, will review and update the General Counsel Charter in light of the recommendations and observations of the Royal Commission.

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.

The Government **accepts** this recommendation.

In April 2023, the Secretary of the Department of Social Services and the Chief Executive Officer of Services Australia executed a new Head Agreement to support the Bilateral Management Arrangement. Under that agreement both committed to reviewing all Protocols, Service Arrangements and Service Schedules entered into under the former Head Agreement.

Work is underway by both agencies to include the requirement to consult on and disclose relevant legal advices in an updated Protocol. In conjunction, Chief Counsels within the social services portfolio have updated the advice-sharing arrangements agreed in 2021. Chief Counsels also have regular dialogue on significant legal issues and portfolio-level responses, including through a regular Chief Counsel Forum.

Recommendation 20.1: AAT cases with significant legal and policy issues

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

The Government **accepts** this recommendation.

The Government recognises the importance of this recommendation and supports the work underway within the Department of Social Services (DSS) and Services Australia to strengthen their processes and ensure greater transparency in the reporting of information relating to Administrative Appeals Tribunal (AAT) cases to senior officers of both agencies.

Services Australia and DSS legal areas are updating their Standing Operational Statement which prescribes arrangements to ensure matters which raise significant legal and policy issues are brought to the attention of senior officials, and are also raised with the Office of Legal Services Coordination when required.

Services Australia will also review any revised settings and approaches required, including systems implementation, to support the establishment of the new federal administrative review body, and its procedures, once established.

Recommendation 20.2: Training for DHS legal officers

Services Australia legal officers whose duties involve the preparation of advices in relation to AAT decisions should receive training which emphasises the requirements of the Standing Operational Statements in relation to appeal recommendations and referral to DSS; Services Australia's obligations as a model litigant; and the obligation to pay due regard to AAT decisions and directions.

The Government **accepts** this recommendation.

The Government recognises the importance of providing training and development to legal officers, to ensure that they are able to deliver services in line with the Commonwealth model litigant obligations.

The Australian Government Legal Service (AGLS) is the overarching, formal professional network for government lawyers. The AGLS supports coherent and consistent legal services across the Commonwealth and provides a professional network for collaboration including on training modules and legal standards. In addition, the Statement of Expectations of Australian Government Lawyers sets out the expectations of government lawyers and provides guidance for government lawyers in fulfilling their duties in a government context.²³

Services Australia will update its training packages and provide specific training to lawyers within the Litigation Branch on the Model Litigant Obligations under the *Legal Services Directions 2017*, as well as the Standing Operational Statement with the Department of Social Services (DSS).

DSS has also engaged with Services Australia and other agencies within the social services portfolio regarding the opportunities for shared training for legal staff across the social services portfolio. The initial focus of discussion will be for training in areas of legal ethics, obligations of in-house lawyers and principles of advice writing. In addition, all in-house lawyers admitted to practice are required to complete mandatory Continuing Legal Education and provide monthly reports of active significant matters.

Recommendation 20.3: Identifying significant AAT decisions

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

The Government **accepts** this recommendation.

The Government recognises the importance of this recommendation and supports the work presently underway within the Department of Social Service (DSS) and Services Australia to strengthen their processes and ensure greater transparency in the reporting of information relating to Administrative Appeals Tribunal (AAT) cases to senior officers of both agencies.

²³ [Statement of expectations of Australian Government lawyers](#). February 2022.

Identification and reporting on significant AAT decisions is governed by Services Australia and the Department of Social Services Standing Operational Statement. The Statement requires Services Australia to notify DSS of significant AAT decisions and provide monthly reporting of active matters.

DSS and Services Australia will consider the impact of the establishment of the new federal administrative review body on its processes for identifying significant matters and will further adjust any processes as required.

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.

The Government **accepts** this recommendation.

On 29 September 2023, the Government announced that by the end of the year it will introduce legislation to abolish the Administrative Appeals Tribunal (AAT) and replace it with a new body, the Administrative Review Tribunal (ART).

The Government is developing legislation to repeal the *Administrative Appeals Tribunal Act 1975* (Cth) and to establish the ART.

The legislation is being informed by public consultation with a wide range of stakeholders including the Expert Advisory Group on the administrative review reforms, representatives of the legal, disability, veterans, social security, migration and refugee sectors, and users of the current AAT.

The Government's proposed legislation to establish the new administrative review body will provide for decisions of the new administrative review body to be published, and will require the publication of decisions that involve a significant conclusion of law or have significant implications for Commonwealth policy or administration. Decisions could also be de-identified before being published if non-disclosure requirements and privacy considerations apply in a particular matter.

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 Government **accepts** this recommendation.

As noted in the response to recommendation 20.4, on 29 September 2023, the Government announced that by the end of the year it will introduce legislation to abolish the Administrative Appeals Tribunal (AAT) and replace it with a new body, the Administrative Review Tribunal

(ART). The Government is developing legislation to repeal the *Administrative Appeals Tribunal Act 1975* (Cth) and to establish the ART.

The Administrative Review Council (ARC) will be re-established under the new legislation as an expert body to monitor and advise on the operation and integrity of the Commonwealth administrative review system.

The ARC will provide expertise to improve the quality of government decision-making through the development of guidance, as well as reports to provide early identification of systemic issues and opportunities for improvement across government.

Legislation is expected to be introduced in late-2023. The process to appoint ARC members would commence following passage of the legislation.

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.

The Government **accepts** this recommendation.

The Government recognises the importance of ensuring agencies and departments are accountable and act in a manner that is lawful, fair and transparent. A properly resourced, independent, impartial and robust Ombudsman is vital to safeguarding the community in their dealings with government agencies.

The Government agrees that a clearly stated statutory duty, imposed on departmental secretaries and agency chief executive officers, to ensure that their department or agency use its best endeavours to assist the Ombudsman would reinforce the responsibility on heads of agencies to ensure their agency engages in good faith and proactively assists the Commonwealth Ombudsman.

The Government agrees that a corresponding statutory duty on Commonwealth public servants within a department or agency being investigated to use their best endeavours to assist the Commonwealth Ombudsman would ensure the responsibility to assist is clearly individually borne by each of those responsible.

The Government also recognises the importance of the Inspector-General of Taxation and Taxation Ombudsman (IGTO) in providing assurance to the community that taxation laws are being administered with integrity. The Government supports also introducing equivalent statutory duties to investigations conducted by the IGTO.

The Government will progress amendments to relevant legislation to introduce these statutory duties.

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.

The Government **accepts** this recommendation.

The Government recognises the importance of ensuring that the Office of the Commonwealth Ombudsman has the legislative powers to undertake full, independent and transparent investigations. The Government also recognises that in order to provide assurance that an Ombudsman investigation is independent, the Ombudsman needs powers to obtain full, free and direct access to agency records as part of an investigation.

The Government will introduce legislation to establish a statutory power equivalent to that of subsection 33(3) of the *Auditor-General Act 1997* (Cth). This would ensure the Ombudsman is not dependent upon agencies to undertake searches and provide documents and information, and will complement the Ombudsman's existing powers to request and compel agencies to provide information.

The Government will also seek to introduce an equivalent power for the Inspector-General of Taxation and Taxation Ombudsman.

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.

The Government **accepts in principle** this recommendation.

The Government agrees that agency and departmental responses to Ombudsman investigations must be accurate, complete and provided in a timely manner. This needs to be appropriately balanced with the fact that not all departments or agencies have a legal services division to provide oversight of responses. It would also not be appropriate for a legal division to provide oversight of a response in circumstances where the Ombudsman is investigating matters in which a legal area within a department or agency has been directly involved.

The Government has accepted recommendation 21.1, and will progress legislative amendments to require that departmental secretaries and agency chief executive officers ensure that their department or agency use its best endeavours to assist the Ombudsman. Consistent with this obligation, departmental secretaries and chief executive officers will ensure responses to Ombudsman investigations are not led or overseen by individuals or divisions directly involved in matters under investigation.

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.

The Government **accepts** this recommendation.

The Commonwealth Ombudsman is committed to effective information and records management systems that meet business needs, accountability requirements and stakeholder expectations. As a public administration oversight and educative body, the Commonwealth Ombudsman should maintain excellent records and demonstrate a high standard of information management.

The Commonwealth Ombudsman requires investigators to maintain a log of communications with agencies under investigation when conducting own motion investigations.

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.

The Government **accepts** this recommendation.

The Commonwealth Ombudsman has the power under section 10A of the *Ombudsman Act 1976* (Cth) to refer questions of law arising in an investigation for the opinion of the Administrative Appeals Tribunal (AAT). The Ombudsman also has a related power, under section 11 of the *Ombudsman Act 1976* (Cth) to recommend that the principal officer of a department make such a referral. These powers are integral to ensuring there are not unresolved matters of law in respect of an agency's actions under investigation by the Ombudsman.

The Government is developing legislation to repeal the *Administrative Appeals Tribunal Act 1975* (Cth) and to establish a new administrative review body. The Government will introduce consequential amendments to sections 10A and 11 of the *Ombudsman Act 1976* (Cth) to retain the power for the Commonwealth Ombudsman to refer or recommend referral of matters to that new body.

These amendments will enable two important elements of the Commonwealth's administrative law scheme to work together to resolve issues of significance to the community.

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.

The Government **accepts in principle** this recommendation.

The Government agrees that portfolio structures should support the effective delivery of government services and programs. The Government will be guided by the Royal Commission's findings when considering the most optimal arrangement of functions and responsibilities between the Department of Social Services and agencies in the social services portfolio, and the status of Services Australia.

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.

The Government **accepts** this recommendation.

The Government recognises the importance of building the skills and knowledge which are unique and essential to working in the APS.

The APS Academy, within the Australian Public Service Commission, is a networked hub of learning and development; working with APS and industry partners to build the capability and performance of the APS workforce. The APS Induction Pathway (which includes an induction training suite and mandatory modules) provides essential information and guidance to assist new and returning officers to work effectively in the APS.

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.

The Government **accepts** this recommendation.

The Government recognises the importance of designing policies and processes of government services that focus on the needs of the individuals engaging in those services. This includes making services as accessible as possible through a channel that meets the needs of the individual.

There has been a substantial change to the way Services Australia approaches service delivery. When considering a change or improvement to delivery of a service an evidence-based understanding of the needs of customers is formed based on their feedback, and with full exploration of how the proposed changes may impact them, before investment or service delivery decisions are made. Services Australia will continue to embed the customer voice in the earliest stages of decision-making, and draw on customer feedback to improve service delivery.

The Department of Social Services has also established mechanisms to consult with representative bodies and ensure feedback from recipients is considered in the development of new policies and programs. These mechanisms include regular engagements with the Australian Council of Social Service (ACOSS), Economic Justice Australia (EJA) and the Federation of Ethnic Communities' Councils of Australia (FECCA).

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.

The Government **accepts** this recommendation.

The Government agrees that access to training and resources on the Commonwealth administrative law system would support proper and lawful administrative decision-making across the public service. The Government will consider the most effective means through which to deliver this training and guidance.

The Government is committed to restoring trust and confidence in Australia's system of administrative review – beginning with the establishment of a new administrative review body that is user-focused, efficient, accessible, independent and fair. As outlined in the Government's response to recommendation 20.5, the Government will introduce legislation to repeal the *Administrative Appeals Tribunal Act 1975* (Cth) and to establish a new administrative review body. The Administrative Review Council (ARC) will be re-established under the new legislation. Legislation is expected to be introduced in late-2023. The process to appoint ARC members would commence following passage of the legislation.

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.

The Government **accepts** this recommendation.

The Government supports providing training, development and the skills that support staff to deliver high quality services on behalf of the government.

In 2022, Services Australia formed the Services Australia Learning Academy. The Learning Academy is a networked model of learning faculties and specialist enterprise learning teams, working in partnership to drive connected, professional and consistent learning practice across the agency. This represents a substantial investment in providing all staff with the support, skills and information needed to deliver critical services to the Australian public and to respond to emerging demands on Services Australia. The focus on building capability is reflective of the agency's approach to supporting staff to deliver world-class customer service, through all methods of customer engagement. This includes providing staff access to training that supports service delivery to customers that may be vulnerable or require additional assistance.

Services Australia will continue to review and assess the need for additional or supplementary training programs that focus on elements of service delivery, where more formal training or a qualification may be of benefit.

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.

The Government **accepts** this recommendation.

The Government supports Senior Executive Service officials spending time in a front-line service delivery setting or with other community partnerships, to gain exposure and insights to the delivery of government services.

Senior Executive Service officials within Services Australia regularly spend time in a front-line service delivery setting, including the face-to-face and telephony environments, to gain insight into the experiences of both customers and staff.

Services Australia is also supportive of providing experience of front-line service delivery more broadly to Australian Public Service and Senior Executive Service officials responsible for policy development to assist when formulating policy/legislative changes and program delivery.

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.

The Government **accepts** this recommendation.

Secretaries and agency heads must be accountable for their actions.

The Government will require the performance process and framework for secretaries and agency heads to be published.

The Government will introduce legislative amendments to the *Public Service Act 1999* (Cth) to provide the Australian Public Service (APS) Commissioner with a new power to commence own motion reviews and investigations into Code of Conduct matters. The APS Commissioner will no longer have to wait for a referral before commencing an inquiry.

The Government will also progress amendments to extend the APS Commissioner's powers to former secretaries, agency heads and APS employees. These amendments will also provide for disciplinary declarations to be made against past secretaries, agency heads and APS employees. This will ensure that inquiries into the conduct of former public servants can be commenced and undertaken, and sanctions applied, following the end of their tenure.

The Government is committed to robust and transparent arrangements for the employment of department secretaries and agency heads. The Government will require the APS Commissioner and the Secretary of the Department of the Prime Minister and Cabinet to have regard to the outcome of a merit-based appointments process when providing a report to the Prime Minister on a secretary appointment.

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.

The Government **accepts** this recommendation.

The Government supports the implementation of standards for documenting important decisions and discussions across the APS.

The Australian Public Service Commission will implement a coordinated, APS-wide communications strategy (in consultation with the Office of the Australian Information Commissioner and National Archives of Australia (NAA)) that highlights the connection between integrity and recordkeeping, in line with the latest NAA guidance; articulates support from senior leadership for best practice in recordkeeping; and promotes existing training and resources to enhance capability and culture around recordkeeping, including for ministers' offices.

The Australian Public Service Commission, through the APS Academy, is also developing in partnership with the NAA an online Record Keeping Module as part of its induction program. This will include a range of case studies and scenarios to equip public servants to understand their obligations for documenting important decisions and discussions.