

**From:** PM&C Secretary and APS Commissioner s 22(1)(a)(ii)  
**Sent:** Friday, 17 November 2023 1:17 PM  
**To:** s 22(1)(a)(ii)  
**Subject:** A message to all staff - APS Integrity Taskforce Report [EXTERNAL]

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## Message to All APS Staff

Colleagues,

Today the Secretaries Board published the [APS Integrity Taskforce report 'Louder than Words: An APS Integrity Action Plan'](#).

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

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

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

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

Work to implement the Taskforce's recommendations is already underway and will ensure we have the right frameworks in place to recruit and to recognise people whose behaviour is consistent with the public service values. A revised [SES Performance Leadership Framework](#) gives equal weighting to leadership behaviours as well as outcomes. The APS Academy's [Integrity Masterclass](#) is running regularly for SES leaders. There are also measures to focus on ensuring legality across APS practices and government policies, programs and services, reinforcing the importance of good recordkeeping, and enhanced contract management and procurement practices.

Thank you for your ongoing commitment to embodying the [APS Values](#) in every aspect of your work.

**Professor Glyn Davis AC**  
Secretary

**Dr Gordon de Brouwer PSM**  
Australian Public Service Commissioner

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This email was sent by Australian Public Service Commission, B Block, Treasury Building, Parkes Place  
West, PARKES ACT 2600, GPO Box 3176 CANBERRA ACT 2601 to **s 22(1)(a)(ii)**



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s 22(1)(a)(ii)

**From:** Nicole Patterson  
**Sent:** Monday, 14 August 2023 4:56 PM  
**To:** BROADCAST\_AUSTRAC\_ONLY  
**Subject:** ELG Insights - 14 August 2023 [SEC=OFFICIAL]

**Security Classification:** OFFICIAL

OFFICIAL



Hi everyone,

s 22(1)(a)(ii)

This week Tim Lear (General Counsel & National Manager, Legal & Enforcement) will attend the **Australian Government Legal Service (AGLS) Board Meeting**. The AGLS is the formal professional network for all Australian government lawyers, and focuses on supporting and developing government lawyers to connect and collaborate across the Australian Public Service. For staff who are government lawyers, you are automatically a member of the AGLS, and your membership grants you access to an invaluable network to support your professional development, and access to training, events and opportunities which are tailored to government lawyers. The AGLS Board leads the AGLS, and is made up of a small group of heads of legal practices from Australian Government agencies. Under the [AGLS Terms of Reference](#), there are 11 members appointed to the AGLS Board. At this week's Board Meeting, members will discuss matters raised by the Robodebt Royal Commission, the development of a Foundational Australian Government Lawyer Training Program, and the 2023 AGLS survey results.

s 22(1)(a)(ii)

Until next week,  
Nicole

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s 22(1)(a)(ii)

**From:** Nicole Patterson  
**Sent:** Monday, 31 July 2023 4:36 PM  
**To:** BROADCAST\_AUSTRAC\_ONLY  
**Subject:** ELG Insights - 31 July 2023 [SEC=OFFICIAL]

**Security Classification:** OFFICIAL

OFFICIAL



Afternoon everyone,

There is very much a focus on collaboration among ELG this week, with Executives undertaking a range of collaboration both internally and externally. On Monday afternoon, the **National Managers** will come together to share insights and discuss a range of cross-cutting topics, including lessons for AUSTRAC from the Robodebt Scheme Royal Commission, agency consultation and governance, and reform design and opportunities for change into the future. s 22(1)(a)(ii)

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Until next week,  
Nicole

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# RoboDebt Royal Commission Report – ELG Update

TIM LEAR, GENERAL COUNSEL AND NM L&E BRANCH  
28 AUGUST 2023

# Factual Findings

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## Policy development and early legal advice

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### 30 June 2014– May 2015

- The idea for the scheme is born in June 2014, using income averaging of part year income to determine whole year income to automate debt recovery notices to welfare recipients.
- DSS was advised early on (in 2014) this was unlikely to be a legally claimable debt – by same in-house lawyer who in later years provided ongoing advice supporting the scheme.
- The relevant minister (then Scott Morrison) was informed “legislative change” is needed to pursue the policy and he signs the memo.
- 5 May 2015 The ‘Strengthening the Integrity of Welfare payments’ budget measure is announced – earlier advice is deleted from documents (not known who, when or why) and there is no reference in the policy/budget papers for need for change legislation.

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# Implementation – July 2016 to March 2019

## July 1, 2016

- The program is rolled out, which involves automated data-matching of what is declared to Centrelink and what is reported to ATO.
- It generates 20,000 debt notices p/week from September.

## June 21, 2017

- A Senate Committee publishes a report recommending the program be put on hold and all debts raised by the use of income averaging be reassessed.

## March 27, 2019

- In a Federal Court action challenging Robo-debt, DHS Deputy Secretary and chief counsel, Annette Musolino, receives draft legal advice from the Australian Government Solicitor (AGS) that individual Masterton has ‘good prospects of succeeding’ in her case as **smoothed income data won’t establish she owed a debt.**
- In April, Masterton’s debt is recalculated to \$0 and the Commonwealth looks to settle. But Masterton is having none of it.

Many successful AAT challenges to debts - but significance downplayed or ignored by Department



## Department told Robodebt is unlawful: again – April – August 2019

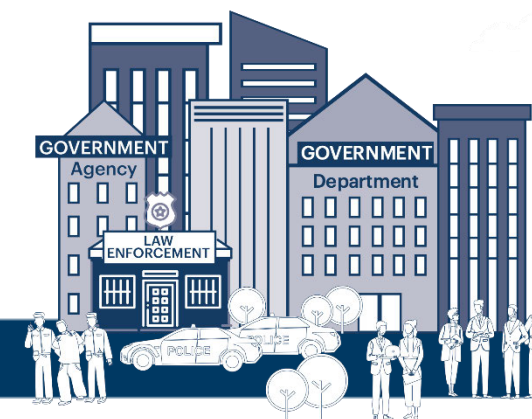
### April 2019

- DHS General Manager creates a document for the Department of Prime Minister and Cabinet (DPMC) that suggests introducing legislation to legalise income averaging, tells the Royal Commission he is unsure whether it was provided to the department.
- AGS provides **draft** advice that debt averaging is unlawful and suggests seeking the Solicitor General's advice. The advice is not finalised. Then responsible Minister Stuart Robert was not, at any point, provided with a copy of the draft AGS advice.

### August 2019 to November 2019

- Advice from the Solicitor General is sought five months after the AGS draft advice.
- In September the Solicitor General advises that ATO PAYG data cannot, without more, support a conclusion that a person has received benefits to which they are not entitled.
- In November, two months after receiving the Solicitor-General's advice, the use of income averaging ceased.

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# REPORT RECOMMENDATIONS

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# Summary of recommendations

1. Circa. twelve recommendations focussed on improving DSS/Services Australia communication, service delivery and broader Commonwealth debt recovery processes. Commission emphasises need to ensure policies help the people they are designed to serve, recognising their potential vulnerability.
2. Three recommendations focussed on wellbeing of Services Australia staff.
3. Six recommendations relate to failures in the policy and budget process, **three of which relate to how legal advice is taken into account in that process** (15.2, 15.3 and 15.4)
4. Two recommendations (16.1 and 16.2) on the **legality and privacy protections in the ATO and DSS end to end data exchange programs**
5. Two recommendations (17.1 and 17.2) relating to introduce a **consistent legal framework in which automation in government services can operate.**



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# Summary of recommendations

6. Thirteen recommendations directly relate to lawyers and legal services, seven of which relate specifically to DSS or Services Australia, including advice applicable to all agencies about the **treatment of draft legal advice** and need to have draft legal advice finalised, five relate to **the Legal Services Directions and OLSC**, and one which relates to the **duties of General Counsel across Australian Government** in the General Counsel Charter.
7. Five relate to the Administrative Appeals Tribunal
8. Five relate to the ombudsman including recommending the introduction of a **“statutory duty be imposed on departmental secretaries and agency chief executive officers to ensure that their... agency use its best endeavours to assist the Ombudsman in any investigation”**



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## Summary of recommendations

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9. Eight relate to improving the APS, some specific to DSS/Services Australia, but others of general application including recommending:
- whole of APS inductions;
  - **training and resources to inform APS members about the administrative law system;**
  - developing **APS wide standards for documenting important decisions;** and
  - changes to APS Agency head accountability to clarify that the **Australian Public Service Commissioner can inquire into the conduct of former Agency Heads** and allow for a **disciplinary declarations** to be made against former APS employees and Agency Heads.



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# Whole of Government Response underway

- PMC has established a taskforce to develop a whole of government response to Robodebt Royal Commission. AGD has representatives on that taskforce.
- AGD Secretary Katherine Jones PSM likely to drive a response across the Australian Government legal service. AGLS Board likely part of that response, driven by AGLS Risk Committee.
- AGLS Board meeting - expectation that while APS agencies should await government response on broader recommendations, should take steps now to address risks identified in report.



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# KEY TAKEOUTS

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## Summary on a page

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The Robodebt Royal Commission findings are ultimately about a failure to operate within the bounds of the law including legislative power, and the cultural, capability and governance failings which enabled that outcome.

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# How did culture contribute to Robodebt?

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For discussion:

1. Why didn't staff speak up?
2. What prevented staff from being heard when they did speak up?

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# Lessons from Robodebt: Culture red flags

| Leadership behaviours                              | Information flows                             | Governance/decision making                                |
|--|---|---|
| Leadership interactions seen as robust/challenging | Structural silos exist                        | Records not kept  |
| Staff feedback dismissed                           | Staff feedback not validated                  | Unfavourable advice not finalised, therefore not accepted |
| SES seen to assign blame                           | Advice dismissed or sent back to be re-worked | Single-minded focus on a specific outcome                 |
| Command/control interactions                       | External advice not sought                    | No role for independent views within governance fora      |

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# Lessons from Robodebt: is AUSTRAC at risk?

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For discussion:

1. How do staff perceive the SES?
2. Do we have appropriate and sufficient channels for staff feedback?
3. How do we react when we receive feedback?
4. Do information silos operate internally?
5. What are we not listening to currently?

# How do we ensure a speak up culture at AUSTRAC?

## An effective pro-integrity leadership culture

- Expectations set out in Insider Threat Management Framework:
  1. Hold regular conversations about integrity and security
  2. Discuss challenging problems regularly and invite different views
  3. Show transparency in decision making
  4. Present your views respectfully
  5. Ensure accountability without blame
  6. Speak up about and report concerns
  7. Others?

# FOR DISCUSSION: RESPONSE TO ROBODEBT

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## Robodebt – risks if AUSTRAC:

1. Enables a culture where staff (including SES) are afraid to speak up when things are not proceeding as planned in order to ‘protect’ earlier decisions (**Leadership culture**).
2. Is too accommodating of goals of Australian Government or partners at the expense of AUSTRAC’s reputation and independence (**Integrity and Independence**).
3. Seeks a particular regulatory outcome without sufficient regard to the legality of the process, or limits of AUSTRAC’s powers (**Legality more than an input**).
4. Fails to maintain a robust, independent in-house legal service team with:
  - a) Visibility over key decisions and exercises of power and discretion (**Legal support for governance**)
  - b) A mandate to seek a legal path to achieve outcomes sought by AUSTRAC (avoiding “Legal Says No”), while recognising in-house legal’s responsibility to provide “unwelcome” advice if that is its independent legal opinion (**Legal independence**).



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## Robodebt – risks if AUSTRAC:

5. Allows General Counsel role to be solely a “management role” and not the chief legal officer of the agency responsible for its legal advice (**Legal culture**)
6. Fails to seek senior in-house and/or external legal advice on issues of serious significance to AUSTRAC or the Commonwealth (**Legal risk management**)
7. Ignores or delays action in response to unwelcome advice (**Decision avoidance**)
8. Provides insufficient training and guidance to staff to understand when and how they are exercising powers and discretion under the AML/CTF Act (**Training and procedure**)
9. Fails to draw the decision maker’s attention legal advice or other important conditions precedent involved in their decision (**Supporting decision makers**).
10. Fails to undertake privacy impact assessments and implement appropriate safeguards prior to implementing data exchange (**Privacy considerations**).
11. Fails to consider and mitigate risks, and likelihood of close future oversight, of automated decision making (**Automation frameworks**).



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# People News

View published

[New draft](#)

[Moderate](#)

Revision state: *Published*

Current draft: Yes

14 July 2023

Hello everyone,

As I write this edition of People News, the Robodebt Royal Commission findings have just been released. Whilst this is a sobering reminder of the responsibilities we take on as public servants, it is also an opportunity to reflect on the opportunities that are available to us by being part of the Australian Public Service (APS).

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# ELG Insights: week commencing 31 July

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Current draft: Yes

31 July 2023

Afternoon everyone,

There is very much a focus on collaboration among ELG this week, with Executives undertaking a range of collaboration both internally and externally. On Monday afternoon, the **National Managers** will come together to share insights and discuss a range of cross-cutting topics, including lessons for AUSTRAC from the Robodebt Scheme Royal Commission, agency consultation and governance, and reform design and opportunities for change into the future. On Tuesday, the CEO, Deputy CEOs, National Managers & Directors will take part in an **ELG/EL2 Strategic Planning Day** and discuss AUSTRAC's new culture statement and change considerations for reform design and implementation.

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# ELG Insights: week beginning 14 August

View published

[New draft](#)

[Moderate](#)

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Current draft: Yes

14 August 2023

Hi everyone,

s 22(1)(a)(ii)

This week Tim Lear (General Counsel & National Manager, Legal & Enforcement) will attend the **Australian Government Legal Service (AGLS) Board Meeting**. The AGLS is the formal professional network for all Australian government lawyers, and focuses on supporting and developing government lawyers to connect and collaborate across the Australian Public Service. For staff who are government lawyers, you are automatically a member of the AGLS, and your membership grants you access to an invaluable network to support your professional development, and access to training, events and opportunities which are tailored to government lawyers.

The AGLS Board leads the AGLS, and is made up of a small group of heads of legal practices from Australian Government agencies. Under the [AGLS Terms of Reference](#), there are 11 members appointed to the AGLS Board. At this week's Board Meeting, members will discuss matters raised by the Robodebt Royal Commission, the development of a Foundational Australian Government Lawyer Training Program, and the 2023 AGLS survey results.



# Legal and Enforcement (General Counsel) branch update

View published

[New draft](#)

[Moderate](#)

Revision state: *Published*

Current draft: Yes

25 August 2023

Hello AUSTRAC,

This is my first update since joining AUSTRAC about three months ago and I wanted to say thanks to everyone in my branch and across the agency who has made me feel so welcome. It is great to move to an agency with a strong and positive culture, especially at a time when regulators and government legal advisers are under such scrutiny.

When the Robodebt Royal Commission handed down its finding on 7 July 24 of its 53 recommendations related to government legal services. While some of those recommendations relate to specific Departments, many have broader implications for the APS. Unsurprisingly, this was one of the key topics discussed at the Australian Government Legal Services Board meeting I attended last week, which discussed the approach to forming a whole of government response to the Royal Commission's recommendations. In the meantime, AUSTRAC's in-house legal team and senior executive are considering lessons in the report and measures we should take now in response to its conclusions.

One of the clear lessons from the Robodebt Royal Commission is the need to seek legal advice to ensure statutory powers are exercised in accordance with the law. To that end, I encourage you to reach out to our Legal team early when something new or novel arises in your work, you are exercising compulsory powers or have been doing something for a while and now have a concern. Legal problems are not like wine – they rarely get better the longer you leave them. Legal are well placed to triage requests for advice and I would rather we receive many requests where we ultimately say "you don't need our legal advice because the risks are low", than to not hear about an issue where risks are high. To help us triage requests for legal support, we ask that you ensure you have Director or above support, but if you are not sure you can always pick up the phone first to touch base.

To better support you, we have also made a change to our in-house legal team structure by creating two Principal Lawyer positions. One is focused on Regulation, Intelligence and Enforcement, with [s 22\(1\)\(a\)\(ii\)](#) currently acting in that role. The other is focused on FOI, Privacy, Capability and Reform, with [s 22\(1\)\(a\)\(ii\)](#) acting in that role. With this change we hope to provide additional support to active intelligence and regulatory matters, while creating a team dedicated to helping with reforms advice and supporting AUSTRAC's corporate legal needs.

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

Tim

# National Manager update - a message from Leanne Fry on behalf of the NMs

[View published](#)

[New draft](#)

[Moderate](#)

Revision state: *Published*

Current draft: *Yes*

By Leanne Fry | 29 August 2023



The National Managers (NMs) met face to face on 31 July. Given that most of our meetings as a cohort are online, it was refreshing to meet in person in the Patterson Room in Sydney, particularly as we have acting NMs, newer NMs and new leadership roles with the Reform Design Branch as part of the NM cohort.

There were two key topics that we discussed at length. The report from the Commission on the RoboDebt scheme has been released and there are important elements noted in it that are relevant to all public sector organisations. We discussed the findings, the sequence of events and decisions that played out, and the implications in that for AUSTRAC, particularly evaluating where our risks and controls sit. We have always had a strong culture at AUSTRAC and we recognised how important culture is in how an agency operates.

s 22(1)(a)(ii)

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# Legal and Enforcement branch update

**View published**

[New draft](#)

[Moderate](#)

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Current draft: *Yes*

7 March 2024

Hello everyone,

In what is shaping up to be a busy year, I wanted to use this column to reflect on some changes happening in AUSTRAC's in-house legal team and the role of government lawyers more broadly.

## AUSTRAC's legal team

AUSTRAC's Legal team is committed to providing a high level of service that helps you achieve your business objectives and further AUSTRAC's strategic priorities. It is a professional and dedicated small team and while it sits in the Regulation and Reform Division, like other service areas we support and advise on issues cutting across all areas of AUSTRAC.

One of the issues I am keen to promote as General Counsel are systems which help ensure AUSTRAC's in-house and external legal resources are best directed to supporting AUSTRAC's strategic objectives and managing AUSTRAC and the Commonwealth's legal risks. To this end, in addition to providing legal advice when requested, we have been piloting appointing members of our Legal team as ongoing advisers to major AUSTRAC's projects. Having an understanding of the strategic aims and detail of a project helps us provide project teams with timely, strategic advice which furthers the project's objectives while managing its legal risks.

The recent appointment of two new Principal Lawyers has increased the number of Principal Lawyers in the team to three and marks a shift in the seniority of in-house lawyers available to AUSTRAC. I will shortly be communicating the revised structure of AUSTRAC's Legal team, which I hope helps embed productive partnerships between our teams.

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## The role of Government lawyers and draft legal advice

I asked ChatGPT why government lawyers were important and it exclaimed that:

*Government lawyers are the guardians of justice, defending the public interest and upholding the rule of law. Their dedication ensures fairness and equality, essential for a stable democracy. Without them, society would be vulnerable to chaos and injustice. Their role is pivotal, safeguarding our rights and freedoms.*

While I hope you all appreciate our efforts to fend off chaos (!), this hyperbolic answer probably best serves as a foil to consider a recent example of what happens when government lawyers do not act with the integrity, objectivity and independence required of us, both as legal professionals and as explicitly required in the *Australian Government Legal Service General Counsel Charter and Statement of expectations of Australian Government lawyers*.

The Australian Government Legal Service has been working with leaders of legal practices across the Commonwealth on a variety of initiatives to ensure failings exposed in the Robodebt Royal Commission are not repeated. One outcome of this process was to release guidance to ensure legal advice does not remain in draft beyond what is necessary to clarify specific factual or legal issues.

While recognising that advice often remain in draft as a result of an oversight rather than any intention, we are doing what we can to identify any examples of draft legal advice within AUSTRAC which has not been finalised. If you are aware of any draft legal advice which has not been finalised in your area, please assist us by emailing that advice to [s 22\(1\)\(a\)\(ii\)](#)

Tim

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