

From: [PM&C Secretary and APS Commissioner](#)
To: [GHALI, Sarah](#)
Subject: A message to all staff - APS Integrity Taskforce Report
Date: Friday, 17 November 2023 1:13:15 PM

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All staff message Secretary Davis and Commissioner de Brouwer



Colleagues,

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

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

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

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

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

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

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

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

Dr Gordon de Brouwer PSM
Australian Public Service Commissioner

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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 SARAH.GHALI@OAIC.GOV.AU



From: [Glyn Davis & Gordon de Brouwer](#)
To: [GHALI, Sarah](#)
Subject: A message to you from PM&C Secretary Davis and APS Commissioner de Brouwer
Date: Monday, 10 July 2023 3:15:43 PM

You don't often get email from apsccommissioner@apsc.gov.au. [Learn why this is important](#)

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All staff message Secretary Davis and Commissioner de Brouwer



Colleagues

We would like to talk with you about the release last Friday of the findings from the Royal Commission into the Robodebt Scheme.

We want you to know the Australian Public Service takes the Royal Commission's findings seriously.

We are committed to working through the findings in an open and constructive way with you—the APS—and with the Australian public.

We know the vast majority of public servants are committed to providing quality advice and dedicated service consistent with the APS values and code of conduct. Australians see the important and meaningful work that you and your agencies do every day, and the professional and diligent way you do it.

Following the release of the report on Friday, a taskforce led by the Department of the Prime Minister and Cabinet, the Attorney-General's Department, and the Australian Public Service Commission will be established to support Ministers in preparing the Government's response.

Separate to this, the APSC will oversee an independent process to determine if public servants with adverse findings have breached the APS Code of Conduct. This process will be established under the APS Commissioner's powers in the Public Service Act 1999. It is designed to be fair, independent, and consistent.

The APSC has engaged Mr Stephen Sedgwick AO to exercise these powers as an Independent Reviewer. Mr Sedgwick will make inquiries and determinations about whether an individual referred for inquiry has breached the [APS Code of Conduct](#).

We will continue to talk with you about the Government's response and what it means for you. [Integrity](#) and stewardship are integral to the work of the APS, our

responsibilities serving the community, and the trust the community places in us.

We echo the Prime Minister's thanks for the many public servants who assisted the Commission. We reiterate the continuing importance of an effective working relationship between the APS and the Government.

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

We recognise this message and the Royal Commission's findings may have an impact. Support is available. We encourage you to contact your agency's Employee Assistance Program. Alternatively, the following services are available 24 hours a day, 7 days a week:

- [Beyond Blue Support Service](#) – Provides immediate, short-term counselling, advice and referral services. Phone 1300 224 636, [webchat](#), or search their [forum](#) for free.
- [Lifeline Crisis Support](#) – This is a confidential service providing you with support for when you feel overwhelmed, for when you have difficulty coping, or are thinking about suicide. Phone 13 11 14 or chat to a [crisis supporter online](#).
- [13YARN](#) – Provides crisis support for First Nations people. Phone 13 92 76 or view their services online at www.13yarn.org.au.

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

Dr Gordon de Brouwer
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 sarah.ghali@oaic.gov.au





Guidance on the use of draft legal advice within government

This guidance concerns the provision and use of draft legal advice within government. It applies to all legal advice provided to the Commonwealth.

Government lawyers have a central role with respect to Commonwealth legal advice, in terms of both providing advice to clients and facilitating advice from external legal services providers. This guidance is primarily directed to government lawyers and government officials who provide instructions to lawyers. However, its principles are also relevant to all government officials and ministers.

Principles

- The provision of considered legal advice to decision makers is indispensable to sound public administration and the rule of law.
- Government lawyers must be free to provide frank, fearless and independent legal advice to decision makers.
- All lawyers owe a paramount duty to the court and the administration of justice. In discharging these duties, government lawyers are also guided by additional considerations, including those reflected in the *Legal Services Directions 2017*, model litigant obligations, their obligations as public servants, the *Statement of Expectations of Australian Government Lawyers* and the *General Counsel Charter*.

Guidance

- Legal advice cannot be disregarded merely because it is in draft form.
- While legal advice should be sought with an intention to receive final advice, there are occasions when it will be appropriate to seek and provide legal advice initially in draft form; for example, so as to confirm that complex facts or policies have been accurately understood, to identify issues on which further instructions are required, or to facilitate proper consultation under the *Legal Services Directions 2017*.
- However, once all queries and clarifications have been conveyed to the advice author, the author should finalise the draft advice. If the author is instructed not to finalise the draft advice, the instructing official must clearly document the reasons for that instruction.
- Every draft advice must be finalised, or instruction given not to finalise the advice (and the reasons for that instruction documented), within three months of the draft advice being provided.
- It is never acceptable for legal advice not to be finalised on the basis that the advice may be inconvenient or unwelcome.
- If a lawyer is instructed or feels pressured to not finalise legal advice in circumstances in which they consider keeping it in draft is not warranted, they should refer the issue to the person with professional responsibility for the provision of that advice (eg the agency's General Counsel), who can engage with the Office of Legal Services Coordination in the Attorney-General's Department for guidance.
- As a matter of sound public administration and to avoid unnecessary dispute as to its status, draft advice should be finalised before it is relied upon to make decisions.

If agencies require support or guidance in any aspect of managing their legal work, in terms of complying with the *Legal Services Directions 2017* and otherwise acting consistently with the expectations of the Attorney-General, please contact the Office of Legal Services Coordination in the Attorney-General's Department on olsc@ag.gov.au or 6141 3642.

DOCUMENT UPDATES

Version	Date released	Comment	Approved by
1.0	December 2023	<i>Guidance on the use of draft legal advice within government</i>	Katherine Jones PSM Secretary, AGD

GENERAL COUNSEL CHARTER

This Charter establishes a set of common expectations for Commonwealth officers in both corporate Commonwealth entities and non-corporate Commonwealth entities who are responsible for the delivery of legal services and management of legal issues in their entity (General Counsel). It applies to the head of the legal practice of each entity (including heads of discrete legal practices within an entity and where responsibility is shared among more than one person), irrespective of the particular job title attaching to that position.

To that end, each entity is to ensure it has identified at least one head of legal who is accountable for the legal services provided by the agency's in-house lawyers and who serves as the internal escalation point for any legal issues.

Entities will likely have existing performance expectations for their General Counsel. This Charter is intended to be complementary to existing entity arrangements.

This Charter is sponsored by the Secretary of the Attorney-General's Department (AGD), as the head of the Australian Government Legal Service (AGLS). The Office of Legal Services Coordination in AGD will provide guidance, support, and assistance to General Counsel in facilitating compliance with this Charter to the fullest extent possible.

This Charter is intended to complement the *Statement of Expectations of Australian Government Lawyers*.

EXPECTATIONS

General Counsel are expected to:

1. Model integrity, objectivity and independence, including by:

- Discharging their role in a manner consistent with the law, the public interest and their obligations as legal practitioners.
- Supporting the Attorney-General as First Law Officer to uphold the rule of law.
- Assisting their entity to achieve the government's objectives in ways that comply with the law and manage legal issues.
- Being a trusted adviser with their entity's senior management and clients, while maintaining their professional independence.
- Supporting their government lawyers to act with integrity, objectivity and independence.

2. Be professional leaders for lawyers within the Commonwealth, including by:

- Participating in and supporting the work of the AGLS.
- Promoting adherence to professional standards and supporting professional development.

3. Foster collaboration between Commonwealth lawyers, including by:

- Sharing information and legal knowledge across teams and between entities.
- Facilitating the mobility of government lawyers across the Commonwealth, including secondments.
- Driving changes that improve efficiency and prevent the duplication of effort and resources in Commonwealth legal practices.

4. Manage legal issues and deliver legal services with due regard to the Commonwealth's interests as a whole, including by:

- Supporting their entity head to ensure compliance with the *Legal Services Directions 2017*, including by:
 - having appropriate systems and practices in place that support compliance, and
 - proactively engaging with the Office of Legal Services Coordination (OLSC) in the Attorney-General's Department concerning reporting obligations under the *Legal Services Directions 2017*, and ensuring all inquiries with and responses from OLSC are documented.
- Identifying legal issues that might require or benefit from a whole-of-government approach, and taking steps to engage relevant stakeholders.

5. Drive innovation in the delivery of legal services, including by:

- Managing their legal practice, and supporting the development of their government lawyers, in a way that fosters innovation.
- Identifying new approaches to how government lawyers support the priorities of the Commonwealth.
- Proactively engaging with clients to incorporate the identification and management of legal issues into all stages of policy and program decision making.
- Looking for opportunities to utilise technology and AI to support the provision of legal services.

ACCOUNTABILITY

General Counsel are accountable, including through the *Legal Services Directions 2017*, to the AGD Secretary, who is the head of the profession for the AGLS. The Secretary supports the Attorney-General and the Solicitor-General, as the First and Second Law Officers of the Commonwealth respectively.

COMPATIBILITY WITH OTHER OBLIGATIONS

It is recognised that General Counsel may have additional, and competing, obligations, such as when working for corporate Commonwealth entities. This Charter does not override such obligations. However, as much as possible, General Counsel will work collaboratively and with a whole-of-government focus.

REVIEW

The AGLS Board, in consultation with General Counsel, is responsible for reviewing this Charter, initially within six months of commencement, then every two years thereafter. The Charter may be amended by resolution of the AGLS Board, subject to endorsement by the AGD Secretary.

EFFECTIVE DATE

The original version of the Charter was effective from the date the Charter was formally conveyed to General Counsel. This occurred in January 2022.

DOCUMENT HISTORY

Version	Date released	Comment	Approved by
1.0	January 2022		Katherine Jones PSM Secretary, AGD
2.0 Current	December 2023	Amendments informed by the <i>Report of the Royal Commission into the Robodebt Scheme, tabled on 7 July 2023.</i>	Katherine Jones PSM Secretary, AGD

From: [AGO,Rocelle](#)
To: [DRAYTON,Melanie](#); [OAIC Executive](#); [CROXALL,Sarah](#)
Subject: RE: Robodebt Royal Commission [SEC=OFFICIAL]
Date: Tuesday, 14 November 2023 8:26:22 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

Good morning Mel

Thanks for your email.

The FOI Branch nomination would be Sara Peel or Raewyn Harlock in Sara's absence over the next few weeks.

Kind regards



Rocelle Ago (she/her)
Assistant Commissioner, Freedom of information
Office of the Australian Information Commissioner
P +612 9942 4205 **M** [s47E\(d\)](#) **E** rocelle.ago@oaic.gov.au

Executive officer to Freedom of Information Commissioner and Assistant Commissioner, Freedom of Information:
Romina Domenici **P** +612 9942 4022 **E** romina.domenici@oaic.gov.au
The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

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From: DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>
Sent: Monday, November 13, 2023 6:05 PM
To: OAIC Executive <DL_OAIC_Executive@external.dese.gov.au>; CROXALL,Sarah <Sarah.Croxall@oaic.gov.au>
Subject: Robodebt Royal Commission [SEC=OFFICIAL]

Dear Colleagues

Earlier today the Australian Government released its [response to the report of the Royal Commission into the Robodebt Scheme](#). The Government accepts (49) or accepts in principle (7) all 56 recommendations made by the Royal Commission. Libby has been the OAIC's representative on the Taskforce considering the Government's response.

As you are aware, the Information Commissioner decided we would establish a Robodebt Royal Commission Working Group to consider the findings of the Royal Commission and recommend actions that can be taken by the OAIC in relation to those aspects of the report that are relevant to its work. It will have six primary areas of consideration:

1. The exercise of regulatory functions, including the adequacy of the OAIC

governance mechanisms that facilitate the identification and regulatory response to emerging or identified risks

2. General regulatory practice, including in circumstances where submissions are sought from respondents or targets in relation to draft findings of the OAIC across its regulatory remit
3. Regulatory independence, including in relation to legal functions and the role of the General Counsel
4. Input into decisions by government in response to the report (completed)
5. Implementation of changes to Australian Public Service duty statements, performance requirements or conduct led by the Australian Public Service Commission, including relevant training and agency communications regarding the report and its key findings
6. Consider the OAIC's role in relation to statutory data matching programs and its continued role in relation to the [Guidelines on Data Matching in Australian Government Administration](#) (voluntary data-matching guidelines).

Now that the government report has been released we are moving to operationalise the Working Group. It will meet monthly, report to the Executive Committee and comprise of the following people:

- Chief Operating Officer (Chair)
- Assistant Commissioner, Regulation and Strategy Branch
- Assistant Commissioner, Regulation and Strategy Branch (CDR)
- Assistant Commissioner, Corporate
- General Counsel
- Director, Assessments, Regulation and Strategy Branch
- Director, FOI
- Director, Dispute Resolution

Other staff will be invited as necessary and there will be opportunities to input to the work.

Pennie and Rocelle, we'd be grateful for your Director nominations.

The first meeting will be held on Monday 27 November.

Angelene will be sending an all-staff email updating staff on the government response and our Working Group.

Many thanks

Melanie

GIBSON, Isla

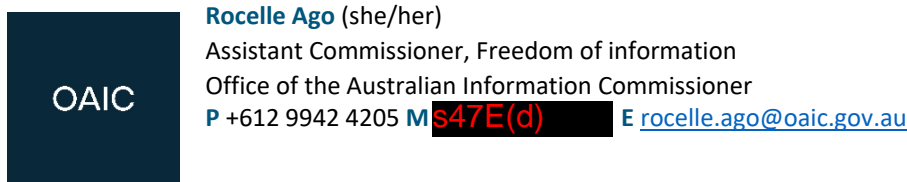
From: AGO,Rocelle
Sent: Tuesday, 14 November 2023 8:26 AM
To: DRAYTON,Melanie; OAIC Executive; CROXALL,Sarah
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Many thanks

Melanie

From: [DRAYTON, Melanie](#)
To: [OAIC Executive; CROXALL, Sarah](#)
Subject: Robodebt Royal Commission [SEC=OFFICIAL]
Date: Monday, 13 November 2023 6:05:45 PM

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Melanie



Executive COMMITTEE Meeting Minutes

Date: Monday 10 July 2023 **Location:** Microsoft Teams
Start: 10.00am **Finish:** 11.33 am

Attendees:

Angelene Falk	Information Commissioner and Privacy Commissioner
Toni Pirani	Acting Freedom of Information Commissioner
Melanie Drayton	Acting Deputy Commissioner
Andre Castaldi	Assistant Commissioner Regulation and Strategy
Annamie Hale	Assistant Commissioner Corporate
Pennie Snowden	Assistant Commissioner Dispute Resolution
Rob Ghali	Assistant Commissioner Major Investigations
Sarah Ghali	Assistant Commissioner Regulation and Strategy

Observers:

Samantha Lidbetter	Executive Assistant Corporate (Minutes)
Andrew Stokes	Director Strategic Communications
Amy Kiely	Assistant Director Strategic Communications
Emma Liddle	Director, Legal Services

Apologies:

Elizabeth Hampton	Deputy Commissioner
Rocelle Ago	Assistant Commissioner Freedom of Information

s22

2. Strategic Priorities and External Environment

Discussion

Commissioner Falk spoke to the following:


- Royal Commission Robodebt Report
 - A number of matters are to be considered by the office.
 - Taskforce to be stood up led by Melanie Drayton as Senior Assistant Commissioner.
 - Membership to the taskforce to be recommended by Melanie Drayton.

The OAIC's in-house Legal Services Team Value Proposition

s47C



The OAIC Legal Services Team is a dedicated in-house legal team within the Corporate Branch, responsible for the delivery of all OAIC legal services, the management of legal risk and external legal expenditure. s47C



s47C



Core OAIC Legal Services

Core OAIC Legal Services include but are not limited to the following:

- Providing legal advice and managing the provision of legal advice across all OAIC functions and powers (including privacy, freedom of information, CDR, procurement, complaints, law reform, guidance, employment and corporate).
- Advising on the legal components of investigations, examinations and drafting of compulsory notices to ensure they are legally defensible.
- Identifying and advising on legal risks and issues that impact on the OAIC and its regulatory obligations.
- Attending and advising on matters before the Regulatory Action Committee.
- Managing and instructing on all OAIC litigation, including matters moving from investigations to filed proceedings.
- Advising on OAIC representative complaints.
- Processing FOI requests and reporting on our FOI decision making.
- Engaging and instructing external legal service providers, including Counsel.
- Legal Policy, including providing legal comment on draft legislation.
- OAIC Privacy Governance.

- OAIC Chief Privacy Officer and privacy officers, including assessing OAIC data breaches and administering the data breach response plan.
- Management of the OAIC external legal budget (including internal and external reporting).
- External reporting to the Office of Legal Services Coordination on significant legal issues and compliance with the *Legal Services Directions 2017*.

s47C



s47C



- A summary of learnings for in-house legal teams from the Royal Commission into the Robodebt Scheme is at Attachment A.

s47C



Robodebt Royal Commission Report - learnings for in-house legal teams

Professional independence

The Robodebt Royal Commission Report highlights the importance of the professional independence of in-house lawyers, including the need to provide 'frank and fearless' advice. The ability of in-house lawyers to be able to provide independent and frank advice must not be influenced by any preferred position of the agency on a matter and can only be effectively delivered where there are appropriate structures and systems in place to support such independence, including an appropriate workplace culture that promotes the objectivity and independence of its lawyers (p 523).

In-house legal areas should have structures and systems in place to support the professional independence of in-house lawyers. This is also important for the maintenance of legal professional privilege. A lawyer will lack the necessary independence to claim privilege if it is found that their personal loyalties, duties and interests have influenced the professional legal advice given to their clients.

One of the fundamental ethical duties owed by a lawyer is the avoidance of any compromise to their integrity and professional independence. A lawyer must not act as the mere mouthpiece of their client. The actions of government lawyers take on extra significance because the government is a client which has powers and obligations that far exceed those of the normal citizen.

The Australian Government Legal Service (AGLS)

The AGLS was established following the AGD Secretary's Review of Legal Services in 2017, which considered how legal services could be delivered most effectively and efficiently to the Commonwealth to support government action and manage Commonwealth legal risk.

Since its creation, the AGLS has published a *Statement of expectations of Australian Government lawyers* (the Statement) and a *General Counsel Charter* (the Charter).²

The Statement includes the following expectations:

- We conduct ourselves with integrity, objectivity and independence.
- Recognising that generally our client is the Commonwealth, when we provide our advice to, or identify and manage legal risk for our agency we do so with a whole-of-government focus.
- We understand that our role requires us to balance managing legal risk with assisting our agency to achieve the government's objectives.
- Because we are part of one Australian Government Legal Service, we collaborate and consult with each other to provide high quality work.
- We recognise that sometimes government lawyers have competing obligations (such as when working for corporate Commonwealth entities). However, as much as possible, we work together with a whole-of-government focus.

² Australian Government Legal Service, *Statement of expectations of Australian Government lawyers (Statement of expectations, February 2022)* <<https://www.governmentlawyers.gov.au/sites/default/files/2022-02/agls-statement-of-expectations-of-australian-government-lawyers.PDF>>.

The [Charter](#) establishes a set of common expectations for Commonwealth officers in both corporate Commonwealth entities and non-corporate Commonwealth entities who are responsible for the delivery of legal services and management of legal risk in their entity (General Counsel). It applies to the head of the legal practice of each entity, and the responsibilities under the Charter may be shared by more than one person. Those responsibilities include:

- Promoting adherence to professional standards and supporting professional development.
- Sharing information and legal knowledge across teams and between entities.
- Managing legal risk and delivery legal services with due regard to the Commonwealth's interests as a whole.
- Supporting their entity head to ensure compliance with the *Legal Services Directions 2017*.
- Identifying legal risks and issues that might require or benefit from a whole-of-government approach and taking steps to engage relevant stakeholders.
- Managing their legal practice, and supporting the development of their government lawyers, in a way that fosters innovation.

The Charter notes that entities will likely have existing performance expectations for their General Counsel. The OAIC reflects the duties and expectations of the Legal Director and General Counsel in [D2020/022954](#), and in current performance agreements.

Draft advice

Following the Commission's recommendations at 19.5 and 19.6 of the Report (p 528) in respect of Social Services and Services Australia's handling of draft legal advice, the following general principles about managing draft advice may be gleaned:

- Draft legal advice should not generally be left in draft form, subject to the following exceptions:
 - The draft advice is finalised in every significant sense, and only requires the administrative step of finalisation.
 - There are questions remaining about issues arising from the advice, which have yet to be answered.
 - The decision not to finalise and the reasons for not finalising the draft advice are documented in writing.
- Finalisation or a documented decision against finalisation should be taken within three months of the finalised advice.

Impartiality

The Commission heard evidence about APS leaders (both Secretaries and SES leaders) being excessively responsive to government, undermining concept of impartiality and frank and fearless advice.

The inherently independent nature of in-house lawyers sets them apart from the rest of the APS. That separation is designed to enable and protect legal professional privilege. Government lawyers are subject to the APS Code of Conduct and Values.

The APS Value of 'Impartial' requires the public service to be apolitical, and provide the government with advice that is frank, honest, timely, and based on the best available evidence.

Record-keeping

Following the Commission's recommendation at 23.8 of the Report (p644-645), and from the evidence before the Commission which highlighted the absence of record-keeping in respect of significant events, the following general principles about recordkeeping may be gleaned:

- In-house lawyers (and other relevant public servants) contemporaneously document and retain file notes of important decisions and conversations;
- Records be made to explain why significant actions are taken or not taken; and
- Agencies take note of any record-keeping standards developed by the Australian Public Service Commissioner and train staff in the awareness and implementation of those standards.

DRAFT