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Australian Government
Department of Social Services
Services Australia

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Mr Peter Woolcott AO
Australian Public Service Commissioner

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

For Information:

Ms Katherine Jones PSM
Secretary
Attorney-General's Department

Dear Professor Davis and Mr Woolcott

**APPROACH TO POTENTIAL ACTIONS FOR CURRENT AND FORMER APS
STAFF - ROBODEBT ROYAL COMMISSION**

We write to you in relation to the possibility that the Royal Commission into the Robodebt Scheme may make adverse findings against current or former APS employees, including Agency Heads, SES and Executive Level employees. It is in keeping with our Agency Head responsibilities to engage with you about this matter with a view to planning for when the Royal Commission hands down its report.

While we do not seek to pre-empt the Royal Commission's findings, it has become clear, during the course of hearings that adverse findings in relation to the actions of a number of current and former employees may follow. Any such findings may include a recommendation for investigation under the APS Code of Conduct. There is also potential for other critical commentary, falling short of a specific finding, which is nonetheless could be relevant for APS Code purposes.

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While the totality of the findings and recommendations of the Royal Commission will ultimately be a matter for Government to respond to, we consider that there should be preliminary advice provided to Agency Heads on the approach to be taken to specific adverse findings or evidence against individuals currently, or previously, subject to the *Public Service Act 1999* (PS Act). For example, Agency Heads need advice in relation to the approach to be taken between now and the Royal Commission making its findings and recommendations in respect of current SES officers and APS employees, in particular where a return to their usual role may need to be considered in the immediate term. In this regard, we are mindful that specific immunities apply to persons who are witnesses at a Royal Commission.

It will be of paramount importance that Agency Heads have clear and consistent advice from the APSC on how to respond to any adverse allegations or findings, and possible referral for investigation of an individual's actions under the APS Code. We are particularly concerned about parity of treatment, accountability, fairness and consistency between decision-makers across a cohort of individuals potentially dispersed across a range of agencies.

In the ordinary course, such investigations would fall to us in line with our Agency Head responsibilities. However, on this occasion, we do not consider any investigations should be led by the Department of Social Services or Services Australia, or by individual Agency Heads with responsibilities for those APS employees who have moved on from this Portfolio.

Noting the Commissioner's powers to investigate an APS Code of Conduct allegation in relation to an Agency Head and an APS employee (s 41(2)(m) and (n), PS Act), we consider centralisation would support an objectively consistent and fair process and clearly show the gravity with which the APS is taking the matter.

While it is ultimately a matter for the Commissioner to decide the most appropriate process, options could include a discrete APSC function or the appointment of an independent eminent person. Alternatively, it may be appropriate to consider establishing an executive agency under s 65 PS Act like the Office of the Special Investigator, or perhaps the appointment of a Special Commissioner by the Governor-General.

The role of an independent person or body would be to investigate allegations of a breach of the Code, including analysing the Royal Commission's report from an APS perspective, and identifying all adverse findings or other criticisms against persons who are or were subject to the APS Code of Conduct. This could include the conduct of those who are no longer APS employees, noting that sanctions could not be imposed.

While we are conscious that significant time, money and resources have been expended already, given the magnitude of the issues being identified by the Royal Commission and their implications for the APS, the public will rightly expect a clear, unambiguous and independent process for dealing with individuals who are subject to adverse findings.

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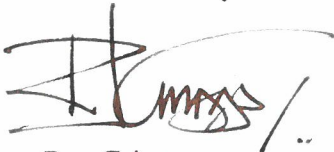
There is clearly a risk of further damage to the reputation of the APS if the findings of the Royal Commission are not handled carefully, independently and in a timely manner.

We consider there would be considerable benefit in raising this matter at the Secretaries Board with a view to getting agreement on a consistent approach, which may also require the Commissioner to make specific Directions. Some of the issues that could be explored in any discussion include:

- statutory powers of the APS Commissioner in relation to APS Code of Conduct processes and responsibilities,
- jurisdiction under the APS Act, particularly regarding former APS employees and Agency Heads,
- status of findings and evidence of the Royal Commission and their appropriate use for APS Code investigations, and
- information sharing arrangements in respect of evidence from the Royal Commission together with agency records.

We think the timing here is critical given the timeframe for the conclusion of the Royal Commission and the likely volume of work involved to establish a thorough, fair and defensible approach. We believe this matter does need appropriate attention as the Royal Commission moves towards its final stages.

Yours sincerely



Ray Griggs
8 February 2023

Yours sincerely



Rebecca Skinner
8 February 2023

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