



Australian Government

Centralised Code of Conduct Inquiry Taskforce

Final Report



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Release of Information from the APS Commissioner

SECTION 72A DISCLOSURE NOTICE – FINAL REPORT OF THE CODE OF CONDUCT INQUIRY TASKFORCE

I, Dr Gordon de Brouwer, Australian Public Service Commissioner, under section 72A of the Public Service Act 1999, have made a decision to disclose protected information to the public by publishing the Report of the Code of Conduct Inquiry Taskforce.

The protected information to be disclosed relates to Code of Conduct inquiries into 16 individuals. The inquiries were commenced following the conclusion of the Royal Commission into the Robodebt Scheme. These inquiries have been conducted through sections 41(2)(m), 41A, and 41(2)(n) of the *Public Service Act 1999* (Cth) (the Act), as recently amended. All inquiries have been completed, and any reviews of breach decisions have been completed.

The proposed disclosure of protected information is a de-identified summary of the breach findings and sanction recommendations.

In accordance with subsection 72A(5) of the Act, I am satisfied this disclosure is in the public interest and the disclosure is not likely to interfere with a review or inquiry under the Act or the *Public Service Regulations 2023*.

In any future cases I will, separately and on the facts as relevant to those matters, consider whether to exercise this discretion.

It is vital that the Australian public has confidence in the integrity of the Australian Public Service.

The conduct of these inquiries, and the manner in which they were conducted, reflects the expectation of the Australian people, the Government and the APS that all public servants, including Secretaries and Agency Heads, adhere to the highest professional standards and their obligations in the Act.

As a result, it is in my view in the public interest that a de-identified summary of the breach findings and the sanction recommendations of the 16 inquiries are disclosed to the public.



Dr Gordon de Brouwer PSM

Australian Public Service Commissioner

5 September 2024

A message from Head of Taskforce

Dr Gordon de Brouwer
Australian Public Service Commission

Dear Commissioner

I present the Final Report of the Centralised Code of Conduct Inquiry Taskforce. The purpose of the Taskforce was to support the Independent Reviewers to inquire into whether current and former Australian Public Service Agency Heads and employees associated with the design and delivery of the Robodebt Scheme breached the Australian Public Service Code of Conduct.

The Taskforce commenced its work in July 2023. We were given twelve months to complete our work, which reflected the complexity of conducting a relatively large number of independent, yet interconnected inquiries. Inquiries into current and former APS employees, excluding former Agency Heads, were completed in early July 2024. Inquiries into former Agency Heads were finalised following the commencement of the *Public Service Amendment Act (No 2) 2024* on 26 August 2024 that clarified the authority of the Public Service Commissioner to inquire into alleged breaches of the Code of Conduct by both former and current Agency Heads and validated the inquiries that had been close to completion prior to the commencement of the amendments. This report captures the outcomes of, and insights from, the inquiries into current and former APS and former Agency Heads.

Procedures for conducting Code inquiries are well established within the APS. An important principle for the work of the Taskforce was that, to the greatest extent possible, existing policies and procedures should be relied upon for the purposes of conducting the inquiries. The APSC Misconduct Guide provides the parameters for undertaking Code inquiries within the APS, including guidance on procedural fairness. Despite the uniqueness of the task, we adhered to the requirements of the Misconduct Guide. This meant that we provided respondents with opportunities to respond to and submit relevant information at every stage in our inquiries.

We also responded to requests by respondents for time extensions. These requests were the result of difficulties encountered by respondents in accessing archived documents to prepare their responses, health and wellbeing concerns, absences from Australia, and competing professional and personal priorities. These requests were accommodated as often as possible to ensure respondents were in the best position to fully participate in the inquiries.

Adherence to the highest standards of procedural fairness and a genuine commitment to the wellbeing of respondents and witnesses meant that the inquiries were not able to be completed quickly but were certainly conducted thoroughly.

This report reflects the outcomes of those inquiries as well as insights relevant to the broader APS.

Yours sincerely

Jamie Lowe

First Assistant Commissioner

5 September 2024

Executive Summary

The number of individuals involved in the design and rollout of the debt recovery program from 2014 – 2019, commonly referred to as the Robodebt Scheme, represents a very small percentage of public servants. Even amongst this small number, there were people who tried to do the right thing and, in identifying and escalating concerns, demonstrated the Australian Public Service (**APS**) Values: Committed to Service, Ethical, Respectful, Accountable and Impartial. There can be no doubt that the Robodebt Scheme is a stark example of a relatively small number of public servants making a series of poor decisions, lacking courage and curiosity to challenge assumptions, and failing to demonstrate the care, diligence and integrity that should be at the core of all we do.

The Secretaries Board agreed that the Australian Public Service Commission (**APSC**) would establish a Centralised Code of Conduct Inquiry Taskforce (**Taskforce**) to support Independent Reviewers to conduct inquiries into potential breaches of the APS Code of Conduct (**Code**) by public servants involved in the design, delivery and monitoring of the Robodebt Scheme. On 7 July 2023, the Royal Commission published its report (**Final Report**) and referred a number of current public servants for inquiries into potential breaches of the Code in a sealed section to the Final Report.

The Royal Commission only referred individuals for investigation who, if found to have breached the Code, could be subject to a sanction. This meant that only current APS employees who may be subject to sanctions were proposed for a possible Code investigation by the APSC.

To ensure equitable treatment of current APS employees, further consideration was given to whether additional referrals to the Taskforce were warranted for former APS employees and former Agency Heads.

The inquiries were conducted in accordance with paragraphs 41(2)(k), 41(2)(m) and 41(2)(n) of the *Public Service Act 1999* (Cth) (**Public Service Act**).

The Public Service Commissioner (**Commissioner**) delegated powers to Mr Stephen Sedgwick AO as Independent Reviewer to undertake inquiries into current and former APS employees. Mr Sedgwick has now completed his inquiries.

The Commissioner delegated powers to Ms Penny Shakespeare as Supplementary Reviewer to undertake inquiries into the conduct of former Agency Heads. Ms Shakespeare has now completed her inquiries.

The Commissioner received 16 referrals to the APSC's Taskforce, consisting of:

- current APS employees named in the sealed section of the Royal Commission's Final Report;
- former APS employees referred by their most recent Agency Head; and
- former Agency Heads referred by the Minister following advice from the Secretary of the Department of the Prime Minister and Cabinet.

Twelve current and former public servants and former Agency Heads have been found to have breached the Code on 97 occasions. The breaches include lack of care and diligence and lack of integrity in performing duties, as well as instances of misleading others and failing to uphold APS values. Some individuals were found not to be in breach or their actions did not meet the necessary threshold at certain stages of the process.

Sanctions have been imposed against the four current APS employees found to have breached the Code. The sanctions imposed ranged from reprimands and fines to demotions. A number of respondents resigned or retired from APS employment prior to, or during, these inquiries and were therefore not subject to sanctions.

Throughout the course of the inquiries, the wellbeing of individuals subject to the inquiry remained a critical and continual priority. This is true for any disciplinary inquiry which is, by its nature, a stressful and distressing experience for any person. However these inquiries posed additional risks for individual wellbeing due to the unprecedented public scrutiny, particularly if they appeared at the Royal Commission hearings.

Procedural fairness was afforded to each individual, with reasonable timeframes provided to respond at each stage of the process and opportunities to provide further evidence for consideration by the Independent Reviewers.

The Parliament and the public expect accountability for the APS's actions. Being as transparent as possible about the inquiry process and its outcomes is critical to meeting that expectation. Part A of this Report sets out the number and range of breaches upheld and sanctions imposed, without disclosing the identity of individuals.

Critically for the APS, Part B of this Report provides insights and observations about individual behaviours, responsibilities, and processes. The inquiries unearthed examples of public servants who acted or failed to act at critical junctures, supported by enterprise-level and more localised workplace cultures that discouraged openness, curiosity, courage and collaboration. The Robodebt experience offers important lessons for all public servants and Government agencies.

Integrity and care are at the heart of these inquiries. It's about the integrity and care taken by the public servants involved in the Robodebt Scheme, but it's also about the integrity of the public service arrangements that are established to develop public policy and service delivery options, provide advice, and identify and correct mistakes. Public policy and service delivery options are properly developed in response to an identified problem. Options are then best assessed against two critical questions often summarised as 'can we?' (is it legal?) and 'should we?' (is it ethical / the right thing to do?)¹. At critical points during Robodebt neither of these questions was properly examined or satisfactorily answered.

¹ For further discussion about the role of integrity in APS decision making, refer to Mr Stephen Sedgwick AO, *Report into consultations regarding APS approaches to institutional integrity* 16 December 2020 [Report into consultations regarding APS approaches to institutional integrity](https://www.apsc.gov.au/report-into-consultations-regarding-aps-approaches-to-institutional-integrity) | Australian Public Service Commission ([apsc.gov.au](https://www.apsc.gov.au))

PART A: Taskforce Establishment and Inquiry Outcomes

1. ESTABLISHING THE TASKFORCE

1.1 Robodebt Royal Commission

A Royal Commission was established on 18 August 2022 to inquire into the establishment, design and implementation of the debt assessment and recovery scheme that became known as 'Robodebt'. The Robodebt Scheme comprised the Pay As You Go (PAYG) Manual Compliance Intervention program, as well as its subsequent iterations in the Online Compliance Intervention, the Employment Income Intervention and Check and Update Past Income. The Robodebt Scheme ran from July 2015 to November 2019.²

The Royal Commissioner, Ms Catherine Holmes AC SC, submitted her Final Report to the Governor-General on 7 July 2023. The Final Report contained a sealed section which was provided to relevant Agency Heads. The sealed section contained a number of referrals for Code investigations.

1.2 Establishing the Taskforce

Agency Secretaries, through the Secretaries Board forum, agreed that, following the completion of the Royal Commission and tabling of the Royal Commissioner's Final Report, a centralised inquiry mechanism would be established. The centralised inquiry mechanism was known as the Centralised Code of Conduct Inquiry Taskforce. The role of the Taskforce, established within the APSC, was to support the Independent Reviewers to inquire into suspected breaches of the Code by current and former APS employees and former Agency Heads, relating to the Robodebt Scheme. The Taskforce formally commenced operation on 7 July 2023 for an initial 12 month period upon release of the Final Report although some administrative arrangements were put in place prior to that date. This time permitted careful and diligent, independent consideration of all material pertinent to the inquiry and allowed for procedural fairness in individual cases.

1.3 Composition of the Taskforce

To maintain the robustness and consistency of this centralised mechanism, the Commissioner delegated his powers in accordance with sections 78(5) and 78(5A) of the Public Service Act to Mr Stephen Sedgwick AO and Ms Penny Shakespeare as Independent Reviewers. This delegation enabled Mr Sedgwick and Ms Shakespeare to conduct Code inquiries.

Mr Sedgwick was appointed to review suspected breaches of the Code under paragraphs 41(2)(n) of the Public Service Act and make determinations with respect to current and former APS employees referred by their current or last employing Agency Head.

Ms Shakespeare was appointed to review suspected breaches of the Code under paragraphs 41(2)(k) and (m) of the Public Service Act and make determinations with respect to former Agency Heads as referred by the Minister for the Public Service.

² See the declaration of Royal Commission in the Attorney-General's letters patent, dated 18 August 2022: [Letters Patent to Robodebt \(royalcommission.gov.au\)](#), and the Royal Commission into the Robodebt Scheme's Final Report, page v.

The Taskforce team, led by a senior public servant, was established to support the Reviewers. Other officers were recruited from a range of APS agencies on either temporary transfer or secondment arrangements. These officers had a range of classifications, experience, and capability. At its peak, the Taskforce had ten officers however staffing was scaled back during the duration of the Taskforce to accommodate fluctuating levels of work.

Additionally, Ms Cheryl-Anne Moy and Ms Elizabeth Kelly PSM, were appointed by the APS Commissioner in the role of Independent Sanctions Advisors. Ms Moy and Ms Kelly were tasked with making sanction recommendations to the relevant Agency Head if a Reviewer determined that a breach of the Code had occurred for current APS employees. As with the Reviewers, it was important that the sanctions advisers were independent from the agencies within which the individuals were employed and had no conflicts of interest with respect to the individuals that were subject to inquiry.

1.4 Referrals to the Taskforce

The Royal Commission only referred individuals to the APS Commissioner in the sealed section of its Final Report who, if found to have breached the Code, could be subject to a sanction. This meant that Royal Commission referrals were confined to current APS employees who may be subject to sanctions.

Referrals to the Taskforce inquiries were not limited to the individuals referred by the Royal Commission for further assessment. A number of individuals who, while not the subject of a direct referral from the Royal Commission, were the subject of adverse commentary in the Final Report. Agency Heads had the option to refer any current or former APS employee, whose conduct they assessed warranted investigation. A number of individuals were also referred by the Minister for Public Service on the advice of the Secretary for Prime Minister and Cabinet. Ultimately, the Taskforce received 16 referrals. For the purposes of the inquiries and this report, these individuals are referred to as '**respondents**'.

1.5 Referrals of former Agency Heads

A small number of former Agency Heads were referred by the Minister for the Public Service acting on the advice of the Secretary of the Department of the Prime Minister and Cabinet, Professor Glyn Davis, and the APSC. Ms Penny Shakespeare, was appointed to make inquiries into the conduct of former Agency Heads.

As the inquiries progressed, and in response to submissions made by a number of former Agency Heads, it became apparent that the Public Service Act was not clear with respect to conducting inquiries, and making determinations, ~~into~~ alleged breaches of the Code by former Agency Heads. Government acted on the advice of the APSC to urgently amend the Public Service Act to provide this clarity.

On 26 August 2024 the *Public Service Amendment Act (No 2) 2024* received Royal Assent. The Act clarified that the Commissioner can conduct inquiries and make determinations with respect to alleged breaches of the Code of Conduct by current and former Agency Heads. The Act includes provisions to validate reviews into the conduct of former Agency Heads where those reviews commenced under paragraph 41(2)(k) of the Public Service Act after 7 July 2023. This was intended to enable the finalisation of reviews into the conduct of former Agency Heads involved in the Robodebt Scheme.

1.6 Independent process

Throughout the inquiry, the Reviewers and Taskforce have operated independently from the broader APSC. The Taskforce was physically separated from other APSC offices and staff. The Taskforce had autonomy within the APSC to conduct operations without interference or monitoring. Taskforce IT systems were digitally partitioned so that non-Taskforce staff were unable to access or view Taskforce files.

Clayton Utz were selected as external legal advisers to the Reviewers and Taskforce, with additional legal advisers appointed in the case of conflicts of interest with Clayton Utz.

The Taskforce inquiries have been a separate process from the Royal Commission. All information relevant to these Code cases, including documentary information and evidence obtained in the course of the Royal Commission, has been independently considered.

2. OPERATION OF THE TASKFORCE

2.1 Good governance and managing risk

While the Taskforce was established quickly, it was critical that proper governance and investigative arrangements were put in place to ensure the integrity of the process.

Early decisions about governance of the Taskforce fell into one of three broad streams of work, described below in Figure 1:

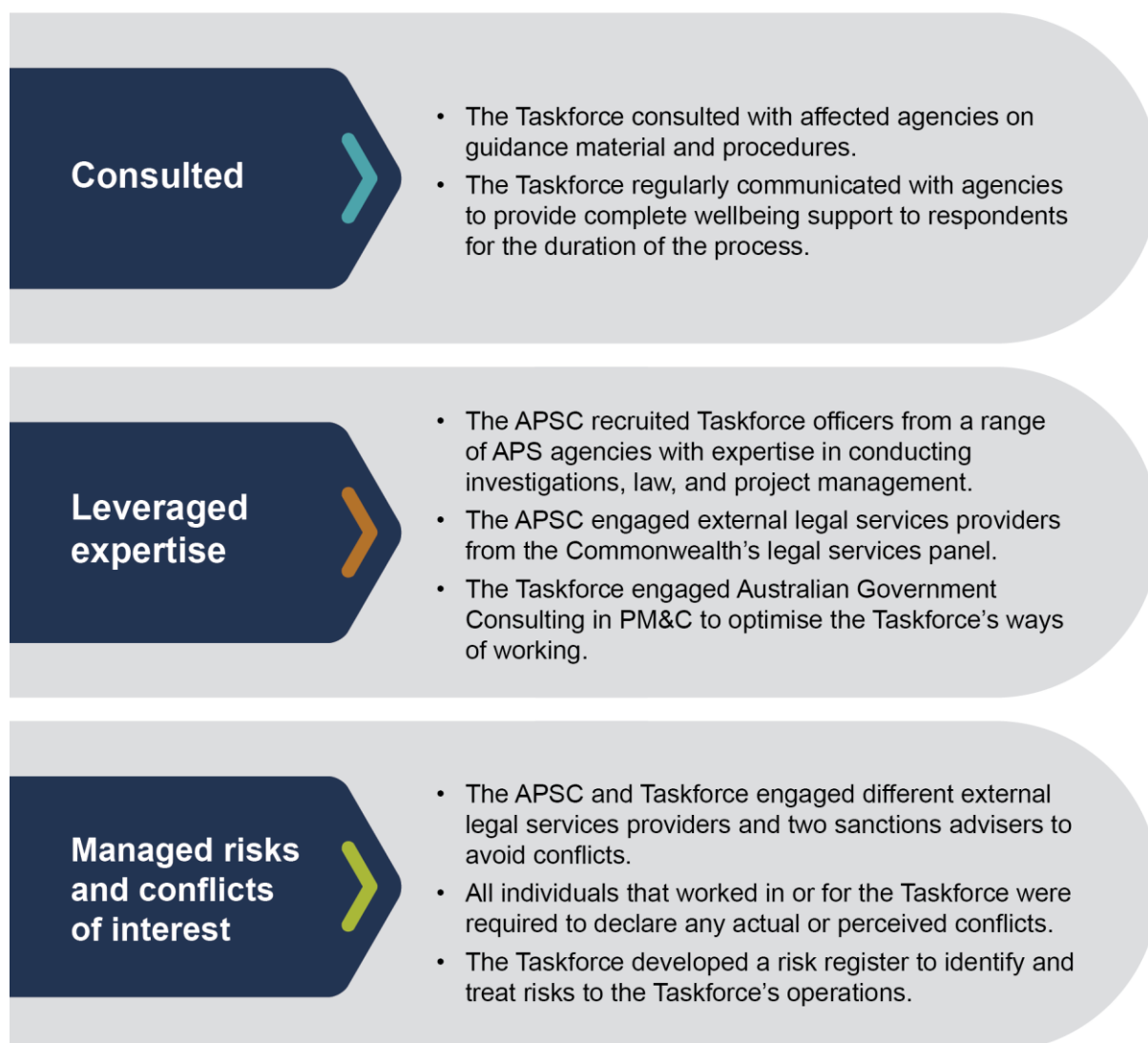


Figure 1

2.2 Procedural fairness

Procedures for conducting Code inquiries are well established within the APS. An important principle for the work of the Taskforce was that, to the greatest extent possible, existing policies and procedures should be relied upon for the purposes of conducting the inquiries.

The APSC Misconduct Guide³ (**Misconduct Guide**) provides the parameters for undertaking conduct investigations within the APS, including guidance on procedural fairness. The Taskforce has, at each stage in its inquiries, adhered to the requirements of the Misconduct Guide.

The Code Process

Independent Reviewer

Notice of Suspected Breach

- Notice issued to individual with specific elements of code suspected to have been breached with supporting evidence.

Preliminary Determination

- Allegations, evidence, individuals submission and interview (optional) reviewed.
- Preliminary findings shared with individual with right to reply.

Final Determination

- A final report is prepared that confirms there is or is not a breach of the code.
- If not a breach, no further action taken.
- If a breach is found:
 - Current APS employee – referred to Independent Sanction Advisor.
 - Former APS employee/Formal Agency Head – relevant agencies notified of breach outcome.



Independent Sanction Advisor

Sanction Proposal

- Independent Sanction Advisor provides sanction proposal to the employing Agency.

Agency

- Individual advised of proposed sanction by Agency.
- Individual provided reasonable opportunity to make submissions to inform sanction decision.

³ APSC Misconduct Guide, page 77

The Misconduct Guide requires that the person under investigation be provided with all relevant, credible, and significant evidence collected during the inquiries to allow them to respond, comment or correct these records. The Taskforce invited respondents to respond at every stage during its inquiries. Where new evidence came to light during the course of an inquiry, a respondent was provided with the evidence and afforded time to consider and respond. Where new evidence resulted in new allegations, supplementary notices of suspected breach were issued.

The passage of time since the alleged conduct occurred has had an impact on respondents' recollection and, in some cases, ability to access archived or lost documentation. The Taskforce worked with relevant agencies to assist respondents to access relevant information where possible.

The initial 12 month timeframe allowed sufficient time for thorough investigations and preparation of findings, respondent and witness interviews, and extension requests.

2.3 Respondent wellbeing

A key characteristic of the Robodebt Scheme was its negative impact on the physical and mental wellbeing of individuals who received debt notices. Even in cases where a debt was accurately calculated, the absence of a human-centric approach to communicating and collecting debts left many people frightened, ashamed and confused. Tragically, the receipt of an automated debt notice has been linked to incidents of self-harm.

The Taskforce took all reasonable steps to ensure that it did not exacerbate the human toll of the Robodebt Scheme, including among public servants involved in its design and delivery. In adopting a human-centred approach to the Code Inquiries, the Taskforce considered respondent wellbeing throughout the process. Being the subject of a Code inquiry is confronting and distressing for any public servant. The consequences of an adverse finding on a respondent's financial position, career development and professional reputation can be significant. This was particularly the case for this cohort of respondents who had already appeared as witnesses before the Royal Commission and been the subject of public discussion and speculation. The Taskforce became aware that many of the respondents as well as additional witnesses interviewed by the Taskforce had health and wellbeing concerns that needed to be carefully managed.

Typically the Reviewers and Taskforce relied on publicly available evidence and testimony to the Royal Commission to avoid witnesses having to repeat information already on the public record. In some cases, specific witnesses were approached for an interview if it was thought they could provide additional detail or insight not otherwise provided to the Royal Commission.

In the case of respondents who remained APS employees throughout the course of their inquiry, primary responsibility for their wellbeing remained with their employing agency. The Taskforce engaged regularly with Agency contacts and encouraged agencies to regularly conduct wellbeing check-ins, particularly when the respondents received significant communications from the Taskforce such as a Notice of Suspected Breach or Final Determination. At every significant stage throughout the process, the Taskforce sought advice from the relevant agency to enquire about the respondent's current capacity to receive communication, taking into consideration concerns and adjusting timeframes where necessary.

The Taskforce was responsible for monitoring the wellbeing of respondents who were no longer APS employees, including individuals who resigned or retired from the APS during their inquiry. The Taskforce engaged with respondents at critical junctures, including immediately prior to issuing significant communication. Additional engagement was respondent-led and adjusted according to their request for support. Where the Taskforce was aware of respondent health and wellbeing concerns, for

either current or former APS employees or former Agency Heads, process timeframes were adjusted to accommodate.

Respondents were offered access to the Taskforce's wellbeing officer in addition to their agency's wellbeing contacts if applicable. Agency support services, such as the Employee Assistance Program, were regularly offered in formal and informal communications.

Respondents were provided with advance notice of significant public announcements relating to the inquiries such as updates to the APSC website, so that respondent wellbeing was not impacted by an unexpected public release of information.

2.4 Privacy

A Code investigation is an internal disciplinary proceeding. A Code investigation is not a legal investigation of a civil or criminal nature. A Code inquiry occurs within the APS employment relationship, which is derived primarily from the Public Service Act. The use of sensitive materials and personal information is governed by the Public Service Act, the *Privacy Act 1988* (Cth) (**Privacy Act**) and the Australian Privacy Principles.

To best comply with relevant confidentiality obligations, the Taskforce commissioned a Privacy Impact Assessment. During this process the Taskforce identified relevant stakeholders and identified any associated information handling risks. The Privacy Impact Assessment has governed how the Taskforce has handled and secured personal information.

At every stage of the inquiries the Taskforce has adhered to these privacy processes to provide procedural fairness to individuals under investigation and to protect their privacy so as not to prejudice any current or future Code investigations conducted by the APSC or other investigative bodies.

2.5 Public comment

Since the Final Report of the Royal Commission was released on 7 July 2023, public interest in better understanding the consequences for public servants identified in the Final Report has been high. There has been particular interest in the contents of the sealed section of the Final Report which was subject to a Direction Not To Publish Order in accordance with section 6D(3) of the *Royal Commissions Act 1902* (Cth).

The findings of the Royal Commission revealed the cost of the Robodebt Scheme on the lives, confidence and wellbeing of many Australians. There has also been serious damage to the reputation of, and public confidence in, the APS.

The Parliament and the public quite rightly expect accountability for the actions of the APS. Being as transparent as possible about the inquiry process and its outcomes is critical to meeting that expectation.

Throughout the course of its inquiries, the Taskforce has sought to balance this legitimate public interest with its legal obligations. The Taskforce has not published details of allegations, lines of inquiry, projected timeframes or likely outcomes of any investigation. To maximise transparency the Taskforce has:

- Provided updates on the progress of its inquiries on the APSC website on 3 August 2023 and 8 February 2024;
- Through the Commissioner provided updates to the Senate Finance and Public Administration Legislation Committee on 24 October 2023, 13 February 2024 and 30 May 2024; and

- Received and responded to a small number of media inquiries, FOI requests and correspondence from members of the public seeking information about the progress of the inquiries and the identity of individuals subject to those inquiries.

This report sets out the number and range of breaches upheld and sanctions imposed, without disclosing the identity of individuals. Such commentary may disclose sensitive personal information and inadvertently undermine the effectiveness of future Code inquiries.

2.5 Hindsight bias and evidentiary considerations

The design, implementation and management of the Robodebt Scheme has been significantly scrutinised over the course of the Royal Commission. The Taskforce was mindful that, with the passage of time, and in hindsight, it could be convenient to form a view based largely on the Royal Commission's Final Report, public commentary and media reporting. However, it was imperative the Taskforce maintain the perspective that the Code inquiries specifically address the actions and decisions taken in a contextualised and impartial manner. The Taskforce inquiries have been focused on the period when individuals were employed and their role in designing and implementing the Scheme.

Moreover, the Code inquiries were undertaken a significant time after the events in question. In some cases, the events subject to a Code inquiry occurred ten years ago. The ability for individuals to recall meetings, conversations or intentions will have been inhibited by this passage of time. While the inquiries relied significantly on documentary evidence and witness statements, individuals often had to recall the circumstances in which an email was written, a decision undertaken or the meaning of a meeting note. Individuals cited the difficulty with this and made reasonable attempts to clarify and explain, noting that recollections were not necessarily distinct. At all times, the Taskforce has been cognisant of the risk of hindsight bias. The Independent Reviewers have been alert to the impact of the passage of time and taken this factor into their considerations of the evidence.

The Taskforce inquiries considered documentary evidence and witness testimony presented during the Royal Commission. However, the Taskforce was not confined to using only this information and did request and receive further information and testimony from respondents as well as other witnesses and relevant agencies. This additional evidentiary basis has enabled the Taskforce to take a broad, independent and objective view.

2.6 Investigative Standards

The Taskforce inquiries were framed around the following APS investigative standards:

Standard of proof

Allegations were considered on the balance of probabilities. This required the decision maker to be satisfied that, having considered all relevant, credible and significant evidence, a reasonable person would form the view that the suspected misconduct is more likely than not to have occurred.

This standard of proof is based on the common law principles Dixon J set out in *Briginshaw v Briginshaw*⁴ that:

⁴ (1938) 60 CLR 336 at 362.

...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequences of the fact or facts to be proved. The seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved...

The Independent Reviewers adhered to this standard of proof in their investigations.

Standard of behaviour

The Misconduct Guide applies an objective standard of behaviour:⁵

The standard of behaviour expected of APS employees is an objective one. This means that the question of whether particular conduct is in breach of the Code is not determined by the subjective standard of the particular employee who has engaged in the conduct.

An employee's genuine belief that the action they took was proper is not relevant to a decision about whether that action was in breach of the Code. For example, an employee may genuinely have intended to compliment a colleague by remarking on their physical appearance, but such behaviour may not meet the objective standard of 'respect and courtesy, and without harassment' required by the Code.

The Independent Reviewers adhered to this standard of behaviour in its investigations.

Intention

The Misconduct Guide advises that intention is not generally relevant to the question of whether the Code has been breached:

The Code does not use words such as 'wilful', 'reckless' or 'negligent' to qualify behaviour, and, generally speaking, intent does not need to be shown to determine that an employee has breached the Code. It can, for example, be inconsistent with the Code to act without respect and courtesy even if the employee did not intend to be disrespectful or discourteous.

Conduct that is the result of an honest and reasonable mistake, accident, or a lack of capability can generally be addressed through process improvements or management action such as training, performance management, or counselling. On the other hand, behaviour by an employee that is within their control—for example, a wilful refusal to follow lawful and reasonable directions, or a blatant disregard for expected behavioural standards—may be better dealt with through misconduct action.⁶

An example of such conduct was the following behaviour:

⁵ APSC Misconduct Guide, page 126.

⁶ APSC Misconduct Guide, page 31.

A document had been prepared for senior officers at an agency. A respondent, tasked with preparing this document made changes to the document that contained falsehoods. The changes made were not accidental. The respondent knew they were creating a document that created a false impression and prepared the document with the intention of creating the false impression.

While intention is not generally relevant to the question of whether the Code has been breached, it can be a relevant mitigating factor when considering appropriate sanctions once a breach has been found. In the course of the inquiries, respondents shared evidence that provided context and some understanding of the intention and thought processes of respondents at pertinent times. While of limited relevance to considering whether a breach had occurred, this information was provided to the Independent Sanctions Advisers to assist them in making recommendations about sanction that took appropriate consideration of relevant mitigating factors.

3. INQUIRY OUTCOMES

The Taskforce supported the Independent Reviewers to complete their inquiries. These respondents had different roles and accountabilities with respect to the design, implementation and ongoing monitoring of the Scheme. The inquiries were complex, with large volumes of interrelated evidence, owing to the nature of the interdependent work undertaken by these respondents. Although interrelated, each of the inquiries were considered independently. Sufficient time was required to allow the Reviewers to conduct the inquiries in a manner that was robust and afforded respondents appropriate procedural fairness.

3.1 Breach findings

The APS Code of Conduct is set out in section 13 of the Public Service Act. All APS employees must behave in a manner consistent with the Code.

At the conclusion of the inquiries, 12 current and former public servants including former Agency Heads were found to have breached the Code on 97 occasions.

Case	Determined / Assessed Breaches
1	1 x breach of s13(1) 4 x breaches of s13(2) 1 x breach of s13(9) 4 x breaches of s13(11)
2	2 x breaches of s13(2) 2 x breaches of s 13(11)
3	1 x breach of s13(1) 3 x breaches of s13(2) 3 x breaches of s13(11)
4	1 x breach of s13(2) 1 x breach of s13(9)
5	4 x breaches of s13(2) 3 x breaches of s13(11)
6	2 x breaches of s13(2)
7	2 x breaches of s13(2) 2 x breaches of s13(11)
8	2 x breaches of s13(1) 3 x breaches of s13(2) 1 x breach of s13(9) 3 x breaches of s13(11)
9	1 x breach of s13(1) 3 x breaches of s13(2) 1 x breach of s13(9) 3 x breaches of s13(11)
10	2 x breaches of s13(1) 8 x breaches of s13(2) 1 x breach of s13(9) 8 x breaches of s13(11)
11	6 x breaches of s13(2) 6 x breaches of s13(11)
12	3 x breaches of s13(1) 4 x breaches of s13(2) 2 x breach of s13(9) 4 x breaches of s13(11)

A summary of the breaches of each element of the Code is as follows:

10 breaches of Section 13(1), which states:

An APS employee must behave honestly and with integrity in connection with APS employment.

42 breaches of Section 13(2), which states:

An APS employee must act with care and diligence in connection with APS employment.

7 breaches of Section 13(9), which states:

An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.

38 breaches of Section 13(11), which states:

An APS employee must at all times behave in a way that upholds:

(a) the APS Values and APS Employment Principles; and

(b) the integrity and good reputation of the employee's Agency and the APS.

In addition, a number of respondents were found to have breached one or more of the APS Values (set out in section 10 of the Public Service Act):

- Committed to Service
- Ethical
- Respectful
- Accountable
- Impartial

3.2 Sanctions

The Independent Sanction Advisers provided impartial advice on sanctions for breaches of the Code by current APS employees. The Sanctions Advisers were independent of the Taskforce and not current APS employees. The Sanctions Adviser's role was to consider available sanctions for the determined breach(es) and to recommend to the Commissioner a suitable sanction for individuals that are current APS employees.

The Commissioner then provided the sanction recommendation to relevant Agency Heads under section 41B(9) of the Public Service Act. The Sanctions Adviser was also available to provide advice to agencies responsible for implementing sanctions, if requested.

The imposition of a sanction for a current APS employee is ultimately a matter for an Agency Head or their delegate as an individual's employer. If an Agency Head disagreed with the Commissioner's sanction recommendation, the Agency Head was required to discuss the proposed alternative decision with the Commissioner prior to finalising any decision.

If a sanction was not able to be imposed on an individual who was no longer part of the APS but had breached the Code, that individual would still be required to disclose their breach, when asked, if they sought employment in the APS, as an APS contractor, or as an APS consultant within the next five years.

In accordance with the Public Service Act⁷ sanctions were applied to current APS employees⁸ where a breach had been determined. A number of individuals received multiple sanctions to reflect the seriousness or the number of breaches. The recommended sanctions were:

- Reduction in classification for two individuals;
- Reduction in salary for one individual;
- Fines for three individuals; and
- Reprimands for five individuals.

One public servant retired before the recommended sanction could be imposed.

The purpose of a sanction is to ensure future breaches of this type are limited, and individuals are enlivened to the issues that occur when APS employees breach the Code. Sanctions are not considered as punishment of individuals, rather as restorative to ensure awareness for future conduct and to reinstall community confidence in public service administration.

Sanctions were not imposed where respondents were former employees or former Agency Heads of the APS. There is no legal authority to impose sanctions for determination of breach once an individual exits the APS. However, there is a requirement that applicants disclose conduct related matters when asked when applying for a role with the APS. This requirement permits agencies to risk manage a person's suitability for a role. This is a standing requirement for five years following the determination of a breach.

In a number of inquiries, had the respondent still been an employee of the APS, the recommended sanction may well have been termination due to the seriousness of the breaches.

⁷ Public Service Act, section 15

⁸ Any APS (other than SES employees) can apply for a review of a workplace decision (subject to certain exceptions) by the Merit Protection Commissioner.

PART B: Key Insights

The Taskforce was in the position to take a holistic view of interconnected matters that may indicate systemic issues of broader applicability to the APS.

Taking this holistic view provided the Taskforce with the opportunity to identify recurring themes and commonalities as they emerged across the inquiries. Part B of this report sets out the Taskforce's key observations and insights to the extent that it may assist with future Code matters and management practices across the APS. The observations have been informed by the work of the Reviewers but are separate and distinct from their work since, in making their findings and determinations in respect of the Code, the behaviours of each respondent have been assessed by the Reviewers in their specific circumstances and context rather than the more systemic issues that the Taskforce has identified are common across inquiries. To be clear, these observations do not necessarily apply to the circumstances or the behaviour of every individual whose behaviour has been the subject of an inquiry.

Insight 1: Leading and building healthy workplace culture

A common theme across several of the inquiries was that respondents found the culture of their workplaces hostile or resistant to critical analysis. Respondents described the difficulty of having their concerns about the Scheme addressed in agencies where the workplace culture did not foster critical discussion, or where critique was perceived as delaying progress towards implementation of the Agency's understand sign of government policy.

The culture of an agency is primarily influenced by those who lead, setting a standard and example for staff to follow.

'Leaders' behaviour sets the tone and creates the psychological safety necessary for the APS to be high performing and to provide the frank and fearless advice that is a cornerstone of the service. Leaders who enable a safe place to collaborate, express concern and ask questions create conditions for innovative thinking and a diversity of views'.⁹

The Taskforce considered the APS standards for leadership in the course of the inquiries and the ultimate impact this had on actions and decisions in the design and delivery of the Scheme.

Members of the APS Senior Executive Service (**SES**) should encourage a workplace where employees feel supported and comfortable raising concerns and risks. SES employees are required, by personal example and other appropriate means, to promote the Values and Employment principles and compliance with the Code.¹⁰

Adverse behaviour in senior leadership is intimidating, creating a culture where employees feel discouraged to provide clear and comprehensive advice to highlight risks or issues. Senior leaders should seek to be informed with strategic, inquisitive, evidence driven advice. The fact that some leaders, on numerous occasions during the design and delivery of the Scheme, failed this standard of care and diligence in connection with APS employment, had a consequential impact on more junior staff who limited their own performance to reflect the work place leadership practices and culture they observed.

⁹ [SES performance leadership framework.pdf \(apsc.gov.au\)](#), page 2

¹⁰ Public Service Act, section 35(3)(c)

Insight 2: Delegating functions while retaining accountability

The Taskforce observed some respondents deflect accountability for decisions and actions, in effect ‘finger pointing’ to attribute responsibility for actions undertaken. Whilst no person is singularly accountable for the design and delivery of the Scheme, the unfortunate combination of multiple individual failings when there were opportunities to intervene effectively contributed to the progressive systemic failures. At times, the APS needs the capability to develop complex innovation at pace. A careful and diligent response in such circumstances requires proactive steps to ensure that material risks are identified, analysed and responded to. In some critical instances, specific leadership culture at the time the Scheme was being developed and rolled out missed or hindered opportunities to achieve such an outcome, with major and catastrophic consequences.

Occupying a position in the APS means that a public servant is accountable for their work and, in the case of leaders, the work of their team. The more senior the leader, the greater the accountability. The Taskforce heard from a number of respondents that the only way to manage large teams with multiple, competing policy and service delivery priorities is to delegate functions.

Senior leaders can – and should – delegate functions to more junior staff to build technical and subject matter capability and confidence. Delegating functions is a constructive way to manage large workloads and complex, broad portfolios of responsibility. Delegating functions is not the same as delegating accountability. Leaders remain accountable for their own work and the work of their delegates. Senior leaders must ensure their teams have the resources, capability and information they need to do their job well. To some degree (which may be context specific) they are entitled to rely on the expertise of others. But that also may not absolve them of their own personal accountability. They need systems in place to hold subordinates accountable, be alert to signals that ‘all may not be well’ and seek further advice and be curious and prepared to challenge to ensure that the ‘received wisdom’ remains appropriate to the contemporary context. When things go wrong, senior leaders must be accountable and humble in acknowledging that mistakes have been made. At critical times, if some senior public servants had been more courageous when it became apparent that the Scheme had serious flaws in its design and delivery, the Scheme may not have been left to continue for as long as it did. In the course of these inquiries, the Taskforce repeatedly observed very senior leaders deflecting and pointing the finger at their peers, their leaders and, most disappointingly, their junior staff to explain their own inaction or inadequate actions.

Too often in the course of these inquiries, the Taskforce was presented with evidence of large and unsustainable workloads as justification for why sufficient attention was not paid to the legal, ethical, and operational risks of the Scheme. In almost all of these cases, it was SES-level respondents who sought to present ‘busyness’ as a justification.

Busyness is a real challenge for many APS, particularly at the SES level and, too often, the quality of work is sacrificed in the interests of simply completing volumes of work. The Code imposes obligations on all public servants to perform their work with care and diligence. A senior public servant who prioritises volume over quality is at risk of breaching the Code. This means that strategies need to be employed to deliberately create time for reflection and review.

SES hold leadership positions in which they can create the space and capacity for themselves and their teams to perform their roles with care and diligence, even amidst the busyness of competing and emerging priorities. Through effective delegation, clear prioritisation and pragmatic governance, SES can build a culture where care and diligence are prioritised and not sacrificed in the face of operational demands.

Some respondents had periods of acting in more senior positions at critical times. APS officers who enjoy the benefits of performing higher duties must also assume the full obligations of the role. While

acting in higher duties may be a mitigating factor when considering a sanction, it is not a defence for poor decision-making made while acting in more senior roles.

Insight 2.1 – Conflicting Accountabilities

A number of respondents described ‘conflicting’ accountabilities; accountabilities that arise from their duties as a public servant and, in most cases, a member of the SES, coupled with professional standards accountabilities that derive from their professional qualifications. Public servants bring a diverse range of professional and personal skills and experiences to their work. In some cases these are formal qualifications and memberships to professional associations such as state and territory Law Societies, the Institute of Public Accountants, or the Medical Board of Australia. Ongoing registration with these bodies requires compliance with tailored standards of professional conduct. The Taskforce noted that, in matters where respondents identified a conflict between their APS accountabilities and their professional association accountabilities, professional accountabilities were consistently prioritised. In a number of matters, respondents sought to justify their actions or, more commonly, inaction with respect to the design, rollout and ongoing management of the Scheme by reference to their professional obligations with their incorrect perception that those obligations overrode their responsibilities under the Code.

The Taskforce did not identify circumstances where professional obligations were inconsistent with the Code. At the core of all professional practice standards is an expectation that the employee will deliver a service to a client that is of a high quality and will, at all times, behave with honesty, integrity and consistent with the law. A public servant is answerable to their employing Department or Agency but cannot forget that it is, in fact, the Australian public who is ultimately the client via the elected government of the day.

The APSC is working to embed principles of accountability for performance, encouraging Agencies to seek opportunities to understand and reflect on culture and leadership standards. In 2023, the APSC developed the ‘SES Performance Leadership Framework’ which provides “an overarching set of requirements that will be applied across the APS to embed a culture of transparency and accountability for SES performance”¹¹ This framework will be implemented APS wide by 2025. The Secretaries Charter of Leadership Behaviours¹² further affirms the standards and expectations of Agency leadership within the APS. Both of these documents set out clear expectations for the APS Senior Leadership and identify expected behaviours and attributes that were not consistently demonstrated by some leaders during the Robodebt era.

Insight 3: Behaving ethically and making ethical decisions

An APS employee is required to abide by the APS values, including the value “ethical”, which is described as:

The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.¹³

The ‘ethical’ value explicitly extends to ‘all’ that a public servant does. The Taskforce inquiries revealed limited consideration of ethical decision-making. Respondents repeatedly reflected on careers unstained by breaches of transactional and technical rules. They had acquired and maintained high level security clearances. Their procurement processes had withstood audit and external scrutiny.

¹¹ [SES performance leadership framework.pdf \(apsc.gov.au\)](#)

¹² [Secretaries Charter of Leadership Behaviours | Australian Public Service Commission \(apsc.gov.au\)](#)

¹³ Public Service Act, section 10(2)

They had been celebrated and promoted for ‘delivering’ policies and services in accordance with established procedures. Too often, compliance with rules was cited as evidence of ethical behaviour. This narrow understanding of the ‘ethical’ value meant that little regard was paid to whether decisions were, in fact, ethical.

Analysing the ethical implications of an action during a Code inquiry is likely to be easier in cases of direct and clear misconduct such as fraud. However, where a Code inquiry needs to consider the decision process, this is more complex and nuanced. Cases with subtle ethical dilemmas require active or dynamic consideration of ethics when making decisions.

In the case of the Scheme, ethical considerations are not confined to the question of whether there was a lawful basis for the Scheme, but also whether the Scheme represented sound and fair public policy. The conduct of respondents was considered in this light, deliberating whether the decisions taken had regard to the impact on members of the Australian public in pursuing the legitimate public policy objective to reduce fraud in the welfare system.

For example, a significant feature of what became Robodebt was that data provided by the Australian Taxation Office about the income an individual had received in a year was averaged over 26 fortnights and compared with the data the individual had provided to Centrelink about the fortnights they had claimed certain benefits. This would only accurately reflect the individual’s actual income in any reported fortnight if the individual received a regular and consistent income stream. In the event of a significant discrepancy between what the individual had reported to Centrelink and this ‘averaged’ estimate, the individual would be presented with the data and requested to provide evidence in support of any alternative estimate they believed was appropriate. Prior to Robodebt, Centrelink would assist individuals by using statutory powers to seek pay slips or bank statements on their behalf. Under the Robodebt Scheme, welfare recipients, some of whom were itinerant, were now required to make their own inquiries about pay periods possibly some years beforehand. Effectively these individuals had to disprove the assessment based on averaged ATO data or the averaged data was assumed to apply and a debt was raised if this assessment of their income exceeded that reported to Centrelink. The averaged assessment was applied automatically unless the individual could satisfy that test, even if the individual had not received the letter from Centrelink. However, at critical times in some agencies, there is little evidence of any concern or systematic assessment of whether such an approach was ‘the right or reasonable thing’ to do in respect of vulnerable and possibly itinerant people with little access to records for periods that, in some cases, were some years beforehand.

During interviews, some respondents were asked to reflect on the ethical implications of their conduct. It appeared that few actively considered the ethics of the Scheme during its inception and implementation, as opposed to whether it could be defended on legal or policy grounds. Applying a critical ethical lens to the Scheme or their own conduct does not appear to have been part of many respondents’ decision-making process.

Similarly, few of the referred individuals were able to reflect on their conduct within the broader concept of integrity in the APS Values. Few were able to identify the significance of integrity at the SES level, or that integrity might mean demonstrating fearlessness and candour when giving advice to senior leaders and Ministers.

Many agencies deliver standardised training to APS employees and contractors on the Code and the APS Values. The training is delivered when they commence employment and yearly thereafter. However, this may not be sufficient in all cases, particularly where the content of the training does not change from year to year or relies on clearly unethical behavioural examples such as misuse of public funds. APS employees should also be encouraged to understand the ethical impacts of decisions regarding public policy and its implementation, and how to manage the obligation on the APS to give effect to an elected government’s policy objectives.

As employees become more experienced in the APS and are promoted to more senior positions, the challenges and decisions they face are likely to become more complex. Understanding the obligation to not only act ethically through behaviour, but also to be cognisant of decision impacts is critical and inherent for ethical leadership. APS employees should be supported to escalate concerns about ethical impacts of policies and programs as an obligation within the APS Values.

Insight 4: Raising conduct and integrity concerns

There are a range of existing pathways available to APS employees to address concerns that relate broadly to conduct, some of which are stated in paragraph 3.3 of the Misconduct Guide:

‘The Public Service Act does not provide for a specific statutory reporting mechanism. Agencies may have a range of avenues for their employees to raise concerns about behaviour, report suspected breaches of the Code, or make public interest disclosures. Such avenues may include:

- line managers
- harassment contact officers (while they cannot accept reports or complaints, these officers can provide advice on options available to employees for dealing with concerns, including avenues for reporting suspected misconduct)
- central conduct or integrity units
- nominated individuals or teams in HR, including employee advice units or hotlines, or fraud prevention and control units or hotlines
- email reporting addresses
- ‘authorised officers’ who receive public interest disclosures.’

Since the issuing of the Misconduct Guide, the National Anti-Corruption Commission (**NACC**) has been established, providing another potential avenue to escalate conduct concerns.

The *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) creates a statutory pathway for current and former officials to disclose certain allegations of misconduct occurring in Commonwealth agencies. Agencies are required to investigate those disclosures. The PID Act offers protection to disclosers and witnesses from reprisal action. Conduct that is disclosable for the purposes of the PID Act includes conduct that is:

- illegal or corrupt;
- results in a wastage of money or property;
- results in unreasonable danger or risk to health and safety; or
- results in danger, or an increased risk of danger, to the environment.¹⁴

Work health and safety laws¹⁵ impose a range of duties on persons carrying on a business or undertaking (**PCBUs**) to eliminate or, if not reasonably practicable to eliminate, minimise risks to the health and safety of workers and other people. Workplace bullying is a known risk to health and safety, and PCBUs must eliminate or minimise the risks of workplace bullying as part of meeting their

¹⁴ See Subdivision B of Division 2 of Part 2 of the *Public Interest Disclosure Act 2013* (Cth).

¹⁵ Work health and safety laws are legislated and regulated separately in each Australian jurisdiction, although most jurisdictions have adopted the model WHS laws developed and maintained by Safe Work Australia. In the Commonwealth jurisdiction, the regulator is Comcare.

duties under work health and safety laws. Agencies may have procedures for reporting incidents and hazards that may pose a risk to health and safety, and appoint officers to represent the health and safety interests of their work group.

The Taskforce's review of the existing pathways available to APS employees to address conduct concerns suggests that some conduct may fall short of, for example, a public interest disclosure, a referral to the NACC, or a bullying claim. Agencies should ensure that there is a process for escalating all conduct and integrity risks within the agency that may not be captured by existing legal frameworks. This process should enable escalation of a concern outside an employee's usual reporting line.

Creating a pro-integrity culture within the APS needs to be driven by senior leaders who, through their actions and their words, respect and require critical debate. Ethical dilemmas are rarely clear. Identifying and responding to ethical dilemmas will be informed by information available to an individual as well as that person's perspectives and values. A pro-integrity culture is one where ethical issues can be identified and explored with confidence and respect. It does not necessarily mean that everyone will agree about how an ethical dilemma is resolved or whether, in fact, an ethical dilemma even exists. The objective must be that decision makers are in a position to make fully informed decisions based on a complete understanding of the risks and opportunities. In a workplace where openness and critical debate are genuinely encouraged, people should be more prepared to accept a decision, even where they disagree with that decision, confident that the decision is based on all relevant information and a diversity of perspectives.

The APSC could also take steps to highlight the availability of the APS Ethics Advisory service, as another avenue for employees to discuss ethical concerns with their agency's operations.

Insight 5: Providing advice to Government

The Taskforce inquiries focused on respondents' roles in developing and delivering the Scheme, however, the work of the public service is undertaken in context of the broader function of Government. The APS program and policy delivery is directed by the Government of the day.

Within the laws established by parliament, it is ministers who decide what is in the public interest and how it should be brought about. Agency heads and employees advise and implement. The role of the APS is to serve the government of the day and to assist in developing and delivering its policy agenda and priorities. Ministers make decisions and issue policy guidelines. Employees must comply with those guidelines when implementing policy. Such ministerial decisions and policy guidance must, of course, comply with the law.¹⁶

In the context of the Scheme, the Government of the day set a policy agenda, and there was an expectation that the relevant agencies would deliver in accordance with that policy agenda. Notwithstanding the question of the Scheme legality, the policy objective set in motion a course of action which agencies and public servants undertook to deliver. Independently, each respondent was working towards a collective outcome within this broader policy objective, effectively 'doing their job'.

However, the public servant's role is to also provide frank and fearless advice to the Government to ensure that decision making is properly informed, including in respect of legal, operational or ethical risks, and the policy or program delivery is effective, efficient, legally sound and ethical, a task which can be challenging under pressure. Cabinet government is most effective when all relevant agencies,

¹⁶ [Section 1: Working with the Government and the Parliament | Australian Public Service Commission \(apsc.gov.au\)](#) 1.3.5

including central Agencies, contribute to the analysis that informs decision making. The same point is true within a multi-agency portfolio. A Minister is entitled to hear the views of all their relevant agencies (including service delivery and policy agencies) and will make better informed decisions if they do. It is a matter of public record that, in the case of the Robodebt Scheme, the (at times quite critical) views of Department of Social Services (DSS) were not adequately reflected in the briefing of Ministers at critical points.

The Impartial Value provides for an APS that is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence:

Advice provided to the Government must also be:

1. objective and non-partisan
2. relevant, comprehensive and unaffected by fear of consequences, not withholding important facts or bad news
3. mindful of the context in which a policy is to be implemented, the broader policy directions set by the Government and its implications for the longer term.¹⁷

In delivering the Scheme, some public servants heard and accepted a call to action, however they appear to have lost an impartial perspective. In these instances, an apparent culture of prioritising delivery of Government objectives at all costs created a reluctance to identify risks and identify alternative paths to delivery. In the course of these inquiries, the Taskforce observed examples of poor behaviour by senior leaders being overlooked in pursuit of achieving results. These leaders were often identified as 'deliverers', people who could be counted on to deliver on Government priorities with little regard for the costs to staff wellbeing, workplace culture and good public policy.

Insight 6: Managing workload and information flow

The level of information flow into and out of an SES office is significant. The ability of an individual to process hundreds of emails, maintain meeting schedules and make multiple formal and informal decisions in the course of daily operations means that many public servants are constrained in their ability to readily inform themselves. In one case, a respondent received an average of 4,000 emails per month over the course of their role. Such information flow is excessive and it is unrealistic to expect senior leaders to reasonably manage, let alone absorb, this amount of information in addition to managing issues that arise every day, while supporting their staff and fostering positive workplace culture. The overwhelming volume of information that is sent to senior leaders is exacerbated when more junior staff adopt a practice of routinely and uncritically escalating information to their managers as a risk mitigation tactic. The Taskforce observed examples of more junior staff sending important emails to their managers with no indication of its importance and with no critical analysis. In the maelstrom of high volume information flow, a senior manager may fail to appreciate the significance of a particular piece of information unless alerted to its significance.

The SES are not passive distribution hubs of information. The Taskforce repeatedly heard about time pressured responses to critical issues. The Taskforce heard that a failure by a senior leader to respond to a particular piece of information was interpreted by more junior staff as an endorsement and awareness of the issues. Agencies, where the span of control at SES level may be larger owing to operational capability, should support SES officers to ensure their workload, combined with time

¹⁷ [Section 1: Working with the Government and the Parliament | Australian Public Service Commission \(apsc.gov.au\)](#)
1.2.18 – 1.2.19

pressures and significant information flow, does not impede their capacity to perform their role with care and diligence.

Insight 7: Breaking down inter and intra Agency siloes

In the course of the inquiries, the Taskforce heard of multiple instances of officers appearing to rely on hierarchy to stifle critical discussion. In a few cases, critical information was most likely withheld from more junior staff, including in circumstances where the junior staff were responsible for preparing briefings and submissions for use by Agency Heads, Ministers, and external oversight bodies. The information was most likely withheld because the relevant information was invariably contentious or controversial and the staff member was assessed as too junior despite usually having the most relevant technical expertise.

Had the technical experts been exposed to important and relevant information and encouraged to participate in critical discussion, it may have highlighted organisational risks before those risks were realised. On other occasions, when junior staff accurately identified risks with the Scheme, these were not always acted upon by senior leadership.

In circumstances where innovative policy and service delivery initiatives are being developed, greater consideration needs to be given to genuinely collaborative real world and digital work spaces. Particularly when these initiatives are being developed rapidly, agencies should consider adopting a posture of open and collaborative communication so that risks are identified early in the development process. Perhaps paradoxically, such an approach becomes more, not less, relevant at times when quick decision making is required. The objective is to assemble all the relevant information and analysis using parallel processes rather than sequential ones.

The Scheme moved rapidly from concept to delivery with subject matter experts seemingly excluded from key decisions or operating with limited information. The Scheme was permitted to commence and expand, in large part, due to relevant information being unduly compartmentalised. This did not always appear to be driven by legitimate security or privacy concerns but because key individuals most likely made unilateral decisions to closely hold information and exclude others from the decision making process. Information appears to have been compartmentalised on the basis of seniority but a discernible schism also appears between technical experts, policy experts and legal experts. This extended to withholding information from counterparts in other agencies. In particular, the Department of Human Services repeatedly demonstrated its unwillingness to collaborate or share even basic information with DSS despite their shared accountabilities.

Insight 8: Making and keeping records

Public servants are required to make and retain records of key conversations and decisions in accordance with their obligations under the *Archives Act 1983* (Cth), the *Public Governance, Performance and Accountability Act 2013* (Cth) and the Privacy Act. In addition to being a legal obligation, good record keeping affords protection to employees who may be asked to account for their behaviours including, in some instances, after the passage of considerable time. Accurate record keeping may have proven to provide useful insight into decisions that, without context, appear to be ill-informed.

Evidence presented during these inquiries suggests that records of key conversations and decisions were not consistently made or, when records were made, they were not retained. A failure to properly note or create records meant there was limited ability for the Taskforce to substantiate some assertions.

Further, some respondents experienced difficulty in accessing records to support their responses to Notices of Suspected Breach and Preliminary and Final Determinations. This was particularly the case for respondents who had ceased employment and was certainly exacerbated by the passage of time.

As a general rule, agencies retain electronic records, not necessarily physical records such as diaries and notebooks. Accessing electronic records and locating hard copy records caused delays where an agency could not immediately identify and locate the documents. Whilst it is acknowledged that a significant period of time has passed and legislative obligations may have meant documents were no longer obliged to be retained, in an era of digital storage, long term record management should be reconsidered.

The Taskforce acknowledges that, in day-to-day management, busy schedules can limit time to make notes or take time to record conversations, however when retrospectively considering issues, these items become invaluable in discerning the thoughts and intents of conversations and decisions at the time. Where possible, a repository of material produced in the course of work (physical or electronic) by SES should be maintained, particularly when exiting an agency.

Finally, the Taskforce observed that some respondents found it difficult to access documentation assembled for the Royal Commission. After the conclusion of the Royal Commission the database of the Royal Commission documents was decommissioned, with the exception of the public facing material on the Royal Commission website.

Insight 9: Supporting wellbeing and safety during conduct inquiries

Adopting a human-centric approach to the inquiries meant that a critical priority for the Taskforce during the conduct of these inquiries was supporting the wellbeing of each respondent. One of the Taskforce's early steps towards this priority was recruiting an officer to be a point of contact for individuals with wellbeing concerns.

For any employee or former employee, becoming a respondent in a Code matter is a distressing event. The circumstances surrounding the Code inquiries created additional risks for the respondents' wellbeing. There was heavy public scrutiny of the Scheme prior to, during and after the Royal Commission. By the time the Taskforce began these inquiries, all respondents had appeared as witnesses at the Royal Commission's public hearings. While the Code inquiries were conducted privately, some respondents expressed a sense of fatigue and a reluctance to have their conduct reviewed again. In addition to interviewing respondents, the Taskforce interviewed witnesses who, because of their roles and functions at particular times, could provide insight and context to assist the inquiries. In some cases, witnesses communicated their own wellbeing concerns, which the Taskforce also needed to manage.

For respondents that were current APS employees, their employing agency continued to offer wellbeing support. The Taskforce was responsible for offering wellbeing support to respondents who were no longer APS employees.¹⁸ The importance of wellbeing support necessitated flexibility in processes and communication with respondents and agencies. The Taskforce considered how best to support respondents' wellbeing and provide equitable access to wellbeing supports. The Taskforce was able to leverage the wellbeing supports offered by Telus Health, who were contracted by Services Australia to provide a wellbeing support hotline to individuals participating in the Royal Commission hearings. Telus Health were also engaged to provide a wellbeing support program which offered wellbeing checks, and up to six confidential counselling sessions.

¹⁸ See the Guidance for managing wellbeing as a result of a request to the Australian Public Service Commissioner due to an adverse finding, issued to agencies on 6 July 2023.

The Taskforce implemented a number of features intended to protect individual wellbeing which are outlined in Figure 2:

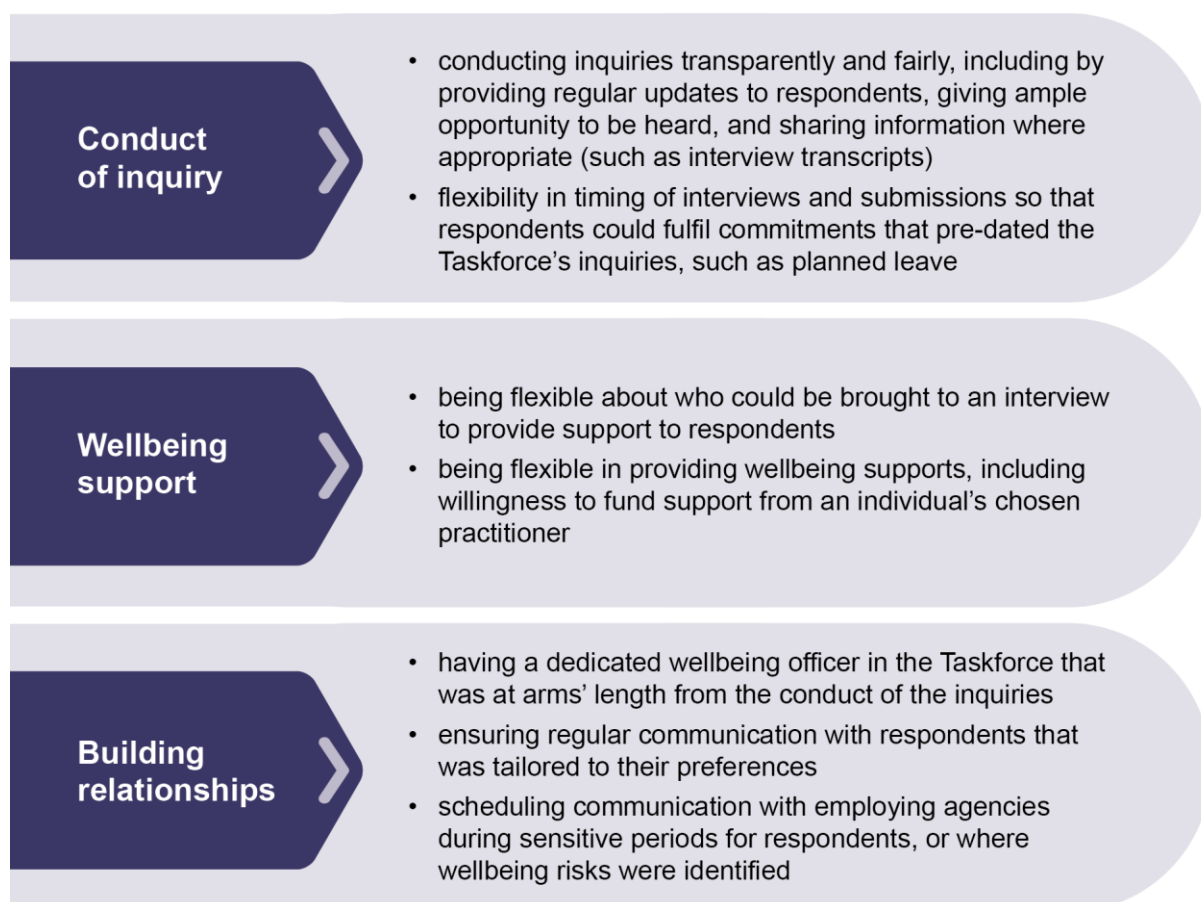


Figure 2

Factors that were considered adverse to respondent wellbeing included the uncertain timing of critical decisions in the inquiries and the impact of the inquiries on a respondent's employment, particularly if they had been suspended from duty without pay. Some respondents also raised the possibility of the inquiry becoming public knowledge, or needing to be disclosed to a new employer, and damaging their reputation. The latter risk to wellbeing was more pronounced for respondents who hadn't anticipated their conduct being referred to the Commissioner for review.

Aside from influencing the timing of the inquiries, the Taskforce had limited ability to control factors adverse to respondent wellbeing. The Taskforce and Reviewer were not responsible for suspension decisions as these decisions were managed by the relevant Agency.

There is little guidance about supporting wellbeing during Code processes in the Misconduct Guide, except by implication (e.g. it contemplates the presence of a support person). This content should be reviewed in light of the Taskforce's experience that taking deliberate and repeated steps to support wellbeing may optimise participation in the process and contribute to timely outcomes.

Insight 10: Breach consequences for former public servants

The Public Service Act does not have a statutory time limitation to investigate Code matters for current employees, nor did it preclude the Taskforce in undertaking inquiries for former employees. However,

the ability to impose a sanction after a determination of breach, is limited to current APS employees.¹⁹ The sanctions applied were considered from the perspective of a 'point in time', had these inquiries been undertaken at the time of the alleged conduct. This treatment was necessary to ensure the integrity of the inquiries were not diminished due to the passage of time.

A number of respondents had retired or resigned from the APS by the time the inquiries commenced, or in the course of the inquiries. For these respondents, whilst a determination of breach could be found, the question of sanction and consequences outside of APS employment is harder to reconcile. There is no framework in the legislation for imposing a sanction on a former employee. However an individual who was no longer part of the APS but had breached the Code, is still required to disclose their breach, when asked, if they seek employment in the APS, as an APS contractor, or as an APS consultant within the next five years.

¹⁹ Public Service Act, section 15

Summary

It appears that, in their dogged pursuit to deliver on a Government priority, some respondents lost their way and compromised their professional standards. For some, these compromises were sufficiently serious to constitute a breach, or multiple breaches, of the Code.

Persistence and commitment to delivery are admirable qualities in a public servant, but these attributes must be tempered by an equal commitment to evidence based decision making, critical thinking and open-mindedness.

Ultimately it is about the culture and leadership of the agencies. When poor practices are encouraged and celebrated and leaders themselves model these practices, it takes a particularly courageous public servant to challenge the status quo. The Code makes it clear that public servants are expected to operate with integrity at all times and, sometimes, this requires a display of courage. The Robodebt Scheme provides an example of some public servants adopting a perverse approach to their obligation to serve the government of the day. Serving the government of the day cannot mean simply telling government what it wants to hear or withholding uncomfortable information. Sometimes it means tempering government's expectations, explaining risks associated with a particular course of action or providing them with alternative options for pursuing their policy agenda.

All respondents were highly experienced public servants with impeccable professional reputations. Despite this experience and capability, many focussed on a single objective – delivering savings by reducing fraud in the welfare system – and were blinkered to the operational, legal, and ethical risks associated with a hastily conceived and poorly executed program.

These public servants lost their objectivity and, in all likelihood, drowned out the deafening and growing criticisms of the Scheme to pursue an operational objective. This apparent single-mindedness manifested itself in different ways in different contexts. Some people relied too heavily on assumptions and entrenched legal views. Almost all failed to challenge the status quo as concerns emerged over time. Where concerns were raised and assurances sought, too few followed up and checked that the assurances were adequately delivered in practice. As a general proposition, even the most experienced public servants demonstrated an inability or unwillingness to have difficult conversations while preserving relationships within and between Departments and with their Ministers. In doing so, they put themselves in the path of a process that would hold them to account for these failings.

It is ironic that, not only did the Robodebt Scheme not deliver the expected savings to Government, the cost to Government to remediate and compensate for the flawed program far exceeded any financial benefit. This is in addition to the incalculable cost to the lives of thousands of Australians and the reputation of the public service.