ExCo Attachment A: *Report of the Royal Commission into the Robodebt Scheme, July 2023: Summary of issues for ASIC*

Link to full text of recommendations: Report | Royal Commission into the Robodebt Scheme

Recommendations directly relevant to ASIC are in black and listed on pages 1-6

Recommendations indirectly relevant to ASIC are in blue and listed on pages 7-9

Rec No	Robodebt Report recommendation	Relevance to ASIC work	ASIC action proposed or under way	ASIC teams responsible
15	**Failures in the Budget process**			
15.1	Legislative change better defined in New Policy Proposals *'The Budget Process Operational Rules should include a requirement that all New Policy Proposals contain a statement as to whether the proposal requires legislative change in order to be lawfully implemented, as distinct from legislative change to authorise expenditure.'*	An additional requirement when preparing and submitting a New Policy Proposal. ASIC is required to comply with the Budget Process Operational Rules issued by Department of Finance. The BPORs are standing rules endorsed by Cabinet that outline the major administrative and operational arrangements for managing the Budget and its related processes. Distinction between legislative authority/ legality to support NPP as distinct from legislative change to authorise expenditure	All NPPs should be submitted by Groups/Teams for review by Legal Services for assessment and provision of legal advice, to underpin a statement for inclusion in the NPP as to whether the proposal requires legislative change in order to be lawfully implemented, as distinct from legislative change. There may be proposals on which legal advice needs to be obtained externally (see Rec 15.2). There is also the potential to support the development of NPPs with learning, via the APS Academy course 'Crafting Quality Policy Proposals'.	Teams drafting NPPs Legal Services Finance P&D
15.2	Include legal advices with New Policy Proposals *'The Budget Process Operational Rules should include a requirement that any legal advice (either internal or external) relating to whether the proposal requires legislative change in order to be implemented be included with the New Policy Proposal in any versions of the Portfolio Budget Submission circulated to other agencies or Cabinet ministers.'*	An additional requirement when preparing and submitting a New Policy Proposal. ASIC is required to comply with the Budget Process Operational Rules issued by Department of Finance. The BPORs are standing rules endorsed by the Cabinet that outline the major administrative and operational arrangements for managing the the Budget and its related processes. Internal and external legal advice on NPP must be shared with relevant other Cth entities – this is already in the Legal Services Directions.	Any legal advice obtained (either internal or external) relating to whether the proposal requires legislative change in order to be implemented should be provided by ASIC to Treasury for inclusion in the Porfolio budget Submissions.	Teams drafting NPPs Legal Services Finance

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15.3	Australian Government Solicitor statement in the NPP *'The Budget Process Operational Rules should include a requirement that where legal advice has been given in relation to whether the proposal requires legislative change in order to be implemented, the New Policy Proposal includes a statement as to whether the Australian Government Solicitor has reviewed and agreed with the advice.'*	An additional requirement when preparing and submitting a New Policy Proposal ASIC is required to comply with the Budget Process Operational Rules issued by Dept of Finance. The BPORs are standing rules endorsed by the Cabinet that outline the major administrative and operational arrangements for managing the Budget and its related processes.	ASIC to include in NPPs a statement about whether AGS has reviewed and agreed with legal advice given in relation to whether the proposal requires legislative change in order to be implemented. Legal Services Group to manage this engagement with AGS, and advise the relevant NPP sponsor Team/Group of completion of AGS review and their agreement with the advice.	Teams drafting NPPs Legal Services Finance
16	**Data-matching and exchanges**			
16.1	Legal advice on end-to-end data exchanges *'The Commonwealth should seek legal advice on the end-to-end data exchange processes which are currently operating between Services Australia and the ATO to ensure they are lawful.'*	Ensuring data-matching and exchanges are lawful.	Data matching exercises are subject to the **Data Ethics Principles** under **Data Governance Policy and Data Governance Handbook** The ethics threshold assessment includes consideration of potential legal risks and the need for legal advice. A legal review is built into the workflow for data ethics and projects using AI. For AI in particular, the legal review is undertaken prior to the ethical assessment.	PT&T (CDAO) Legal Services
16.2	Review and strengthen governance of data-matching programs *'The ATO and DHS should take immediate steps to review and strengthen their operational governance practices as applied to jointly conducted data-matching programs.'*	s 47C [redacted]	s 47C [redacted] When finalised Data matching exercises will be subject to the **Data Governance Handbook** and **Data Governance Policy**	PT&T (CDAO) Legal Services
17	**Automated decision making**			
17.2	Establishment of a body to monitor and audit automated decision-making *'The Commonwealth should consider establishing a body, or expanding an existing body, with the power to monitor and audit automate decision-making processes with regard to their technical aspects and their impact in respect of fairness, the avoiding of bias, and client usability.'*	Relevant given ASIC's use of AI and publication of the AI policy.	s 47C [redacted]	PT&T (CDAO) CRO

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18	**Debt recovery and debt collectors**			
18.1	Comprehensive debt recovery policy for Services Australia *'Services Australia should develop a comprehensive debt recovery management policy which among other things should incorporate the Guideline for Collectors and Creditors' issued by ACCC) and ASIC.'*	ASIC's debt recovery process should comply with best practice guidelines (and proper and legal basis for raising of debt to the Commonwealth).	Check to ensure ASIC debt recovery process comply with best practice guidelines	Finance Legal Services
19	**Lawyers and legal services**			
19.2	Training for lawyers – Services Australia *'Services Australia should provide regular training to its in-house lawyers on the core duties and responsibilities set out in the Legal Practice Standards'*	Consider whether our training for ASIC's in-house lawyers on the core duties and responsibilities set out in the Legal Practice Standards is appropriate.	Check and ensure training for ASIC's in-house lawyers on the core duties and responsibilities set out in the Legal Practice Standards is appropriate	Legal Services P&D
19.3	Legal practice standards – Social Services *'DSS should develop Legal Practice Standards which set out the core duties and responsibilities of all legal officers working at DSS.'*	For example, the Report said that legal advice must be referenced to case law or legislative provisions. This will be included in the Lawyer Handbook being drafted by Legal Services.	Legal Services is preparing a Lawyer Handbook	Legal Services
19.4	Training for lawyers – Social Services *'DSS should provide regular training on the core duties and responsibilities to be set out in the Legal Practice Standards which should include an emphasis on the duty to avoid any compromise to their integrity and professional independence and the challenges that may be presented to a government lawyer in fulfilling that obligation appropriate statutory and case authority references in advice writing'*		Legal Services is considering this recommendation as part of its drafting of the Lawyer Handbook	Legal Services

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19.5	Draft advice – Social Services *'DSS should issue a further direction providing that, if the administering agency decides that a draft advice need not be provided in final form, that decision and the reasons for it must be documented. One of those steps – finalisation, or a documented decision against finalisation – should have been taken within three months of the receipt of the draft advice.'*	The Secretary of AGD (in consultation with Solicitor General) provided advice to all government lawyers, noting the principles apply to all government officials and Ministers. The key principles are: • 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. Government lawyers are also guided by additional considerations, as reflected in the Statement of Expectations of Australian Government Lawyers and the General Counsel Charter. With regard to draft advice: • Legal advice cannot be disregarded merely because it is in draft form. • Once all queries and clarifications have been conveyed to the advice author, draft advice should ordinarily be finalised. If a decision is taken not to finalise the draft advice, the reasons for that should be documented	General Counsel circulated this guidance to all staff on 29 May 2023. It will be included in the Lawyer Handbook.	Legal Services
19.6	Draft advice – Services Australia *'Services Australia should issue a direction that legal advice is to be left in draft form only to the extent that the administrative step of finalising it has not yet been undertaken by lawyers or there are remaining questions to be answered in relation to the issues under consideration and that, if the administering agency decides that a draft advice need not be provided in final form, that decision and the reasons for it must be documented. One of those steps – finalisation, or a documented decision against finalisation – should have been taken within three months of the receipt of the draft advice.'*	See above		
19.7	The Directions 1 *'The* Legal Services Directions 2017 *should be reviewed and simplified.'*	ASIC is required to comply with the Legal Services Directions	If asked, ASIC will provide policy inputs or feedback on whether the Legal Services Directions should be reviewed and simplified	Legal Services

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19.9	Recording of reporting obligations *'The OLSC should ensure a documentary record is made of substantive inquiries made with and responses given by agencies concerning their obligations to report significant issues pursuant to para 3.1 of the Directions.'*	ASIC makes substantive inquiries and reports significant issues to OLSC under the Legal Services Directions	Legal Services to review its current processes in terms of Legal Services Directions reporting obligations to OLSC and relevant record-keeping/documentary processes.	Legal Services
19.10	The Directions 2 *'The OLSC should issue guidance material on the obligations to consult on and disclose advice in clause 10 of the Legal Services Directions 2017.'*	ASIC often considers disclosure obligations under paragraph 10 of the Legal Services Directions	Legal Services is consulting with Portfolio lead i.e. Treasury to discuss the scope of this recommendation and how it is to operate/be implemented	Legal Services
19.12	Chief counsel *'The Australian Government Legal Service's General Counsel Charter be amended to place a positive obligation on chief counsel to ensure that the Legal Services Directions 2017 (Cth) are complied with and to document interactions with OLSC about inquiries made, and responses given, concerning reporting obligations under those Directions.'*	AGLS's General Counsel Charter applies to ASIC's General Counsel	Legal Services to monitor changes to AGLS General Counsel Charter and make recommendations and changes to ASIC's processes and procedures as approproproate.	Legal Services
20	**Administrative Appeals Tribunal**			
20.1	AAT cases with significant legal and policy issues *'Services Australia should put in place a system for identifying AAT1 cases which raise significant legal and policy issues and ensuring that they are brought to the attention of senior DSS and Services Australia officers.'*	ASIC regularly has cases considered by the Administrative Appeals Tribunal	Processes to be reviewed to ensure they are appropriate to identify/raise significant legal and policy issues arising from AAT cases relating to ASIC and bring them to attention of relevant SELs	Legal Services
21	**The Commonwealth Ombudsman**			
21.1	Statutory duty to assist *'A statutory duty be imposed on departmental secretaries and agency chief executive officers to ensure that their department or agency use its best endeavours to assist the Ombudsman in any investigation concerning it, with a corresponding statutory duty on the part of Commonwealth public servants within a department or agency being investigated to use their best endeavours to assist the Ombudsman in the investigation.'*	ASIC and its CEO are subject to the Ombudsman's powers	Legal Services will monitor any proposed legislative changes	Legal Services

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21.3	Oversight of the legal services division *'Departmental and agency responses to own motion investigations by the Ombudsman should be overseen by the legal services division of the relevant department or agency.'*		s 47C [redacted]	Legal Services
23	**Improving the Australian Public Service**			
23.2	Obligations of public servants *'The APSC should, as recommended by the Thodey Review, deliver whole-of-service induction on essential knowledge required for public servants.'*	Although ASIC is no longer part of APS, some WOAG resulting guidance (if any) may still be binding for ASIC or beneficial for ASIC. Given many of our people come from private sector, would be beneficial to conduct some training around obligations of public servants, ethics, how to work with government and other agencies, how to give frank and fearless advice. Capability and cultural uplift i.e. as recommended by Thodey Review (whole-of-service induction) and knowledge transfer and sharing (i.e. APS as steward and custodian of knowledge and proper processes). s 47C [redacted]. s 47C [redacted]	ASIC will monitor any changes, and consider relevance and application to ASIC. The ASIC Induction and the ASIC Essential Mandatory training modules broadly cover conduct and obligations of public servants. The APS Academy offer a range of deeper dive courses that would be of benefit (particularly for new starters) and that could form part of curated learning resources on these topics. s 47C [redacted] As noted earlier, 'Crafting Quality NPPs' is an APS Academy course that ASIC could either run in-house or send participants to the APS Academy.	P&D Legal Services
23.8	Documenting decisions and discussions *'The Australian Public Service Commission should develop standards for documenting important decisions and discussions, and the delivery of training on those standards.'*	Relevant to ASIC when documenting the decisions that have applied legal and ethical judgements	ASIC will monitor any changes introduced by the APSC and consider relevance and application to ASIC	IKRC Legal Services
	Other observations			
N/A	Commissioner Holmes' comments (p.179) about Government disclosure of personal information of social security recipients in the media, with that conduct found to have "represented an abuse of…power"		ASIC to review its media release processes to ensure they remain suitable/fit for purpose, especially around and involving the use/disclosure of an individual's personal information	Comms Group Legal Services

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10	**Effects of Robodebt on individuals**			
10.1	Design policies and processes with emphasis on the people they are meant to serve	Opportunity for us to consider learning solutions to build capability in applying human centre design principles to our work, to ensure alignment to the needs of the affected humans	ASIC should ensure all teams understand this capability exists, or include it as part of relevant project kick off/design. s 47C [redacted]	PTT (DTx) P&D Moneysmart, Comms
11	**The concept of vulnerability**	A question of ethics as decisions are considered – i.e. just because we can (legally) does it mean we should (ethically). s 47C [redacted]	s 47C [redacted] s 47C [redacted] Learning modules are currently available in relation to dealing with distressed and vulnerable people, as well as in relation to Whistleblowers. These can be updated to reflect recent recommendations.	P&D RIS Comms
12	**The roles of advocacy groups and legal services**			
12.1	Easier engagement with Centrelink	Accessibility and tailored engagement observations are relevant to reporting misconduct and how we engage with whistleblowers and witnesses – see evidence in SERC hearings 23/24 August 2023	Review to confirm ASIC is reasonably accessible and any behavioural economics are tailored and appropriately applied (e.g. design of forms, contact details and phone numbers)	RIS REU
12.2	Customer experience reference group *'The government should consider establishing a customer experience reference group, which would provide streamlined insight to government regarding the experiences of people accessing income support.'*	Potentially relevant to ASIC in relation to its various Consumer and Consultative Panel members	s 47C [redacted]	Consumer Panel and Consultative Panel Secretariats Communications Group REU

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13	**Experiences of Human Services employees**			
13.1	Consultation process *'Services Australia should put in place processes for genuine and receptive consultation with frontline staff when new programs are being designed and implemented.'*	Relevant to ASIC in terms of ensuring teams have opportunity to contribute and stress test ideas for appropriateness.	ASIC has a range of channels for feedback, such as the Speak Up program and other integrity measures.	P&D CRO
13.2	Feedback processes *'Better feedback processes should be put in place so that frontline staff can communicate their feedback in an open and consultative environment. Management should have constructive processes in place to review and respond to staff feedback.'*	Relevant to ASIC in terms of how our staff can engage and provide feedback on issues or concerns.	We have Speak Up, P&D processes and line managers. Speak Up is included in the ASIC Induction and ASIC Essentials Module 1.	P&D CRO
17	**Automated decision making**			
17.1	Reform of legislation and implementation of regulation *'The Commonwealth should consider legislative reform to introduce a consistent legal framework in which automation in government services can operate. Where automated decision-making is implemented:* • *there should be a clear path for those affected by decisions to seek review* • *departmental websites should contain information advising that automated decision-making is used and explaining in plain language how the process works* • *business rules and algorithms should be made available, to enable independent expert scrutiny.'*	Potential legislative reform	ASIC to keep a watching brief on this potential reform.	CDAO IT Legal Services
19	**Lawyers and legal services**			
19.1	Selection of chief counsel *'The selection panel for the appointment of chief counsel of Services Australia or DSS (chief counsel being the head of the entity's legal practice) should include as a member of the panel, the Australian Government Solicitor.'*	Constitution of any panel for selection/ appointment of General Counsel	When a General Counsel is next recruited, consideration should be given to including AGS as a panel member	P&D CEO Commission
23	**Improving the Australian Public Service**			

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23.3	Fresh focus on "customer service" *'Services Australia and DSS should introduce mechanisms to ensure that all new programs and schemes are developed with a customer centric focus, and that specific testing is done to ensure that recipients are at the forefront of each new initiative.'*	Similar to 10.1 above	See earlier comments at 10.1 about ASIC adopting user-centric design principles	PTT (DTx) P&D Moneysmart Comms REU
	Closing/other observations			
	Section 34 of the Cth FOI Act should be repealed	FOI exemption for Cabinet material. ASIC does receive some Cabinet material from time to time	The Commonwealth has indicated it opposes this recommendation ASIC will need to monitor and make submissions if legislative change is pursued	Legal Services