Australian Government

Australian Government response to the
Legal and Constitutional Affairs References Committee report:

Impact of changes to service delivery models on the administration
and running of Government programs.

Introduction

The Government welcomes the opportunity to respond to the Senate Legal and Constitutional Affairs References Committee's report titled *Impact of changes to service delivery models on the administration and running of Government programs* (the Report).

The Senate Legal and Constitutional Affairs References Committee tabled the Report in February 2020 following an inquiry that included public submissions and a public hearing that was held in Canberra.

The Report and its seven recommendations covers a broad range of issues including different models for delivering government services, staffing levels in the Australian Public Service, automation in the delivery of services, and specific procurements for government services.

The Government recognises the importance of this report and its recommendations, and supports, or notes, the seven recommendations.

As noted in the Government's Response to the report of the Royal Commission into the Robodebt Scheme, the Government will consider opportunities to progress legislative reforms to ensure that government decisions involving automation are made under a consistent legal framework which is clear and transparent, while harnessing the speed, cost and efficiency benefits of technological advances in artificial intelligence (AI) and automation. Noting the links between the use of automated decision-making and AI, the implementation of these recommendations will be informed by the Government's broader work on the safe and responsible use of AI.

Further to this, the Government is also committed to growing capability within the public service, ensuring that there is internal capacity to deliver a range of services to the Australian public. Additionally, where services are outsourced, the Government is committed to ensuring accountability and transparency in its procurement activities. This commitment is reflected in the 2023-24 Budget with funds allocated to update AusTender, the Commonwealth's publicly available e-procurement information system, to allow further transparency in the procurement process in addition to existing reporting requirements.

The Government provides the following response to the Committee's recommendations.

Response to Recommendations

Recommendation 1

The committee recommends that the Australian government assess all current and future proposals for outsourcing government services against a 'public interest test', which includes flow-on economic and employment impacts. Results of the public interest test, along with a comprehensive business case, must be made publicly-available in a timely fashion.

Response: The Government **notes** this recommendation.

Alternative delivery methods for Government programs and/or services, and their associated costs and benefits, are considered as part of established budget processes. Through the development of New Policy Proposals and submissions to Government, entities work with central agencies to develop policies, including consideration of the most appropriate delivery model. The development and consideration of budget proposals is underpinned by delivering the most efficient, effective, economical and ethical way to achieve maximum economic benefit for Australians.

The Government recognises the importance of considering the benefit of procurements to the Australian economy. As such, the Commonwealth Procurement Rules already require officials to consider the economic benefit of a procurement to the Australian economy for significant procurements. This can include considerations around the employment of workers in Australia, the contribution to positive social outcomes in Australian communities, sharing knowledge, skills and technology with small and medium enterprises, or the development and adoption of innovative products or practices that benefit Australian communities.

Requiring an additional public interest test, that includes flow-on economic and employment impacts, would duplicate existing considerations in the Budget and procurement processes and place additional burdens on businesses engaging in Commonwealth procurements.

> **Recommendation 2**
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> The committee recommends that the Australian government provide a commitment that services dealing with complex cases and vulnerable people should not generally be considered suitable for outsourcing.

Response: The Government **notes** this recommendation.

The Government is committed to ensuring that our most vulnerable community members and those with complex needs have access to the support they need at the time they need it.

This support may include outsourced services that provide the Government with specialist skills and resources that may not be able to be provided from within the Australian Public Service, at a particular time or to the scale required. This may include cultural and technical skills, as well as knowledge of local communities. Outsourced services may also allow the Government to respond rapidly to developing situations and needs, including situations that may be time limited and not ongoing.

The Government is committed to ensuring the Australian Public Service has the capability to deal with complex cases and vulnerable people in a fair and equitable manner, including by ensuring those delivering the services possess the necessary skills and resources.

> **Recommendation 3**
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> The committee recommends that the Australian government, in consultation with relevant stakeholders, implement arrangements to make outsourcing contracts publicly available, unless there are published national security concerns.

Response: The Government **notes** this recommendation.

The Government is committed to ensuring accountability and transparency in its procurement and contracting activities. The Commonwealth Procurement Rules provide existing requirements for relevant contracts to be reported on AusTender, the publicly available whole of government procurement information system. In addition, information on procurement contracts is reported in entities' annual reports and through the Murray Motion.

Existing contractual reporting obligations recognise the importance of maintaining confidentiality, including commercial confidentiality, of certain information, and the need to balance this against public accountability and transparency requirements.

In a further demonstration of its commitment to transparency, the Government announced in the 2023-24 Budget (Buy Australian Plan[1]) that it is making further enhancements to AusTender. As part of these improvements, procuring officials will be required to publicly report their justification for exercising contract variations or extensions, and further information will be required to be publicly reported regarding the procurement process, such as reporting the number of suppliers invited to participate (including when procurements have utilised a panel arrangement).

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[1] Page 111, Budget Paper No. 2: Budget Measures (https://budget.gov.au/content/bp2/download/bp2_2023-24.pdf)

> **Recommendation 4**
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> The committee recommends that the Commonwealth public service Average Staffing Level (ASL) cap be lifted immediately.

Response: The Government **supports** this recommendation.

Consistent with its election commitment, the Government removed the ASL cap across all government agencies in June 2022.

> **Recommendation 5**
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> The committee recommends that the Australian government ensure any further projects that involve automated decision-making are not pursued if automation reduces service quality, impacts upon fairness, or reduces equity of access.

Response: The Government **supports** the recommendation.

In the right areas and with appropriate management, automated systems can provide benefits that improve service quality, such as real-time notification that claims contain insufficient information, and faster overall claims processing. They also deliver business benefits such as improved consistency, accuracy and transparency of administrative decision making. The AI in Government Taskforce under the future of work sub-committee is working on whole-of-government AI application, policies, standards and guidance to help the Australian Public Service to engage with and deploy AI in a way that is safe, ethical and responsible.

The Government is committed to ensuring technologies like automated decision-making are integrated in a safe and responsible manner. The Government considers that ethical considerations and principles of administrative law must be taken into account in the design of automated decision-making processes and there needs to be proper oversight of these arrangements.

The Commonwealth Ombudsman's automated decision-making better practice guide provides a practical tool for agencies implementing new automated systems. This guide emphasises that Australian Government agencies must ensure their automated systems comply with administrative law principles of legality, fairness, rationality and transparency, as well as privacy requirements and human rights obligations.

In its Response to the report of the Royal Commission into the Robodebt Scheme, the Government has committed to consider opportunities for legislative reform to introduce a consistent legal framework in which automation in government services can operate ethically, without bias and with appropriate safeguards. This will include consideration of review pathways for those affected by decisions, and transparency about the use of automated decision-making and how such decision-making processes operate, for persons affected by decisions, and to enable independent scrutiny.

The Government has also committed to ensuring there is appropriate oversight of the use of automation in service delivery. This includes oversight of technical aspects to identify potential bias and ensure the use of automated decision-making or AI is ethical and in accordance with legislative protections. In implementing its Response to the report of the Royal Commission into the Robodebt Scheme, the Government will consider establishing a body, or expanding the functions of an existing body, with the power to monitor and audit automated decision-making processes. Noting the links between the use of automated decision-making and AI, the implementation of these recommendations will be informed by the Government's broader work on the safe and responsible use of AI.

The committee recommends that Commonwealth departments and agencies have regard to the Commonwealth Ombudsman's guidance on best-practice in automation at the earliest stages of any relevant project.

Response: The Government **supports** the recommendation.

As mentioned in the Governments response to Recommendation 5 of this report, in implementing its Response to the report of the Royal Commission into the Robodebt Scheme, the Government will consider establishing a body, or expanding the functions of an existing body, with the power to monitor and audit automated decision-making processes, further supporting best-practice considerations regarding automation in government projects. The implementation of these recommendations will be informed by the Government's broader work on the safe and responsible use of AI.

> **Recommendation 7**
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> The committee recommends that the Australian Government does not proceed with the *Request for Tender (RFT) Delivering Visa Services for Australia - Global Digital Platform*, and seeks instead to fund and deliver an in-house solution.

Response: The Government **notes** this recommendation.

The Global Digital Platform (GDP) Request for Tender (RFT) was terminated as a result of a change in the former Government's policy on 20 March 2020.

On 11 December 2023, the Hon Clare O'Neil MP, Minister for Home Affairs and Minister for Cyber Security, announced the *Migration Strategy*, which outlines a new vision for rebuilding our migration system for a more prosperous and secure Australia.

The *Migration Strategy* will address systemic issues by reimagining the immigration system to serve the national interest and the community.