

Ten Lessons for Public Servants from Robodebt: A Panel Discussion

Introductory Remarks*

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* These remarks were prepared for a panel discussion on Richard Mulgan's analysis of the Robodebt Royal Commission transcripts. This event was scheduled to be held on 24 September 2024 but was cancelled due to unforeseen circumstances.

Welcome. I would like to begin with personal thanks to the Susan McKinnon Foundation for commissioning my report. It was a very interesting challenge to write according to a somewhat unusual brief, with the main points coming first in a brief, stand-alone document, intended to be read quite separately, and the supporting argument coming later. The leading document is something like an executive summary, with which you are all familiar, but not quite - it does not summarise the analysis, though it is supported by it.

The report is framed as 'lessons' - I have avoided the more fashionable term 'learnings' in the interests of preferring plain language to bureaucratic jargon wherever possible. As you will see, the so-called lessons themselves are strictly speaking not new discoveries, so much as restatements of well-known and time-honoured principles of public service professionalism. The actual lessons to be gained are more about how these principles came to be overlooked and how such neglect can be remedied in the future. The report can now be read in conjunction with the recently published final report of the public service commission's task force into the code of conduct inquiry, particularly Part B, Key Insights, which covers much of the same ground.

The emphasis in the report is clearly on public service culture and on encouraging public servants to make good choices in their professional lives. It therefore focuses on those instances in the robodebt saga where public servants clearly did not make the right choices, more often through acts of omission as much as acts of commission. It assumes that making



the right choices is primarily a matter of individual responsibility and not something where the onus of responsibility can be shifted on to other external factors, such as the influence of group pressure or institutional structures.

On this point, I find it useful to return to an exchange in the pages of the *Australian Journal of Public Administration* 2007 between two well-respected former public service commissioners, Peter Shergold and Andrew Podger. The issue was whether changes to secretaries' tenure from permanent tenure to limited terms at the prime ministers' pleasure had affected the willingness of secretaries to give frank and fearless advice. Shergold was of the view that tenure was largely irrelevant and that the willingness to give robust advice was more an issue of character, combined with capability and competence, rather than a matter of tenure. Podger, on the other hand, insisted that changes to tenure had weakened the independence of the public service.

There are elements of truth, I think, on both sides. But in the context of learning ethical lessons from *robodebt*, our problem for today, we need to side with Shergold. When deciding whether to stand up to ministers or bureaucratic superiors, public servants need to have sufficient character to know the right thing and to do it. It is no excuse to argue that you can't do it because your career might be on the line. Of course, we want to support collective structures and practices that encourage ethical behaviour rather than discouraging it, and some of the discussion today may turn in that direction. But the starting point must always be the need for good personal choices.

Turning to the report itself, I will not go through each of the lessons but will assume that you have read the main statement. Instead, I will make some general comments on each of the three areas of analysis - independence, collaboration and accountability. Independence is the most important area because it covers lawfulness and truthfulness, which were the most blatantly breached principles and where the narrative of events still never fails to shock. Some of the wrongdoing was deliberate, particularly from a small number of senior officials



desperate to win ministers' favour. But even more pervasive was a pattern of bad-faith acquiescence among senior public servants in both departments who had their doubts but chose not to follow them up. Many were in positions where they had full authority to press for greater clarification and for second thoughts about the scheme, but they preferred to go along in order to get along. Lower down the department hierarchies there appear to have been many conscientious and principled junior public servants who suspected that all was not well with the scheme but received no encouragement to speak out. This is the issue of greatest salience in the whole fiasco. How do we prevent such a collective failure from recurring in the future? What should have been done differently? Who carries the main responsibility for not stopping the juggernaut in its tracks?

One point that I would emphasise is that the policy goals set by government were not inherently unethical. That is, the desire to confront wastage and fraud in the welfare system and to claw back savings, was not illegitimate, even if it appeared to some as cruel and unsympathetic. It was right for public servants to develop and implement the policy. The key professional mistake was in not making sure that the policy was within the law and backed by adequate evidence. If the proper legislative change had been attempted, the policy might have been blocked in the senate. Similarly, if the problems in implementation had been honestly reported, public opinion might have forced major changes if not abandonment. That is, if the public service had acted professionally, the policy should never have proceeded to do so much harm for so long. But that is not because public servants should have blocked the policy in the first place. It is because they should have insisted on procedures that would have led to the policy being effectively ended by the political process.

This distinction is overlooked in much public commentary on robodebt. Many critics seem to think that public servants should have asserted their disapproval of the policy and that that is what public service independence and speaking frankly and fearlessly demand. Others, on the former government's side, argue that the public service should simply



implement the policies of elected ministers regardless. But public service independence is both less and more than these views entail. Public service independence is not about disputing policy objectives but is primarily about procedure, about honesty and evidence relevant to given policy objectives. It is about the skill and courage to confront ministers on such matters in the interests of good government.

On the area of collaboration, the report is relatively uncontroversial. Everyone knows about the problems of coordination in hierarchical structures of which robodebt provides some glaring examples. Some difficulties were due to the institutional separation of policy and service delivery between DSS and the former DHS, now Services Australia. But others, such as institutional jealousies and misplaced loyalties, were endemic to the public service as whole. Personalities also played a crucial role, as they always do. In a system of government bureaucracy, hierarchy is inescapable as a mechanism for delivering the policies of the government of the day and for facilitating the accountability of government to parliament and the public. So much value can be lost, however, from neglect of the many opportunities for cross-institutional cooperation and sharing of information. Sometimes this needs the establishment of formal coordinating structures, as the Robodebt Royal Commission recommended in the case of legal services across different agencies. At other times, it is matter of more general culture, of attitudes encouraging communication, both up and down hierarchies as well as across them. Above all, any suggestion of institutional exclusiveness, of 'us and them', is to be strongly resisted.

On accountability, robodebt exposed some deep-seated problems in public service culture, particularly the unwillingness to divulge information. The reluctance covers not only information that might embarrass ministers politically but also extends to routine information that should not offend anyone. This pattern of learned evasiveness was very evident during the commission's hearings when many public service witnesses had clear difficulty in giving straight answers to counsels' straightforward questions, much to the commissioner's



frustration. The same habits are also regularly on display in front of senate committees. The culture of secrecy is reinforced at the highest levels, particularly the secretaries board and its leadership, who show little interest in making government more open.

Admittedly, the issue is not as simple as some of the FOI advocates and their media supporters claim. Confidentiality is a core value in the public service and needs to be protected. In particular, the imperative to give ministers frank and fearless advice, neglect of which lies at the heart of the robodebt failure, depends on much of the advice being given in confidence, without fear of being reported. On the other hand, there are large swathes of public service information which could be readily disclosed without any risk of political damage. We need to establish an information regime which clearly distinguishes between a sphere of legitimate confidentiality and another sphere where information is readily disclosable. Public servants need to be able have confidence about which sphere they are operating in at any time, whether the advice they are writing and the evidence they are reporting will remain confidential or whether it will likely end up in the public arena. At present the FOI legislation sets up a balance of principles which leaves too many situations contestable. The resulting uncertainty encourages a risk-averse approach from officials where the default response is secrecy and where seekers of legitimate information are forced to resort to complex procedures and appeals. In the meantime, pending any major shift in information policy, which appears unlikely, individual public servants should try to remember that they serve the public and owe the public as much information as possible about how they are being served.