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Independent Review of the Australian Public Service

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Dear Panel

### **Independent review of the Australian Public Service (APS)**

Good policy making requires transparent agile techniques and iterative engagement with stakeholders facilitated by the adoption and judicious use of technology and data. Increasingly, it also requires cross-portfolio collaboration to harness the full benefits of our connected societies. In dealing with these complexities the basic principles of best practice regulation should remain front and centre to ensure regulation and policy remain fit for purpose.

#### **Genuine engagement with stakeholders is fundamental to good policy making**

It has always been important for policy makers to consult with affected stakeholders as policy is developed. Failure to do so can lead to policy that does not effectively meet its aims, and/or causes unintended consequences, and/or imposes unnecessary and costly burdens on market participants including consumers. Consultation is inadequate when performed too late in the process, or with a lack of appropriate breadth or depth, or when it does not result in appropriate changes to policy.

Meaningful engagement extends beyond consultation during the policy development process. Government and the APS should be accountable for decisions made and policies implemented. There is sometimes insufficient information available as to why a particular decision has been made, even where there are significant adverse impacts on individual or groups of stakeholders. Clarity around decision making would further improve accountability and deliver better policy.

Trust in institutions, including the institution of government, is declining.<sup>1</sup> It is harder for politicians to enact contentious policy, and yet the most beneficial policy is precisely that which makes difficult accommodations between different real or perceived interests. Meaningful consultation can helpfully weigh and potentially align those interests, making policy less contentious. The alternative will contribute to further deepening mistrust of government and institutions and make beneficial reform even more difficult.

#### **Policy making is better when agile and transparent rather than linear and opaque**

Traditionally the APS develops policy in an opaque, linear manner. Public visibility is often limited to only two or three points in a long process – perhaps at the beginning when the

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<sup>1</sup> Edelman Global Trust Barometer 2018. [http://cms.edelman.com/sites/default/files/2018-02/2018\\_Edelman\\_Trust\\_Barometer\\_Global\\_Report\\_FEB.pdf](http://cms.edelman.com/sites/default/files/2018-02/2018_Edelman_Trust_Barometer_Global_Report_FEB.pdf)



Minister announces a policy will be developed on a particular issue, then at the formal consultation stage when a consultation paper or exposure draft legislation is released, and finally when the completed policy is announced. There is little or no scope for public input other than at the formal consultation.

This opaque linear manner of policy development has certain potential consequences. By the time a consultation paper is released the bureaucracy might already be invested in the direction the policy has taken, and consequently inclined to limit the scope of consultation whether or not they are aware of it. Officials might be less willing and able to take the policy in a new direction or start again, even when that is the optimal course. If they do, the time to complete the process can be greatly extended.

Policy making does not have to be done this way. Large businesses – akin to the bureaucracy in size and complexity – are adopting agile methods of product and system development that should be equally applicable to policy development. Agile methods abandon the traditional, linear approach to development and instead promote a series of small, quick, incremental, customer-focused steps, each delivering insights which inform the direction of subsequent steps.<sup>2</sup>

Agile is not the adoption of a pre-defined process and set of development tools. To work properly it requires a new mindset and culture that is energetically open to iterative development of process as well as product, and is above all constantly self-reflective and evidence-driven. It prioritises human interaction over formal process, data over single-perspective logic and an external focus on the customer or user over an internal focus on the developers' own perceived requirements.

From Telstra's perspective a key question for this review is not whether agile methods of policy development should be adopted, but how the APS can be organised differently to enable an agile culture, and what underpinning legislative changes are needed to make that happen. Telstra is not best placed to comment on those organisational and legislative imperatives, but as a key stakeholder we encourage the APS to do everything necessary to facilitate the adoption of agile methods and culture.

### **Effective cross-portfolio collaboration is increasingly necessary**

Markets are becoming increasingly dynamic. Technology enables disruption, but technologies like 5G and the Internet of Things also enable transformation – of service provision, supply chains and business processes. Governments want this transformation for its economic benefits, but the business and use cases are still being defined and developed. It is critical that during this period the processes of government facilitate and do not impede these transformations.

One of the potential barriers to effective transformation is the risk that existing regulation will get in the way. A topical example of this is rules that assume a driver must always control the vehicle, and any rule that assumes a human will do something an automated sensor/monitor/responder could do. Not only must policy making be faster, more agile and more innovative – it must also be done collaboratively across every relevant part of Government in ways we have not seen before.

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<sup>2</sup> See for example: McKinsey, [From waterfall to agile: How a public-sector agency successfully changed its system-development approach to become digital](#), March 2016. The challenges and benefits of agile policy making are explored in a [blog](#) hosted by the Australian Government Digital Transformation Office and a [blog](#) hosted the UK Government's Civil Service Policy Lab.



APS budget appropriation and accountability is currently organised on a siloed basis. Each Secretary and agency head is accountable for their annual appropriation and against outcomes and objectives for their portfolio. This model risks decreasing the focus given to delivering cross agency and whole of government outcomes. In our view a greater focus on cross agency and whole of government deliverables would help the APS to evolve and deliver the opportunities new technology can present.

The 5G working group<sup>3</sup> established by the Department of Communications and the Arts in December 2017 is a good example of how Government can bring a whole-of-government focus to addressing policy development. One of the key objectives of this group is to facilitate collaboration between industry and across all of Government on 5G technology matters. It is required to examine how the Commonwealth regulatory settings across a wide range of sectors can be optimised for 5G networks and technologies.

### **Policy making and regulation must remain evidence based and observe best practice principles**

Technological and economic convergence within digital ecosystems presents fundamental challenges for regulation and regulatory systems. Digitisation drives rapid progress and change, for which traditional regulation is ill-suited. If regulatory frameworks are not adapted to digital ecosystems, they risk distorting digital markets and technological progress.

A study by NERA Consulting for the GSM Association<sup>4</sup> identifies two ways in which outdated regulatory policies are harming the development of digital markets:

- Discriminatory regulation, in which converging sectors are regulated in different ways and to different degrees. For example, the communications sector is currently far more heavily regulated than other sectors within the digital ecosystem.
- Static regulation of dynamic markets, in which traditional *ex ante* regulation is applied unchangingly to markets which are rapidly evolving and hence more suited to *ex post* regulation in which problems are identified and addressed only once they emerge.

NERA suggests that policy makers address these problems by applying three basic principles to the regulation of digital markets:

1. Regulation should be based on function rather than structure or technology. It should seek to protect consumers and competition “without regard to technologies, industry structure or legacy regulatory regimes”.
2. Regulation should be flexible, because the markets it applies to are flexible. It should instil rather than undermine confidence in risk-taking by taking a performance-based approach to regulation rather than a prescriptive approach.
3. Regulation should be rethought from the ground up. Convergence within digital ecosystems has intensified competition to the point that regulation is no longer needed in many cases, while in others new cross-sectoral regulations can best address new threats and minimise distortions.

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<sup>3</sup> Refer to the terms of reference at <https://www.communications.gov.au/departmental-news/5g-working-group-membership-and-terms-reference>

<sup>4</sup> [A new regulatory framework for the digital ecosystem](#), a study by NERA Economic Consulting for the GSM Association, 2016.



Telstra contributed to the commissioning of this study, supports its findings and policy prescriptions, and commends it to all regulatory practitioners and policy makers alike. We have been encouraged to see elements within government reflecting similar principles in some of the language used to talk about the future of regulation in digital markets, and look forward to them being implemented in practice.

More generally, similar best practice regulation principles and guidelines have been issued by regulators, governments and interested organisations around the world.<sup>5</sup> Despite differences in details and emphasis, these guidelines are broadly aligned and all based on sound underpinning research articulating the enormous costs in lost productivity from inefficient regulation. The challenge for all governments is to ensure they are followed in spirit as well as letter.

### **There are opportunities to Improve APS procurement processes with benefits for all parties**

The APS procurement framework could benefit from reorienting, to become less process focused and more outcomes focused, such that the framework provides the tools needed to inform a decision but is not the instrument that makes the decision. Successfully following a procurement process does not mean the business outcome will be successful. Clear and widespread recognition of this could deliver substantial benefits for all parties to a procurement transaction.

Capped contract terms are also of concern when they relate to large complex procurements which take many years to conclude and cost tens of millions of dollars. For these procurements, short fixed term contracts will often need to be re-tendered soon after they have been awarded. There is an opportunity to ensure more efficient outcomes by lengthening capped contract terms, making the procurement process quicker, or both.

Similarly, there would be benefits for the Commonwealth in making sole sourcing a valid option for APS procurement. In many circumstances, there is only one viable option for sourcing and sometimes the dollar amounts involved are very large. Tendering these contracts is a waste of time and resources. A process allowing agencies to request sole sourcing regardless of the size of the deal would be beneficial where there is genuinely only one viable supplier.

I hope these perspectives are useful, and look forward to the outcomes of the review.

Yours sincerely

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<sup>5</sup> For example: the ACMA's [Optimal conditions for effective self- and co-regulatory arrangements](#), June 2015; the OECD's [Guiding principles for regulatory quality and performance](#), 2008; the *Australian Government guide to regulation*, 2014; Ofcom UK's [Principles for economic regulation](#), 2011; and Deloitte's paper [The future of regulation – principles for regulating emerging technologies](#), June 2018.