



31 July 2018

Mr David Thodey AO  
Chair, Independent Review of the APS  
Department of the Prime Minister and Cabinet  
PO Box 6500  
CANBERRA ACT 2600

### **Independent Review of the Australian Public Service**

Dear Mr Thodey

The Business Council welcomes the opportunity to contribute to the Independent Review of the Australian Public Service (APS).

The public service plays a unique role as the custodian of the long-term national interest agenda.

Business engages regularly with the APS, across a range of functions — in policy design and implementation, in purchasing and delivery of infrastructure and services, and regulation.

Overall, we believe Australia is well served by our highly professional public service. However, as for any business or organisation, it is good practice to review performance regularly with a view to improvement.

Total federal government spending, inclusive of government services and transfer payments, is estimated to be 35.6 per cent of gross domestic product. So even a small improvement in government sector productivity would deliver large national gains.

While Australia's government services – education, health care and social services – generally perform well on international comparisons, there are still problems to be fixed and gains to be made through service delivery redesign. In some cases, this may involve another sector – non-government or business – playing a greater role or altering the balance of responsibilities between the jurisdictions.

In this context, there is a broad issue for the Review to consider about the roles and responsibilities of governments, non-government and private sectors. We believe that greater clarity and testing of the appropriate roles of government should be encouraged throughout the Review.

The Business Council thinks that improvements can be made by better use of technology and data as well as greater transparency to promote accountability. We have also suggested some opportunities for greater collaboration with the private sector.

### **Clarifying the role of the APS**

Government is responsible for setting the parameters for the APS's work – identifying national imperatives, priority issues and the outcomes it wants to achieve. This agenda then provides a framework for departments to organise their work and make resource allocation decisions into the future.

However, the government does not develop its policy agenda in isolation and the role of the public service should not be a passive one. Policy expertise, experience and advice of the APS should be drawn on to identify national policy problems and actively shape the government's agenda.

A fundamental challenge for the APS is balancing immediate demands with the task of developing and advancing a longer-term policy agenda.

At a practical level, the public service's role involves five core functions:

1. Policy – includes work to set broad policy directions and agree the desired system outcomes; the development and maintenance of data repositories to monitor system performance; ongoing coordination and analysis; identification of system risks and exploring innovation.
2. System design – covers the functions related to setting system standards; establishing governance arrangements and regulatory regimes and incentive structures to promote the efficient and effective functioning of markets.
3. System management – includes regulating, enforcing compliance with the standards, monitoring performance at the provider level and making targeted investments to build capacity necessary for markets to produce the desired outcomes.
4. Delivery – direct delivery of services by arms of government and the delivery of infrastructure directly related to service provision.
5. Funding – discrete role, but different in nature from the other functions as it can enable the performance of functions in each of the other categories. Funding can be provided in four ways: untied funding; lending; commissioning of providers/intermediaries and purchasing (e.g. project agreements, contracted work).

While some of these functions are contested (with state and territory governments and/or other sectors), there are some activities that the Commonwealth public service is undoubtedly best placed to do.

When designing policies and systems, only the Commonwealth public service can contribute a holistic view that combines national strategic and economic considerations. It is also the only organisation that has the capacity and continuity to develop and coordinate the decades long structural reform agenda Australia needs to maintain its living standards.

In terms of service delivery, the Business Council believes there will always be some services that are unsuitable for contestability and therefore best delivered by government. This issue is discussed further under the 'Role of the APS as a procurer and service deliverer' section. However, the Review should examine if there are opportunities for the APS to retreat from some service delivery areas because they can be better delivered by other sectors.

The Review should also consider whether the structure of the APS is fit for purpose. In mid-2016, the Commonwealth Government maintained an estimated 1181 entities, bodies and administrative relationships. While this number is now below 1000, it is difficult to see why a nation of Australia's size has so many Commonwealth agencies. The need for independence alone does not justify the establishment of a new operational body.

### **Determining roles and responsibilities**

For all its functions, the government should continually test the boundaries of the role of government more generally and why it should be undertaken by the APS.

The Review should consider whether enough attention has been paid to this issue. When the APS is undertaking work, does it actively consider whether government should play a role and whether the work should be performed at the Commonwealth level? Are there any widely accepted principles with the APS to guide this thinking?

In the last few years, the government has undertaken functional and efficiency reviews of departments/agencies to ensure that their work programs reflect their core functions and government priorities.

The Review should examine the effectiveness of the reviews, including whether their recommendations have been implemented, and whether they are the right vehicle for this important and ongoing task.

### **Measuring and improving performance**

The Review should also identify how the efficiency of the APS could be improved. The APS needs to find ways to innovate and improve its productivity, in the same way shareholders expect private enterprises to continually improve their performance and thus contribute to gains in real income across the community.

Increasing the efficiency of government programs and services will be key to improving the public sector's efficiency. However, it is important the APS also considers how it can improve its operations across all five of its core functions with a view to working smarter – driving efficiency and reducing costs and being more productive.

Making funding cuts that impair the capacity of the public sector to design and deliver policy improvements would be short-sighted and ultimately self-defeating. In some cases, upfront investments in technology and data will be required to make longer-term savings and to improve program outcomes.

The Business Council believes program redesign has the potential to increase the effectiveness and efficiency of some programs to improve outcomes and which may also result in savings.

Promoting a more transparent evaluation culture within the APS will be critical to achieving this.

When considering the effectiveness of a program, the APS should consider whether the program's design can be amended to drive better outcomes for service recipients and the broader community and what resources are required to deliver the desired outcomes. A long-term perspective of cost and benefits should be encouraged.

Robust evaluations are necessary at both the system and policy-detail level. Doing either one without the other risks making decisions on incomplete information.

A strategic approach to major program redesign can be embedded through regular and disciplined evaluation of programs, underpinned by more effective collection and analysis of performance data.

Budget bids for new or continued funding and even savings measures should be able to demonstrate that a thorough whole-of-program evaluation has been undertaken. They should also be able to demonstrate that comparative public and private sector models of innovative service delivery have been evaluated and incorporated into the program design where relevant.

Public sector productivity should also be measured, and targets set for improvement. The Business Council recognises that government sector productivity is not measured well, if at all, because of the difficulty in measuring outputs and outcomes. However, where possible, productivity measures and benchmarks should be developed and published to enable greater performance monitoring and assessment.

### **Enhancing capability**

A central challenge of the Review is to ensure that the APS can maintain and enhance its policy development capabilities into the future.

To continue to be able to deliver high-quality policy advice, the APS will need access to the right mix of skills.

Generalist, more mobile skills will continue to be important across the APS, but they are not the only skills public servants will need to navigate increasingly complex challenges, relationships and data rich environments. The APS will need to nurture and deepen professional expertise of specialists and technical experts to enrich policy capability. The Review should consider whether the APS's current workforce and remuneration structures foster the development of specialist skills.

There will inevitably be times when there is still merit in the APS engaging consultants to undertake work on their behalf. However, it is critical that the APS has the skills and knowledge to design and oversee these projects to ensure that they deliver sound outcomes and value for money.

Further, the Review should consider whether the APS has the digital capabilities needed to support the digital transformation of government services.

The Review should explore options to improve the coordination of secondment opportunities for public servants. In previous years, the Business Council worked with the APS to offer public servants the opportunity to undertake secondments in Business Council member companies. While the program was well-intentioned, it proved to be resource intensive and hard to scale up.

### **Strengthening the APS's role in service delivery**

Governments procure a wide variety of public services that are delivered under contract by external, non-government providers from the business and not-for-profit sectors. Greater competition, the use of technology and innovative finance models have the potential to drive innovation, leading to greater diversity, choice and responsiveness in the delivery of government services.

Most governments in Australia have already started introducing competition in some areas of delivery of human services. Increasingly, governments are looking to fund private or not-for-profit organisations to deliver services (e.g. public housing, Indigenous services and disability services). This direction for reform is strongly supported by the Business Council.

However, the Business Council acknowledges privatisation and contestability are not policy goals in and of themselves – they should be used only when there is a genuine opportunity to innovate and improve outcomes. In some cases, pilot programs will be appropriate to test costs and benefits and identify barriers.

Services delivered via market-based mechanisms must meet quality, suitability and accessibility standards. The APS also needs to ensure that citizens can access the information and support needed to make sound choices, and that appropriate consumer safeguards are in place.

The 2015 Competition Policy Review provides a roadmap for increasing competition in the delivery of key social services. The federal and state governments should work together to develop benchmarks, including private sector comparators.

In cases where the government sector remains the service deliverer, the APS should still consider whether subjecting them to greater contestability and benchmarking will drive improved efficiency and outcomes.

The Review should also consider how the APS can leverage its funding power and developments in technology to deliver better services, including in education, health, tax and transfer services, and other social services. The Digital Transformation Agency should play a key role in ensuring digital technologies are used to make government service delivery seamless, intuitive and customer-centric.

Further, the Review should explore if there are opportunities for the APS to use innovative finance models to bring private sector innovation and commercial discipline to government service delivery. The Business Council believes that new funding models have the potential to improve service delivery and reduce costs to government, as has occurred in infrastructure investment.

## **Strengthening the APS's role in procurement**

Contracting is an integral part of doing business in the public sector.

As noted above, the delivery of many government programs now involves some contracting with private sector providers. There has also been a significant increase in the number of contracts for consultancy services.

In this context, contracting activity in the APS can range from straightforward procurements through to highly complex, innovative long-term projects that may involve several interconnected contracting arrangements.

Effectively managing government procurement processes is a key aspect of public sector accountability and transparency. However, recent reports from the Australian National Audit Office indicate there have been instances where contracts have not been managed effectively and subsequently, some contracts have not delivered the desired outcomes.

The Review should consider whether the APS has sufficient capability in purchasing and contract management to ensure the APS is better able to plan and conduct 'value for money' procurements and effectively manage contracts to achieve government outcomes.

## **Strengthening the APS's role in policy development and regulation**

While business is the primary creator of wealth and jobs, governments and the public service profoundly shape the environment in which businesses operate.

The Review should explore opportunities to improve policy and regulation development process and how regulations are administered, with a view to determining how the APS can better support a business environment that is conducive to innovation, employment and wealth generation.

### *Policy and regulation setting*

As previously noted, the APS plays an important role shaping the government's policy agenda by identifying problems, developing policy options, providing advice about the potential consequence of policies being proposed and suggesting alternatives that might better meet the government's objectives.

To effectively fulfil this role, the APS must undertake a significant amount of work to:

- verify that the causes of a 'problem' are properly understood
- clarify that government intervention would help
- work out which approach is likely to be most cost-effective.

Each of these steps requires evidence, consultation and debate. While the APS has established systems to do this, in practice, the development of policies and regulations is not always undertaken in a way that delivers the best outcomes.

In past decades, independent government research agencies like the Productivity Commission, Parliamentary Budget Office and the former Australian Bureau of Agricultural and Resource Economics and Bureau of Transport Economics have been pivotal in providing well researched, evidence-based impartial advice and data for government (and the broader APS) to draw on when developing policies. Unfortunately, several of these research bodies have effectively disappeared (existing in name only). The Review should consider how this independent research and advisory role could be strengthened and what resources the agencies need to maintain this capability.

The Review should also explore options to strengthen Regulatory Impact Statements (RISs) and stakeholder consultation processes.

A RIS is a well-established mechanism for assessing the cost and implications of new regulation with the community. However, RISs would be strengthened by:

- doing a cost–benefit analysis of all options (not just the preferred regulatory option)
- assessing how the proposed regulation will interact with existing regulation to affect the cumulative burden on business
- ensuring all RISs are published as soon as practicable from the date of regulatory announcements so the transparency of decision-making processes is increased.

Greater collaboration with industry to identify and solve problems ('co-design') can identify alternatives to legislation or improve the effectiveness of policies, reduce costs and avoid unintended consequences. However, the Business Council acknowledges that co-design with the private sector may not always be appropriate.

Undertaking genuine consultation is a key mechanism to improve public sector accountability. Consultation should occur before policy decisions are taken to allow those affected by regulatory changes to provide feedback on how the policy will operate in practice and why changes to the proposed legislation may be needed.

There have been recent examples of consultation periods which did not give business adequate time to provide meaningful input. For example, the consultation period for the exposure draft of the *Treasury Laws Amendment (Whistleblowers) Bill 2017* only provided stakeholders with a total of 10 business days to read the material, consult and make a submission.

When designing regulation, it must be carefully targeted to achieve its stated objectives and minimise the cost impacts on the community, including business.

As a general rule, the government should not introduce regulation to apply to business, where it is not prepared to comply with the regulation itself. Regulatory neutrality is particularly important now that the government is re-emerging as an owner of new infrastructure businesses and will increasingly be competing against private sector businesses.

Further, the Business Council proposes that the Commonwealth Government reinvigorate the regulatory reform program and task the Productivity Commission with reviewing the cumulative burden of regulation on the economy and to identify reforms.

The Review should also consider options to encourage a stronger culture of independent and transparent program evaluation in the APS.

Knowing what works and why is essential in designing successful policies and regulations for the future. In the business world, a program that doesn't work will provide valuable lessons for the business going forward. Learning from mistakes is a key attribute of any successful organisation.

### *Regulatory administration*

The Review should consider options to improve the effectiveness and efficiency of the way regulators operate.

The Business Council supports the Regulator Performance Framework (RPF), which aims to ensure that regulators do not impose unnecessary costs on regulated entities in the administration of their duties. The Review should consider the RPF's effectiveness to ensure that it has not become a compliance exercise and identify mechanisms to promote its impact.

If the RPF model is found to be effective, it should be adopted more widely across Australian government agencies, so they hear firsthand from regulated individuals and entities about the impact of their operations and opportunities to lessen unnecessary costs and impacts.

The Review should also consider whether regulators' cost recovery models are reflective of benefits to the regulated community and whether they have appropriate incentives to minimise cost recovery charges through the efficient implementation of cost recovery activities.

More broadly, regulators (and the wider APS) would benefit from greater awareness of how business works and the implications of policy and regulatory decisions. Secondments are an effective mechanism to develop this knowledge as they provide public servants with an opportunity to undertake structured, highly meaningful periods of employment in an industry setting.

### **Increasing collaboration**

Many of the policy issues the APS is facing are global challenges – the ageing workforce, future of work, technological disruption, cyber security – that will require it to work with other governments, the non-government sector and the private sector to develop solutions.

Mechanisms like roundtables and workshop helps facilitate information sharing, but more needs to be done to embed a deep and constant culture of collaboration across all levels of the APS.

When silos occur within departments, there is a real risk the work environment will stymie work or result in suboptimal outcomes. Conversely, innovation is more likely to occur when ideas and processes cross-pollinate.

The Business Council has a history of collaborating with the APS on priority issues for business, for example, we have worked closely with the APS on changes to the skilled migration program, energy reform and trade issues.

Further, the Business Council has longstanding arrangements with Treasury and DFAT for department staff to undertake a yearlong secondment with the Secretariat. These secondments have helped us build strong connections with the public service and the given secondees a deeper understanding of policy priorities for business.

The Review should consider practical mechanisms to increase the capacity of the APS to collaborate with other sectors.

As previously noted, the Business Council believes there is scope to increase private-public sector collaborations by having the private sector co-design some policies and regulations. However, we recognise that effective collaborations are not easy to achieve or sustain and carry some risks.

From the Business Council's perspective, collaboration with industry is more likely to be effective when it is established with clear governance arrangements and a shared understanding of the:

- objectives of the arrangement
- roles and responsibilities of each party
- details of the activity
- accountability mechanisms.

### **Facilitating greater use of data and digital technology**

The Business Council believes the public service is yet to fully realise the benefits of greater availability and use of data and related digital technology. The benefits of greater availability and data include improved outcomes for citizens, reduction of costs, greater transparency, better insight into the impact of government policies, and enhanced innovation.

The Business Council looks forward to the forthcoming National Digital Economy Strategy as an opportunity to discuss the policy settings and business leadership needed to enable Australia to develop and adapt to changes in digital innovation.

From the Business Council's perspective, there are four issues the Review should focus on to improve the APS's use of data and technology.

First, the APS (and the private sector) needs greater capability in data analytics and technologies like artificial intelligence. The ability to analyse and extract the most value out of the data will increasingly be a requirement of the mainstream APS workforce. There will also be a niche group of public service roles that require advanced and specialised technical skills in technologies like artificial intelligence.

The APS should also consider how private sector capability could be used to complement public sector capability. Much better value for money could be derived by seeking private sector expertise prior to going to market, especially for rapidly evolving technology.

Second, the APS needs to continue the work of creating protocols/standards and institutions that will enable greater data sharing across the APS and with the other sectors. We welcome the forthcoming National Data Commissioner and *Data Sharing and Release Act* and encourage their expedient implementation. Once established, we recommend prioritising efforts to share data in the health and education sectors.

Third, the APS must look to improve interoperability and integration of private and public systems and data. Key service delivery areas like health and education would benefit from digital innovation but a lack of interoperability is holding back efficiencies, cost savings for government, and improved outcomes for citizens.

The Business Council recognises that improving the interoperability of data is difficult and expensive to implement because legacy data was collected under a range of different standards and systems. As a first step, the APS should take steps to enable greater interoperability in future between private and public service providers.

Lastly, the APS should continue to work with business on cyber security issues. No sector can address this risk alone. Improving Australia's cyber security requires a concerted and joined-up effort between government, industry, research and individuals.

The Cyber Security Strategy, released in 2016, was a good start. However, the APS should build on this to expand and deepen collaboration with the private sector, especially in relation to education and awareness of the community.

### **Next steps**

The Business Council would welcome the opportunity to convene a roundtable for the Review Panel, consisting of members and other relevant experts, to further discuss these issues. Please let me know if this is of interest.

Yours sincerely



**Jennifer A. Westacott AO**  
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