



**Australian
Human Rights
Commission**

Independent review of the Australian Public Service

SUBMISSION BY THE
AUSTRALIAN HUMAN RIGHTS COMMISSION

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ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

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Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to make this submission to the Independent Review of the Australian Public Service.
2. The Commission is a Commonwealth corporate entity under the Public Governance and Performance Accountability Act 2013 and staff of the Commission are public servants employed under the Public Service Act 1999.
3. The Commission is a national human rights institution, with recognised independent status and roles in United Nations human rights fora. We undertake a range of policy development and research tasks which aim to promote compliance with Australia's human rights obligations, while also investigating and conciliating complaints of unlawful discrimination and breaches of human rights.
4. This submission addresses two distinct sets of issues.
5. **Part 1** sets out policy proposals drawn from the Commission's work that relates to the terms of reference. The Commission sees the overall objective as being to create an APS that is a leader in diversity and inclusion and fosters an environment in which employment discrimination is not tolerated. The challenge facing all employers is how to improve the capability of their workforce by leveraging the talents across the full diversity of our population. Given its role in developing policy and delivery services for the entire Australian community, the APS—more so than other employers—should reflect the full diversity of our population.
6. In particular, the Commission identifies the need for the Australian Public Service to be better equipped to protect and promote human rights. This is critical to the ability of the APS as a whole to be able to address the following matters identified in the terms of reference of this inquiry:
 - Deliver high quality advice, informed by the experiences of citizens and vulnerable groups
 - Tackle complex, multi-sectoral challenges in collaboration with the community, business and citizens
 - Improve citizens' experience of government and delivery of fair outcomes.
7. In particular the Commission identifies the following issues for consideration by the Review Panel:
 - Modernising the approach of the APS to mature age workers
 - Increasing the representation of people with a disability in the APS

- Reflecting the cultural diversity of the Australian community
 - Achieving gender equality in the workplace
 - Ensuring the APS is child safe
 - Introducing a positive duty for APS employees to respect and protect human rights
 - Addressing the challenges and harnessing the opportunities for the APS in the use of Artificial Intelligence and other technological developments.
8. The Commission also proposes mechanisms for consolidating these different elements of diversity and inclusion through an overall framework, with mechanisms to encourage innovation and collaboration.
9. **Part 2** sets out the Commission's views on industrial and workplace matters from the perspective of a small public sector agency. The Commission's concern is that the employment experience for many across the APS has become fragmented, inequitable and dependent on factors often beyond individual agency's control. The Commission identifies three areas for focus to address this:
- Enabling flexible access to work
 - Enabling enterprise level control of work
 - Creating a capable, mobile workforce.
10. The Commission makes the following 17 recommendations for consideration by the Independent review team.

Recommendation 1: The Commission recommends the APS should adopt the terminology of 'older worker' and the age threshold of 50+ to reflect that Australians can work as long as they want and to align with practice of other industrialised ageing nations.

Recommendation 2: In order to address any potential barriers to employment of older Australians in the APS, the Commission recommends the Review consider the findings and recommendations of the *Willing to Work* report.

Recommendation 3: To ensure the APS is fit for purpose in the future, the Commission recommends the APS develop, implement, monitor, evaluate and promote a mature age workforce strategy.

Recommendation 4: To understand workforce dynamics and capability that inform workforce planning, the Commission recommends that APS departments and agencies update the methodology for information gathering and use one

model comprising five-year age cohorts with no upper age limits in the future collection and reporting of data about older workers in their annual reports.

Recommendation 5: That the Review team consider the findings and recommendations of the *Willing to Work* report in order to address the barriers to employment of people with a disability in the APS.

Recommendation 6: That the Review team consider the research findings and proposed strategies put forward by the Australian Human Rights Commission through the *Leading for Change* reports to improve cultural diversity at all levels of the APS.

Recommendation 7: That the Government establishes targets and annually reports on progress in regard to recruitment and retention of employees from culturally diverse backgrounds, and on the development of culturally competent, safe and secure workplaces.

Recommendation 8: That the Review identify barriers to achieving gender equality across the APS and identify a suite of reform options for consideration by the APSC (on a service-wide basis) or for individual agencies as appropriate. This might include consideration of broader workplace reforms such as:

- i. targeted measures to reduce gender segregation in Australian workplaces.
- ii. targeted strategies to address the gender pay gap and women's economic insecurity in retirement.
- iii. recommendations of the *Supporting Working Parents: Pregnancy and Return to Work National Review Report*.
- iv. a minimum period of government-funded paid parental leave of 26 weeks, and an additional minimum of four weeks paid leave, which may only be taken by the supporting parent.
- v. superannuation entitlements as part of paid parental leave.
- vi. removing the 12 month qualifying period for parental leave, and allow for greater flexibility in how and when to take the paid leave.
- vii. funding future editions of the ABS Time Use study, to collect accurate data concerning the extent and distribution of unpaid work and its intersection with paid work.
- viii. family and domestic violence leave in the National Employment Standards and modern awards.
- ix. family and domestic violence as a protected attribute within existing anti-discrimination legislation and federal employment laws.

Recommendation 9: The APSC develop a Diversity and Inclusion Framework for the entire APS, with appropriate data collection, monitoring and reporting mechanisms. The APS should also operate as a clearing house on best practice across the APS and provide guidance to agencies on model policies and approaches.

Recommendation 10: That the APS Review:

- (i) Ensure there are adequate measures in place for the prevention of and response to sexual harassment in APS workplaces, with consideration

of the identified strategies in the Commission's 2012 survey report, as well as the findings of the National Inquiry into sexual harassment in Australian workplaces, when that report is published.

(ii) Consider undertaking an industry-specific survey to identify the prevalence, nature and reporting of sexual harassment in the APS.

Recommendation 11: That the Review identify meeting the National Child Safety and Wellbeing Standards as a core capability for the APS.

Recommendation 12: That the APS Code of Conduct in the *Public Service Act 1999* (Cth) be amended to introduce a positive duty on APS employees to:

- act consistently with human rights, and
- actively promote, respect and protect human rights,

where 'human rights' is defined in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Recommendation 13: That the Review Panel identify mechanisms to ensure the use of artificial intelligence and other new technologies in decision making across the APS is consistent with human rights and supported by measures to build the capability of the APS workforce.

Recommendation 14: That the APS introduce a virtual working policy, with innovation grants for small agencies for technological upgrades and support to implement this. This should link to APS policies on disability recruitment and retention.

Recommendation 15: Consideration be given to new mechanisms for ICT sharing across the APS and access to innovation support to build excellence in use of new technologies.

Recommendation 16: The Review focus on the detrimental impact of enterprise level control of work, particular on small agencies. In particular, the Review should identify mechanisms for addressing pay disparities across agencies.

Recommendation 17: If it is to be retained, the APSC should be refocused as a centre of excellence for the APS building APS workforce capability and technological innovation. Consideration must be given to supporting small agencies to participate and receive the benefits of innovation, noting that the current cost recovery model has locked small agencies out of gaining these benefits.

Part 1: The role of the APS in promoting and protecting human rights

11. The Australian Public Service can play a critical role in promoting and protecting human rights in Australia.
12. This includes by being an employer of choice that can attract and retain a broad cross-section of people representing the diversity of the Australian community; and by ensuring that human rights considerations are front and centre when developing policy and delivering services to the community.
13. The Commission identifies the role of the APS in modelling best practice in the recruitment and retention of older workers, promoting cultural diversity and promoting women in leadership.

a) A mature age workforce strategy for the APS

14. This Review will examine the capability, culture and operating model of the APS to ensure it is ready to best serve Australia over the coming decades.
15. With Australia's ageing population, this means becoming well equipped to manage five generations in the workplace concurrently and to face the prospect of a 100-year life in the near future.
16. This Review should consider the reforms necessary to ensure that the APS is able to harness the full capacity of our ageing population.
17. In June 2017 there were 1,956,900 public sector employees. This comprises 239,800 employees in Commonwealth government, 1,527,600 in state government and 189,500 in local government.¹
18. One in three APS employees are aged 50 and over. Recent APSC data shows that, over the last decade, the proportion of APS employees aged 50 or over has increased from 25% to 32%.²
19. Enabling Australians in their 50s and 60s to remain in work for as long as they choose will generate significant benefits to the national economy. Analysis commissioned by the Commission showed that the projected growth in the labour force participation rate (LFPR) of older workers would produce a \$55 billion or 2.7% increase in national income by 2024–25. If Australia could achieve a further increase of 3% in the LFPR of older workers, the national economy would be \$33 billion or 1.6% larger per annum.³
20. The current LFPR of people aged 65 and over in Australia (13%) remains relatively low compared to other industrialised economies experiencing population ageing, such as New Zealand (20%) or the United States (19%).⁴
21. A range of strategies are required to build capability in planning and management of the ageing workforce.

22. The proportion of Australians aged 65 and over in work has doubled between 2000 and 2015 from 6% to 13%.⁵ The LFPR of those aged 65 and over is projected to increase strongly to 17.3 per cent in 2054–55.⁶ There are clear gender differences in the participation of workers aged 65 and over. One in five (20.4%) men aged 65 and over are working and half (47.5%) work full-time. One in ten (9.8%) women aged 65 and over are working and a quarter (24.2%) work full-time.⁷ This gender difference is particularly significant given that women on average retire with less in their superannuation funds than men. In 2016, women who retired had an average super balance of \$157,000 and men had an average of \$271,000.⁸
23. Since the majority of older workers work part-time, ensuring the availability of quality part-time jobs is critical to engaging older workers and encouraging them to extend their working lives.
24. Australians are living for longer and in better health. Despite this, one of the main factors contributing to absenteeism and early exit of older Australians from the workforce is poor health. The most recent data available (dating from 2009–10) from the Australian Institute of Health and Welfare (AIHW) reported that half (54%) of 55-64 year olds have chronic disease.⁹ It is worth noting that loss due to absenteeism associated with risk factors for women and men was greater than for chronic disease.¹⁰
25. The 2015 ABS Survey of Disability, Ageing and Carers found that around one in six (16.5%) workers who retired early (between age 55 and 64 years) did so due to their own sickness, injury or disability.¹¹
26. Ensuring that adequate support via the workplace is available to older workers who develop chronic disease or disability to stay in employment is critical to maximising their participation in the labour force.
27. Caring affects the capacity of older women to participate in the labour market. The 2015 ABS Survey of Disability, Ageing and Carers reported that, of primary carers aged 55–64 years, nearly two-thirds (65.2%) are women and fewer than half (46.4%) were participating in the labour force.¹² Ensuring that adequate support is available to older people, particularly women, who have caring responsibilities is critical to enabling them to engage in some form of work and participate in the labour force.

Case study: New Zealand's older workforce

New Zealand has the highest LFPR for older workers in the OECD. StatsNZ reports that the LFPR for New Zealanders in their 50s is 85% in 2017. This is projected increase to 88% in 2038 and 89% in 2068. For people in their 60s, the LFPR is currently 59% and is projected to rise to 64% in 2038 and 67% in 2068.¹³

New Zealand has achieved significant increases in the LFPR of all older workers, but particularly women aged 65 and over: educated older women are the most likely to be working and older Maori women have the highest employment rates among women aged 65 and over.¹⁴

This is attributed to labour market flexibility including widespread availability of 'decent' (ILO term) or quality part-time employment, low incidence of age related discrimination, as well as government policy changes regarding access to age pension.¹⁵

28. The APS can lead public sector employment and set an example of best practice as a model employer of older workers. To achieve this, a number of steps are required.
29. The Australian government does not have a clear and consistent working definition for older workers. For example, data from various Australian government sources reported in this submission refers to mature/older workers as aged 45 and over, 55–64, and 65 and over.
30. One definition found in the APSC's *Australian Public Service Strategic Workforce Analysis and Reporting Guide (2012)* defines workers aged 50 and over as 'in the age range considered to be approaching retirement'.¹⁶ This definition highlights a need for the APS to align with the current policy setting of having no mandatory retirement age and adapt to future needs with respect to the prospect of a 100-year life in order to help Australians develop more flexible, open ended and longer working lives.
31. A redefinition of terminology is needed to reflect the realities of changing socio-economic and policy circumstances for older workers participating in the paid labour market.¹⁷

Case study: Redefining older workers in Singapore

In 2015 the United Nations projected Singapore would face a 97% increase in the population aged 60 years or over between 2015 and 2030.¹⁸ Singapore has developed a suite of policies to address population ageing. The Tripartite Committee on Employability of Older Workers has mapped out new directions to advance efforts in supporting the employment, employability and productivity of older workers. This includes revising its definition of older workers in its Age Management and Job Redesign program from those aged 45 and over (in 2005) to those aged 50 and over (in 2013). It also extended the exit age of its Re-employment program, a form of Transition to Retirement (TTR), from 65 to 67.¹⁹

32. Internationally, the term 'older workers' has become the most widely used term. The age range that previously defined older workers varied across contexts. In the past, older workers were defined in two ways: by age ranges limited by a mandatory retirement age, such as 55–64 years, or by a threshold age, such as aged 50 and over, or aged 65 and over.
33. The Australian Bureau of Statistics (ABS) has used threshold ages of 45 and over for 'mature aged workers',²⁰ and 65 and over for 'older workers'.²¹ Internationally, with the exception of the US *Age Discrimination in Employment Act (1967)*,²² it appears that consensus has developed in the usage of the threshold age '50+' for older workers (Table 1).

Table 1. Examples of terminology and corresponding age for workforce groups in selected industrialised countries with an ageing population

	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54 ²³	55-59	60-64	65-69 ²⁴	70-74	75-79	80-84 ²⁵	85-89	90-94	95-99	100+	
OECD ²⁶	Entering labour market after education	Prime age worker							Passing career peak & approaching retirement										
ILO ²⁷	Working age																		
UN ²⁸										Older person									
ABS ²⁹	Working age																		
ABS ³⁰								Mature age worker											
ABS ³¹										Older person									
APSC ³²								Approaching retirement											
COTA ³³								Older worker											
UK ³⁴								Older worker											
CAN ³⁵								Older worker											
SING ³⁶								Older worker											
AARP ³⁷								Older worker											
ADEA ³⁸								Older worker											

34. The mandatory retirement age in the APS was abolished in 1999. Now government policies encourage older workers, including retirees, to continue working for as long as they choose. Australian workers aged over 50 may not be approaching retirement. Indeed they may be working for 20 or more years after that age.
35. **Recommendation 1: The Commission recommends the APS should adopt the terminology of ‘older worker’ and the age threshold of 50+ to reflect that Australians can work as long as they want and to align with practice of other industrialised ageing nations.**
36. In preparing capability for the current management need of five generations in the workplace and facing the future prospect of the 100-year life, the APS could take the opportunity to become a model employer for the public sector and beyond.
37. Best practice employment of older workers can be demonstrated by the development, implementation, monitoring, evaluation and promotion of a mature workforce strategy that addresses key issues for older workers, including voluntary targets, a leadership commitment, workforce planning and management, recruitment strategies, retention strategies, and proactively managing health at work.
38. Voluntary targets may be developed in one or more commitments, depending on business need and department/agency capacity. Targets may be sector-wide or department/agency-specific and may address a lack of recruitment or retention of older workers, lack of access to flexibility and workplace adjustments, and/or workforce planning challenges including loss of skills. Performance against targets should be recorded in performance management systems and reported annually to public service commissions and in annual

reports. Alternatively, departments/agencies may provide a rationale for why voluntary targets will not be pursued.

39. Leadership commitment will enable the development and delivery of both sector-wide and department/agency-specific publicity and/or education campaigns. Champions in each department and agency may lead campaigns which raise the issues, articulate the case for reform and why such measures do not detract from the merit principle.
40. Workforce planning and management strategies could include:
 - **Healthy ageing principles.** Employing a robust and tested philosophical approach, such as the World Health Organization’s model, would be ideal to guide the revision of departmental/agency workforce capability plans and strategies in line with international best practice.³⁹
 - **Routine training.** Formal courses may be provided for APS managers and human resources specialists (including contractors engaged to provide recruitment services) which incorporate the benefits of employing older people and a diverse workforce; debunk common myths (for example health and safety risks, costs, absenteeism); the nature of age discrimination in employment; and availability of support and resources (such as workplace adjustments).
 - **Multi-generational teams.** The development, implementation and monitoring of a multi-generational team-working and management strategy could assist the APS to build capability, manage diversity and inclusion, and draw effectively on the skills, experience and knowledge of the entire workforce including employees seeking a greater work-life balance such as ‘career stabilisers’ and ‘semi-retirees’.⁴⁰
41. Recruitment strategies could include formal programs for older workers to:
 - **Enter the APS workforce.** Piloted APS recruitment initiatives, such as NextStep⁴¹ and GradAccess,⁴² could provide models that can be tailored to older workers and rolled out nationally.
 - **Change career.** Older workers may be encouraged to enter the APS workforce via a targeted initiative through an existing program such as What’s Next⁴³ or a new program such as Skills Checkpoint for Older Workers.⁴⁴ For example, older workers might be recruited into new careers in non-traditional fields for women, such as STEM, and across areas of skill shortage identified in the National Skills Needs List (NSNL).
 - **Re-enter the workforce.** After a long career break of two to ten (or more) years, older workers—especially women—seeking to re-enter the workforce may benefit from a tailored reskilling program comprising formal training and a period of employment such as a one-year fixed

term contract. An example is the Platform to Employment (P2E) model that has been trialled and rolled out in the US.⁴⁵

- **Rehiring retirees.** The APS might develop a program for rehiring people who have previously exited the workforce. A rehiring program might comprise ongoing or fixed term positions that are tailored to the business needs of Australia's public sector and unique superannuation system. An example is the Singapore Government's Responsible re-employment program that enables employees who have reached a minimum retirement age to be rehired by their own or another employer for a maximum term of 5 years.⁴⁶

42. Retention strategies could include formal measures tailored to the needs of older workers such as:

- **Flexible working arrangements.** The APS could determine that positions at all levels be deemed to be 'flexible' unless there are sound documented reasons to preclude it. Examples from State public services include:
 - NSW Public Service Commission, *Make Flexibility Count Strategic Framework for the NSW Government Sector (2017)*⁴⁷
 - Victorian Public Sector Commission, *Mainstreaming flexibility (2016)*⁴⁸
 - Queensland Government, *Flexible by Design (2018)*⁴⁹
 - Government of Western Australia Public Sector Commission, *Multigenerational workforce (2017)*⁵⁰
 - Tasmanian Government, *State Service Diversity and Inclusion Framework 2017-2020 (2017)*.⁵¹
- **Innovative flexible working arrangements.** Extending beyond conventional flexible working arrangements available across the State Public Service workforces, the APS could develop, pilot, evaluate and rollout new initiatives tailored to older workers. Such measures may include virtual working; 9/12 work patterns where an employee aged 50+ works nine months each year; seasonal work to meet peak period demand such as end of financial year; rotating short term work to cover for staff on long term leave such as parental leave or long service leave; job sharing; and other arrangements suggested by an older worker that meets their particular needs and responsibilities. An example is the Bunnings Australia Travelling Team Members program that enables existing employees to work at another Bunnings location. One in four Bunnings workers are aged over 50. This measure was designed to cater to older workers and then rolled out to the whole workforce.

- **Career development and planning.** The APS could adopt a range of measures to facilitate individual career progression, skills development and knowledge transfer and retention, such as targeted mentoring arrangements, reverse mentoring, return mentoring, and secondment initiatives. An example highlighted in the Commission’s *Willing to Work* report is the Reserve Bank of Australia’s reverse mentoring program that enables senior executives to learn new skills from graduates.⁵²
 - **Transition to Retirement (TTR).** Where superannuation schemes allow flexible arrangements leading up to permanent withdrawal from the workforce, APS departments and agencies might encourage older workers to delay retirement by entering into TTR arrangements, such as secondments or fixed term contracts for a special project. An example highlighted in the Commission’s *Willing to Work* report is Australia Post’s flexible pathway to retirement for eligible employees aged at least 53 years.⁵³
 - **Health at work.** In order to effectively facilitate the retention of older workers for longer, the APS could develop proactive multi-generational programs tailored to address individual and team needs. Such measures could focus on mitigating risk factors for chronic disease as well as managing chronic disease and disability across the workforce.
43. Many of the benefits discussed above would also benefit other cohorts, such as women, Aboriginal and Torres Strait Islander peoples and people with disability.
44. Monitoring and evaluation measures should include:
- **Reporting.** All APS departments and agencies could collect and report workforce data using one reporting protocol analysed by age, such as recruitment decisions, promotion and training opportunities, retention, exit and return of older workers, complaints, and key demographic data about gender, employment status, work pattern, location (including regional, rural and remote (RRR) Australia) in order to build effective future workforce capability.
 - **Monitoring.** All initiatives, measures, pilots and programs used in department and agency workforces could be monitored to ensure the APS is fit for purpose as well as to develop public sector best practice.
 - **Evaluation.** As part of an effective mature workforce strategy, it is important to record approaches that have been evaluated as successes as well as those evaluated as failures in order to develop evidence-based best practice for the public sector and beyond.

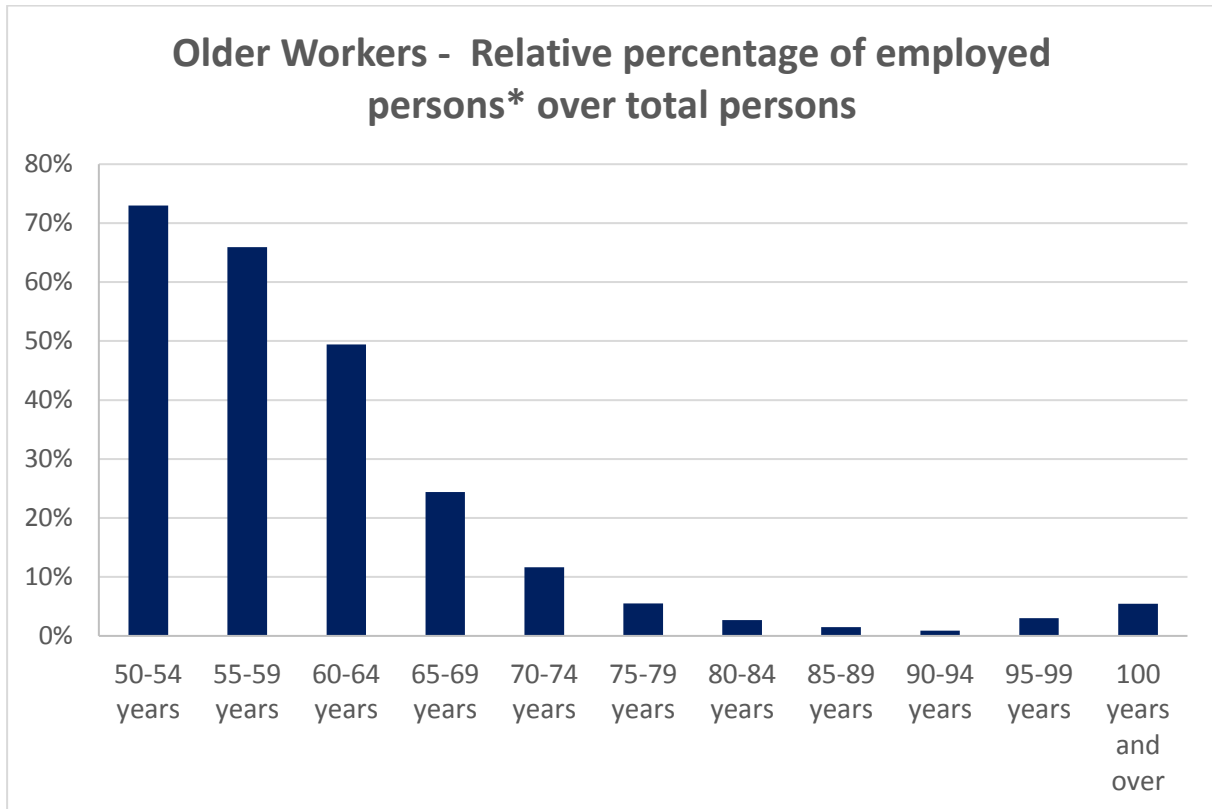
Case study: DHS workforce capability in diversity and inclusion

The largest Commonwealth government department, the Department of Human Services, is a proactive leader in the development of future workforce capability. The DHS Diversity and Inclusion Strategy outlines a comprehensive

approach to developing its capability, culture and operating model to be fit for service currently and in the future. The DHS Strategy includes an exemplary model for a Mature Age Employee Plan 2016–19 comprising 17 actions grouped as recruitment, inclusion, workforce development and leadership commitments. This plan illustrates how government can be a model employer.⁵⁴

45. **Recommendation 2: In order to address any potential barriers to employment of older Australians in the APS, the Commission recommends the Review consider the findings and recommendations of the *Willing to Work* report.**
46. **Recommendation 3: To ensure the APS is fit for purpose in the future, the Commission recommends the APS develop, implement, monitor, evaluate and promote a mature age workforce strategy.**
47. Reporting and monitoring the older workforce is essential to understanding workforce dynamics.
48. The APSC demonstrates the value in reporting workforce data by five-year age cohort, stating that this is useful ‘for assessing the potential risk posed by likely age retirements and associated loss of corporate knowledge, skills and experience’ And for ‘understanding employee preferences and behaviours, to inform employment value propositions’.⁵⁵
49. The State of the Service report uses five-year and ten-year cohort data, and age thresholds of up to 55+ or 65+ to refer to the mature workforce.⁵⁶
50. An expanded definition of ‘older’ workers would require methodological changes in information-gathering, such as labour market statistics.⁵⁷
51. As noted above, the APS has no mandatory retirement age. Labour force participation of Australians in their 50s declines gradually and in their 60s decreases by half.
52. The CEPAR fact sheet on older workers pointed out that labour force participation of each five year age cohort over 60 decreases by half.⁵⁸
53. In 2016, two in three Australians aged 50–59 were in work: 73% of people aged 50–54 and 66% of those aged 55–59 were in work. This decreases to 49% of people aged 60–64, 24% of those aged 65–69, 12% of those aged 70–74, 6% of those aged 75–79, 3% of those aged 80–84 and 1.5% of those aged 85–89 (see Table 2).

Table 2. Older workers as a proportion of the total population in Australia, 2016.⁵⁹



*Employed persons includes Employed full-time, Employed part-time, Employed away from work, Employed hours of work not stated.

54. It is worth noting that Table 2 shows 6% of centenarians participated in some form of paid work in 2016.⁶⁰ The 2015 Intergenerational Report projects there will be around 40,000 people aged over 100 by 2055, almost nine times the current number.⁶¹
55. In line with population projections, proportions of labour force participation are expected to increase in later years although work statuses and patterns are shaped differently for workers across these five-year age cohorts.
56. Current policy measures enable Australian retirees to continue working as long as they choose.⁶²
57. **Recommendation 4: To understand workforce dynamics and capability that informs workforce planning, the Commission recommends that APS departments and agencies update the methodology for information gathering and use one model comprising five-year age cohorts with no upper age limits in the future collection and reporting of data about older workers in their annual reports.**

b) Increasing the representation of people with disability in the APS

58. This review should consider options to improve the representation and experience of people with disability in the APS.

59. As of December 2017, the employment rate of people with disability in the APS was 3.6%. This is despite around 18% of the Australian population reporting as living with disability.
60. The business case for addressing employment discrimination is well-established. An increase in diversity across an organisation delivers tangible benefits in terms of productivity, performance and innovation; increased access to a broader talent pool; and improvements to organisational reputation.
61. The Commission's *Willing to Work* report in 2016 found that employment discrimination against people with disability is ongoing and systemic. In 2015, 53.4% of people with disability were participating in the labour force, compared with 83.2% of people without disability. This figure has changed little in the past 20 years.
62. The Commission makes a number of recommendations in the Report that are highly relevant to the APS Review. These include:
 - The expansion of the role of the Workplace Gender Equality Agency (WGEA) to become the Workplace Gender Equality and Diversity Agency, extending its current functions to Australians with disability. An expanded and adequate resourced agency would, over time, collect data, publically report on progress against voluntary targets, and engage collaboratively with employers and business to reduce employment discrimination. This expanded role would be incorporated into the agency's supporting legislation.
 - That the Australian government take deliberate action to employ and retain more people with disability within their own respective workforces. This would include:
 - Sector-wide and agency-specific publicity and/or education campaigns led by champions in each agency to raise the issues, articulate the case for reform and clarify why such measures do not detract from the merit principle
 - Sector-wide and agency-specific targets based on workforce data, build performance against these targets into performance management systems and report on progress annually to public service commissions and in annual reports
 - Positions at all levels to be deemed to be 'flexible' unless there are sound documented reasons to prevent it
 - Long-term training of managers and human resources specialists on inclusive employment practices
 - Routine evaluations to assess the impact and effectiveness and make changes as required

63. **Recommendation 5: That the Review team consider the findings and recommendations of the *Willing to Work* report in order to address the barriers to employment of people with a disability in the APS.**

c) Cultural diversity and inclusion

64. The APS has the responsibility to serve the entire Australian community. Within the *Public Service Act 1999*, the APS Values state that the Public Service ‘respects all people, including their rights and their heritage’.⁶³ Moreover, the APS Employment Principles state that the Public Service ‘provides workplaces that are free from discrimination, patronage and favouritism’ and ‘recognises the diversity of the Australian community and fosters diversity in the workplace’.⁶⁴
65. The Commission recognises the important work done by the APSC with respect to diversity and inclusion within the public service. In particular, it notes the current Gender Equality Strategy and the Aboriginal and Torres Strait Islander Employment Strategy, which set a target of 3% Indigenous employment by Commonwealth agencies by 2018.⁶⁵
66. The Commission notes there are currently no targets for broader culturally-diverse employment in the APS, nor are there leadership targets.
67. Employment targets are useful in setting measurable goals to achieve employment diversity across APS agencies within a defined time. However, targets are not a substitute for retention strategies, or for improving accessibility to APS employment opportunities for those from the most disadvantaged backgrounds.
68. For instance, the Commission notes the significant employment gap between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians.⁶⁶ As of 30 June 2017, there were a significant number of APS agencies with under 2% Indigenous employment and in some cases, there were no Indigenous employees.⁶⁷ To address this employment gap, it may be necessary to adopt ‘special measures’ to recruit and retain Aboriginal and Torres Strait Islander peoples and others from disadvantaged racial groups to enable similar access to opportunities as others in Australia.⁶⁸
69. The Commission also notes that cultivating a culturally safe and secure work place is fundamental to the retention, job satisfaction and positive engagement of Aboriginal and Torres Strait Islander employees. Such workplaces have been defined as those where Indigenous peoples feel safe and secure in their identity, culture and community.⁶⁹
70. The Commission notes the broad footprint of APS agencies across Australia, and therefore their ability to recruit Indigenous employees from linguistically and culturally diverse backgrounds. In this regard, the Commission recognises the APSC’s *Aboriginal and Torres Strait Islander cultural capability: A framework for Commonwealth Agencies*, which looks to improve employee skills and agency practices.⁷⁰

71. In addition to improving the cultural capability of all APS employees to enhance cultural safety and security, the APS should invest in the capacity building of Indigenous employees. This will drive more effective and responsive Indigenous specific work across APS agencies. Where possible, Indigenous employees should be supported to lead workplace initiatives and manage Indigenous specific programs, particularly when:
- working in regions where English is a second language
 - consultations are being run with Indigenous peoples and communities
 - supporting Indigenous community-led services and programs
72. There are a range of other complementary employment strategies that should run in parallel to targets and 'special measures'. Such strategies can be grouped under the following key areas:
- **Accessible employment pathways** — target recruitment, direct access from education and training to employment, and enhance the range of employment opportunities
 - **Retention of staff** — Invest in capacity building, increase opportunities for training and skills development and support career progression
 - **Leadership** — Increase representation in leadership and senior roles
 - **Workplace cultural awareness and competency** — provide cultural awareness and capability training, develop inclusive and transparent decision-making processes
73. The Commission refers to its research on cultural diversity and inclusion in organisations, in particular the *Leading for Change* reports.⁷¹ The Commission's research has found a significant under-representation of cultural diversity in the senior leadership of the public service at federal and state levels, as well as across business, parliament and universities.
74. The 2018 report estimates that approximately 24% of the Australian population has a non-European or Indigenous cultural background.⁷² Meanwhile, in 2018, only 1% of federal or state departmental secretaries had a non-European cultural background, and there were none who had an Indigenous cultural background.⁷³
75. Among a cohort of 329 deputy secretaries and equivalents at the federal and state levels, those with non-European backgrounds accounted for 2.4%, and Indigenous backgrounds for 1.8%.⁷⁴ This significant under-representation of cultural diversity calls into question whether the APS is making the most of the talents of Australia's diverse population.
76. While the *Leading for Change* reports focus on cultural diversity in leadership, they are also relevant to broader issues of participation and representation in

organisations. The reports propose actions with respect to leadership, systems and culture, including:

- Senior leadership commitment to cultural diversity
- Measuring cultural diversity in organisations through data collection
- Setting targets for cultural diversity in leadership
- Dealing with bias and discrimination, including through training and education
- Professional development, mentoring and sponsorship⁷⁵

77. The success of these strategies and actions are often dependent on well-devised implementation plans, sustained investment in implementing strategies, and accountability, measuring and monitoring frameworks.

78. **Recommendation 6: That the Review team consider the research findings and proposed strategies put forward by the Australian Human Rights Commission through the *Leading for Change* reports to improve cultural diversity at all levels of the APS.**

79. **Recommendation 7: That the Government establishes targets on, and annually reports on, progress in regards to recruitment and retention of employees from culturally diverse backgrounds, and on the development of culturally competent, safe and secure workplaces.**

d) Gender equality

80. There are a range of gender equality gaps in Australia that affect women's rights to work, to just and favourable conditions of work and to adequate standard of living for themselves and their family.⁷⁶ Many of the barriers present for women in the broader workforce are also present in the APS.

81. For example, on occupational segregation, the Senate Standing Committee on Finance and Public Administration's *Inquiry into gender segregation in the workplace and its impact on women's economic equality* (2017) notes that gender segregation is most evident in Commonwealth agencies responsible for health care, social assistance and education, a trend which is mirrored in state jurisdictions and the public sectors of other OECD nations.⁷⁷

82. Similarly, while women represent more than half of all APS employees, they have not yet achieved parity in leadership positions.⁷⁸ As at 30 June 2017, women occupied the majority of positions in the APS (59%) and a majority of positions below the EL2 level, particularly at the APS4 classification which accounts for 20% of public service numbers and where women occupy almost 70% of positions.⁷⁹ In the executive levels these proportions are reversed, where the number of men is higher than women with the exception of the EL1 level.

83. The proportion of employees working part-time hours is also still dominated by women — the proportion of men working part time is significantly lower than women (4.7% compared with 23.7% for women). Men also represent less than 13% of all employees working part time.⁸⁰
84. The Commission also notes the need for access to adequate paid parental leave and greater flexibility in how and when to take the leave,⁸¹ the absence of superannuation from paid parental leave,⁸² and the resulting gender gap in retirement savings,⁸³ as issues that continue to be relevant for the APS workforce.
85. The Commission acknowledges the APS's commitment to gender equality through *Balancing the Future: Australian Public Service Gender Equality Strategy 2016–2019*, which focuses on changing culture through leadership, flexibility, and innovation.⁸⁴
86. The Commission acknowledges the Australian Government's commitment to achieve gender balance at all leadership levels in the APS and for women to hold 50% of Government board positions, as well as the implementation of a strategy to boost women's workforce participation, with a commitment to reduce the gender participation gap by 25% by 2025.⁸⁵
87. **Recommendation 8: That the Review identify barriers to achieving gender equality across the APS and identify a suite of reform options for consideration by the APSC (on a service-wide basis) or for individual agencies as appropriate. This might include consideration of broader workplace reforms such as:**
- (i) **targeted measures to reduce gender segregation in Australian workplaces⁸⁶**
 - (ii) **targeted strategies to address the gender pay gap and women's economic insecurity in retirement⁸⁷**
 - (iii) **recommendations of the *Supporting Working Parents: Pregnancy and Return to Work National Review Report*⁸⁸**
 - (iv) **a minimum period of government-funded paid parental leave of 26 weeks, and an additional minimum of four weeks paid leave, which may only be taken by the supporting parent**
 - (v) **superannuation entitlements as part of paid parental leave**
 - (vi) **removing the 12 month qualifying period for parental leave, and allow for greater flexibility in how and when to take the paid leave**
 - (vii) **funding future editions of the ABS Time Use study, to collect accurate data concerning the extent and distribution of unpaid work and its intersection with paid work**
 - (viii) **family and domestic violence leave in the National Employment Standards and modern awards**
 - (ix) **family and domestic violence as a protected attribute within existing anti-discrimination legislation and federal employment laws.**

e) The APS as a best practice employer — modelling diversity and inclusion

88. The Commission encourages the APS to be a best practice employer that sets a model for other public services and the private sector. This Review provides an opportunity to develop a comprehensive and integrated approach to diversity and inclusion across a range of attributes, taking into account key factors such as targets, data collection, inclusive leadership, flexible work arrangements, strategies for attraction, retention and promotion of staff.
89. As the above discussion indicates, the Commission has policy experience across a range of different diversity and inclusion related issues, and would be pleased to work further with the APSC on models for integrating diversity and inclusion initiatives.
90. The Commission acknowledges that it is sometimes challenging for agencies when faced with the call for diversity and equality targets and measures across a range of different issues: Aboriginal and Torres Strait Islander peoples, disability, ageing, cultural diversity, gender, sexual orientation, gender identity and intersex status for example. This can sometimes overwhelm people and lead to inaction.
91. The Commission encourages the Review Team to consider mechanisms for streamlining how departments and agencies seek to achieve better diversity across the range of groups listed in this submission.
92. As an example, the Commission has integrated its Reconciliation Action Plan, Disability Action Plan and diversity targets into one overall diversity plan for the organisation. Implementation is led by a Diversity Committee, chaired by the CEO.
93. This may be an appropriate approach for some agencies, especially smaller agencies.
94. There is a role for the APSC to provide guidance across the APS for an overall diversity and inclusion strategy. Consideration should also be given to ongoing monitoring and public reporting mechanisms, and the setting measurable targets with clear timeframes that hold agencies accountable.
95. The Commission notes that small public service agencies could provide appropriate locations for the APSC to work collaboratively to trial such initiatives. Often small agencies lack the seed funding to develop new initiatives and a small pool of resourcing for innovation and technical support could yield significant benefits that could then be expanded across the broader APS.
96. **Recommendation 9: The APSC develop a Diversity and Inclusion Framework for the entire APS, with appropriate data collection, monitoring and reporting mechanisms. The APS should also operate as a clearing house on best practice across the APS and provide guidance to agencies on model policies and approaches.**

97. The Commission also encourages the APS to be a best practice employer in ensuring there are adequate measures in place for the prevention of and response to sexual harassment in the workplace.
98. The Commission's periodic workplace sexual harassment surveys investigate the prevalence, nature and reporting of sexual harassment in Australian workplaces. In particular, the APSC should have regard to the identified strategies in the Commission's 2012 survey report to address sexual harassment in the workplace,⁸⁹ including:
- development and implementation of effective prevention strategies, including community education
 - adoption of measures to improve access to workplace reporting mechanisms
 - equipping a diverse range of workplace actors with the knowledge and skills necessary to provide effective support and advice to individuals who may have experienced, or are experiencing, sexual harassment
 - creation of an enabling environment to encourage and empower bystanders to take immediate and effective action to prevent and reduce the harm of sexual harassment
 - industry-based research on sexual harassment.⁹⁰
99. The Commission is currently undertaking a National Inquiry into sexual harassment in Australian workplaces, which will review and report on the prevalence, nature and reporting of sexual harassment in Australian workplaces, by sector, and will make recommendations to address sexual harassment in Australian workplaces.
100. The Commission encourages the APSC to take steps to ensure that the existing APS workplace sexual harassment policy is consistent with the best practice approach set out in the Commission's guidelines for employers, and have regard to the findings of the National Inquiry into sexual harassment in Australian workplaces, when that report is published.
101. The Commission notes that, alongside the national inquiry, the Commission is conducting industry-specific sexual harassment survey work to identify the prevalence, nature and characteristics of sexual harassment in particular industries as well as approaches to prevention. Consideration should be given to undertaking further prevalence work to identify the extent of sexual harassment in the APS.
102. The Commission acknowledges that the current APS State of the Service survey asks a question on whether the employee experienced harassment or bullying in the workplace in the last 12 months. However, the Commission considers that the findings of experience alone are not sufficient to obtain the full picture of the nature and extent of employee experiences of sexual

harassment in order to identify gaps in existing prevention and response measures.

103. **Recommendation 10: That the APS Review:**

(iii) Ensure there are adequate measures in place for the prevention of and response to sexual harassment in APS workplaces, with consideration of the identified strategies in the Commission’s 2012 survey report, as well as the findings of the National Inquiry into sexual harassment in Australian workplaces, when that report is published.

(iv) Consider undertaking an industry-specific survey to identify the prevalence, nature and reporting of sexual harassment in the APS.

f) *Ensuring the APS is child safe*

104. Since 2017, the National Children’s Commissioner has led the development of the National Principles for Child Safe Organisations.⁹¹ This project has been commissioned by the Australian Government, with input from the states and territories and national sector peak bodies and advocacy groups.

105. The development of the National Principles is a key action under the National Framework for Protecting Australia’s Children 2009–2020 and in response to the Royal Commission into Institutional Responses to Child Sexual Abuse.

106. The National Principles reflect the Royal Commission’s ten standards for creating child safe institutions, with a broader scope that goes beyond sexual abuse to also cover other forms of potential harm to children and young people. The principles will act as a national benchmark for protecting the safety and wellbeing of children and young people in organisational settings.

107. They apply to all organisations of different sizes and across various sectors that engage with or provide services to children and young people. The National Principles are aligned with existing child safe approaches at the state and territory level.

108. Following COAG endorsement, the National Principles are expected to be adopted and implemented across all jurisdictions and sectors, including the APS at the Commonwealth level.

109. In response to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), the Australian Government established the National Office of Child Safety within the Department of Social Services from 1 July 2018. As part of its work, the National Office of Child Safety will oversee implementation of the National Principles.

110. An early priority for the National Office of Child Safety is the further development and implementation of the Commonwealth Child Safety Framework. The framework sets out child safety requirements for

Commonwealth entities to help ensure children engaging with Commonwealth staff are safe from harm.

111. A core component of the Framework is the adoption and implementation of the National Principles. The Australian Government is currently considering how the framework can be applied to Commonwealth funded organisations. The Department of Social Services is leading this work with Department of Finance, in consultation with Department of Prime Minister and Cabinet, and the Attorney-General's Department.
112. **Recommendation 11: That the Review identify meeting the National Child Safety and Wellbeing Standards as a core capability for the APS.**

g) A 'positive duty' for public servants to protect human rights

113. The APS is at the frontline of the Australian Government's interaction with people throughout Australia. Public authorities, such as Centrelink and Medicare, make many day-to-day decisions that impact on people's lives and can affect their human rights.
114. Respect for human rights should therefore be at the core of public service and human rights should be incorporated into public sector practices and procedures.
115. To that end, the Commission recommends the introduction of a positive duty on each member of the APS to act consistently with human rights and to actively promote, respect and protect human rights. The Commission considers that a positive duty would enhance Australia's national framework for protecting human rights and promote a culture of human rights in Australia.

Why have a positive duty?

Positive duty will improve policy development and service provision

116. Positive duties enhance the capacity of policy-making, policy implementation and service delivery to better meet the needs of all members of the community. By requiring human rights considerations to form part of the early stages of policy planning, potentially rights-infringing policies and services can be adapted and made more proportionate.
117. Experience in the UK has shown that '[h]uman rights principles can help decision-makers and others see seemingly intractable problems in a new light'.⁹² This is because active consideration of human rights provides a framework to analyse, understand and ultimately resolve issues that may have at first seemed to be unresolvable.⁹³
118. The Commission considers that compliance with a positive duty would require the APS to:

- a. review existing policies and processes to consider the extent to which existing powers, discretions, policies and practices impact on human rights
 - b. ensure that human rights considerations are brought into the development and drafting of new policies and procedures and also in the implementation of policy and the evaluation of policy
 - c. consider individual needs in developing and implementing policy, reducing the risk of application of blanket policies which can, in particular circumstances, unduly restrict rights
119. In this way, consideration of human rights would positively impact on the lives of people in Australia in their regular, day-to-day contact with government departments and public services. It would strengthen Australia's human rights culture both in government and the general community.

Positive duty will improve law-making and parliamentary scrutiny processes

120. The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) requires each bill, regulation and ordinance introduced into Parliament to be accompanied by a statement of compatibility with 'human rights', defined as the seven core international human rights instruments to which Australia is a party.⁹⁴
121. Any Member of Parliament who proposes a draft law must also include a statement of compatibility in respect of the proposed law, which sets out whether the law is compatible with human rights.⁹⁵ Where proposed legislation engages and limits a human right, the statement of compatibility should provide an assessment of the measures against the criteria for legitimate limitations under international human rights law instruments above.⁹⁶
122. The Parliamentary Joint Committee on Human Rights (PJCHR) analyses bills and legislative instruments introduced into Parliament for compliance with human rights, as set out in the core international human rights treaties to which Australia is a party. It then reports its findings to Parliament.⁹⁷ The PJCHR's starting point in carrying out its assessment is the statement of compatibility.⁹⁸ Since August 2012, the PJCHR has produced over 65 reports to Parliament assessing over 960 bills.⁹⁹
123. There is variable quality in the drafting of statements of compatibility within and across Government departments. In the Commission's view, the quality of statements of compatibility is often poor.¹⁰⁰ The Commission is concerned where statements of compatibility are of poor quality.
- a. First, poor statements of compatibility frustrate the PJCHR's ability to perform its scrutiny function in a timely fashion. The PJCHR is often required to seek further information from the legislative proponent, which can lead to delayed human rights scrutiny and result in important human rights considerations not being raised for debate in Parliament.

- b. Second, poor statements of compatibility indicate that drafters (who are often APS employees) do not have a strong grasp of human rights knowledge or, alternatively, that they do not consider engaging with human rights at the level of complexity required to prepare a high quality statement of compatibility to be a valuable use of their time.
124. A positive duty would encourage legislative proponents to properly consider human rights when approaching the task of drafting a statement of compatibility and improve quality. Increased quality in this regard would allow for more rigorous human rights discussion in Parliament and in the development of legislation. The Commission also considers that an additional duty should apply to APS employees to encourage timely responses to the PJCHR if it seeks further information to perform its scrutiny function.

What form of positive duty?

125. There are numerous ways to introduce a positive duty. In the circumstances of this review, the Commission recommends that a positive duty on the APS be introduced by way of amendment to the APS Code of Conduct.

Anti-Discrimination Acts

126. At the Commonwealth level, there is no positive duty in anti-discrimination legislation. However, in Victoria, a positive duty applies to everyone who already has responsibilities under the *Equal Opportunity Act 2010* (Vic),¹⁰¹ including governments. This requires governments to be proactive about preventing discrimination and ‘to take appropriate steps to prevent discrimination, sexual harassment and victimisation from occurring’.¹⁰²

Human Rights Charters

127. There is no comprehensive federal human rights legislation in Australia. However, Victoria and ACT have introduced human rights legislation for their respective jurisdictions, namely the *Human Rights Act 2004* (ACT) (ACT Charter) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Victorian Charter).¹⁰³ Both Charters require public authorities to:
- act consistently with human rights
 - give proper consideration to relevant human rights in decision-making¹⁰⁴
128. It follows that public authorities are required to exercise their powers in a manner that is, in *substance*, compatible with human rights (a substantive obligation), and must also consider human rights in the *process* of making decisions (a procedural obligation).¹⁰⁵ The substantive obligation is derived from the *Human Rights Act 1998* (UK),¹⁰⁶ but the procedural obligation is unique.
129. Individuals have a right to apply to the Supreme Court to seek a remedy for breach of these obligations.¹⁰⁷ In relation to the procedural obligation, courts

can 'review whether the weight that is given to human rights is appropriate to the seriousness of the potential infringement of those rights',¹⁰⁸ which promotes the executive to ensure meaningful consideration of human rights.¹⁰⁹

Public Service Codes of Conduct

130. The Victorian Public Sector Values, contained in s 7 of the *Public Administration Act 2004* (Vic), places the following obligation on public sector employees. The Code of Conduct for Victorian Public Service Employees expands on this obligation.¹¹⁰

Human Rights – public officials should respect and promote the human rights set out in the Charter of Human Rights and Responsibilities by:

- (i) making decisions and providing advice consistent with human rights; and
- (ii) actively implementing, promoting and supporting human rights.¹¹¹

131. The Commission considers that this obligation strengthens the human rights culture in Victoria. The 2016 Victorian Public Sector Commission People Matter survey, which captured the views of 58,678 staff from 169 public sector organisations, relevantly asked employees about human rights culture.

- 53.9% 'agreed' and 24.4% 'strongly agreed' with the statement that 'my organisation encourages employees to act in ways that are consistent with human rights'
- 46% 'agreed' and 32.7% 'strongly agreed' with the statement that 'in my working group, human rights are valued'
- 44.7% 'agreed' and 15.6% 'strongly agreed' with the statement that 'I understand how the Charter of Human Rights and Responsibilities applies to my work'
- 43.1% 'agreed' and 14.6% 'strongly agreed' with the statement that 'I understand how the Charter of Human Rights and Responsibilities affects me as an employee'¹¹²

132. Although there is room to improve these figures, the Commission considers that these positive results are, at least in part, attributable to the positive duty in the VPS Code of Conduct. The Victorian Equal Opportunity & Human Rights Commission has noted these results in its 2016 report on the operation of the Charter of Human Rights and Responsibilities, 'Growing a human rights culture'. The Commission draws attention to that report.¹¹³

133. At the Federal level, the Commission notes that the responsibility of public servants to respect 'all people, including their rights and their heritage' is articulated in the APS Values.¹¹⁴ In relation to that responsibility, paragraph 2.2.13 in relation to the APS Value of 'Respect' states that:

Employees should recognise the importance of human rights and understand Australia's human rights obligations, and comply with all relevant anti-discrimination laws. They should recognise and foster diversity and be open to ideas in policy development, implementation, program management and regulation.¹¹⁵

134. This is not a positive duty. The Commission notes that the APS State of the Service survey does not ask questions about human rights and it is unclear the extent to which human rights are understood across the APS.
135. In the absence of federal human rights legislation, the most effective way to increase 'rights-mindedness' and promote a human rights culture in the APS is by way of amendment of the APS Code of Conduct. In that regard, the Commission recommends that the APS Code of Conduct be amended to provide a positive duty on APS employees to act consistently with human rights and to actively promote, respect and protect human rights.
136. **Recommendation 12: That the APS Code of Conduct in the *Public Service Act 1999 (Cth)* be amended to introduce a positive duty on APS employees to:**

- **act consistently with human rights, and**
- **actively promote, respect and protect human rights,**

where 'human rights' is defined in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*.

Public sector human rights education

137. The Commission considers that the introduction of a positive duty on APS employees should be accompanied by a commitment to human rights education. Effective human rights education will provide APS officers with the requisite knowledge and skills to adequately consider human rights.
138. In 2009, the Australian Government commissioned a detailed consultation about human rights through the National Human Rights Consultation. The consultation was the largest human rights inquiry in Australian history and was conducted by an independent Committee led by Father Frank Brennan SJ. The Committee recommended that education be the highest priority for improving and promoting human rights in Australia.¹¹⁶ In particular, it noted strong public support for better education of public officials who exercise powers of investigation, arrest and detention and perform other duties that are likely to adversely affect the rights and freedoms of ordinary Australians.¹¹⁷

h) Artificial Intelligence and Big Data

139. New technology is transforming the Australian economy and society. The pace of technological change is unprecedented. The rapid emergence of new technologies pose both opportunities for and challenges to the protection and promotion of human rights. The Commission is undertaking a major project on

human rights and technology, and has recently released an Issues Paper that provides important background information on these issues.¹¹⁸

140. There is an urgent need for cross-sectoral conversation on the intersection of human rights and technology. It is essential that government, industry and civil society create and adopt a framework that will help ensure technology serves, rather than undermines, the Australian community.
141. The Terms of Reference indicate that the following are all potentially within the scope of the review:
 - The role of the APS in policy development in relation to new technologies
 - The role of the APS in implementing policy in relation to new technologies. The APS will, for example, have a critical role in administering any current or future regulatory regimes
 - The use of new technologies by the APS in performing its functions
 - The role of the APS through government procurement to stimulate national innovation
142. One of the most revolutionary technologies which is of relevance to all of the matters above is artificial intelligence (AI). The Innovation and Science Australia report, *Australia 2030 Prosperity through Innovation* (the Australia 2030 Report), which is cited in the Terms of Reference, includes a recommendation that the development of AI and machine learning should be prioritised 'to ensure the growth of the cyber-physical economy'.¹¹⁹
143. AI is the theory and development of computer systems that can do tasks that normally require human intelligence. This includes decision making, visual perception, speech recognition, learning and problem solving.¹²⁰
144. Innovation and technology can play a key role in challenging traditional ways of work and remove barriers to equality and participation for people with disability in the workplace. Machine learning, artificial intelligence and human computer interaction are examples of opportunities that have challenged traditional ways of working and enabled accessibility.
145. For example, researchers at IMB are using a combination of machine learning, cognitive technologies and natural language-processing to make a tool called Content Clarifier to support people with cognitive or intellectual disabilities. It can replace figures of speech such as 'raining cats and dogs' with plainer terms, and trim or break up lengthy sentences with multiple clauses and indirect language. Accessible technology for people with disability can both drive the use of technology throughout the APS, and lead to more inclusive workplace within the APS.
146. Another interrelated field is big data. 'Big data' refers to the diverse sets of information produced in large volumes and processed at high speeds using AI. Data collected is analysed to understand trends and make predictions.

Since humans lack the ability to manually process and analyse millions of data-sets quickly and efficiently, AI can fill this gap by automatically processing the information and giving it meaning.¹²¹

147. AI and big data have the potential to promote a number of human rights. For instance, the use of AI in medical diagnosis is significantly improving the accuracy of diagnosis and treatment of disease. Genome sequencing software and machine learning from genetic data sets, when integrated with clinical information, present a new frontier in how we approach public health. They can therefore serve to protect and promote the right to the highest attainable standard of health and the right to life.¹²²
148. On the other hand, these technologies also have the potential to have a significant adverse effect on human rights. For example:
- Computerised, and computer-informed, decision making may be affected by bias. This bias may have its origin in systemic bias embedded in the data sets used to inform that decision making. It may also result from unintended or unconscious bias derived from the actions or values of people creating the technology, and in the limitations of the data used to train it.¹²³

This bias may be difficult, or impossible to detect, because the algorithms employed are proprietary and confidential, or because, in some cases, the methods by which AI systems arrive at decisions may not be discernible even to the creators of those systems.

Biased decision making is likely to interfere with the right to non-discrimination. Bad decision making can interfere with a wide range of other human rights — including rights to privacy, equality and non-discrimination, a fair trial and procedural fairness, and the right not to be arbitrarily detained.¹²⁴

AI informed decision making is currently utilised across a range of public services, including intelligence, service delivery, law enforcement and public safety. Computers may be used in decision making by the APS under a number of statutes – for instance, certain decisions relating to social security benefits.¹²⁵ Use of computerised, or computer-informed, decision making, continues to increase.¹²⁶

- Use of large data sets may involve the collection, collation and processing of large amounts of personal information. This can have a very significant impact on the right to privacy.¹²⁷
- Other applications of AI can also have very significant impacts on the right to privacy. For instance, facial recognition technology, combined with large databases of photographs and other personal information, potentially allow for mass, real-time public surveillance on a scale never seen before. The Commission has expressed concern about the potential impact on privacy of this technology in relation to the government's Identity-matching

Services Bill 2018, which at the time of writing is the subject of inquiry by the Parliamentary Joint Committee on Intelligence and Security.¹²⁸

The APS has access to very large amounts of data, including sensitive personal information. The Australia 2030 Report has urged the government to encourage the appropriate use of government-held data to foster innovation and growth.¹²⁹

149. The potential benefits, and the potential negative effects, on human rights of emerging technologies, including AI, have not been fully investigated. For that reason, the Commission has launched a major project to explore these issues. The project will include consideration of what forms of regulation might foster the development and deployment of new technologies in a way that protects and advances human rights.¹³⁰ The Commission will work closely with both government and industry in this project.
150. Given the profound potential impact of AI on human rights, it is vital that all appropriate steps are taken to ensure that human rights are protected from illegitimate interference by AI systems developed or deployed by the APS, while ensuring that AI these systems are used to promote the human rights of all those affected by them.
151. The APS is also uniquely placed to foster responsible development and use of AI technologies in the private sector, both by helping to develop and implement appropriate regulatory frameworks, and by fostering responsible development through a robust and rights-protective procurement framework.
152. The *Australia 2030: Prosperity through Innovation* Report highlights the importance of government adoption of new technologies and identifies how government procurement, for example, could be used as a strategic lever to stimulate national innovation.
153. The Commission agrees that the Government's adoption of technology will enhance and support processes, services and outcomes for the public and APS staff. Such innovations and technologies must be adequately trialled and evaluated to ensure that they enhance and promote equality and access to APS services for all members the public.
154. The Government's strategic opportunities to utilise technology for growth and innovation in government include: implementing flexible regulatory environments to support innovation; further promotion and utilisation of open data; government procurement to be a lever for national innovation; and government service delivery improvement through process redesign and digital technology. These opportunities also pose several risks concerning potential violations of human rights. This is particularly the case where big data and decision making intersect, which raise implications for discrimination, bias and privacy.
155. The Commission's project activities include consulting on innovative solutions to contribute to the creation of flexible and responsive frameworks for

regulating innovation that adheres to Australia's obligations under international human rights law.

156. This Review aims to examine how the APS may improve citizens' experience of government and deliver fair outcomes for them. It is essential that any APS adoption of AI-informed decision making be adequately assessed and have in-built safeguards to protect human rights. APS processes and services must not undermine public trust in neither the process (for example, a privately-owned algorithm) nor outcome (for example, the Centrelink Robo-debt scheme) of any AI-informed decision making.
157. The APS has an opportunity to set benchmarks and best practices in how technology is developed and deployed in processes and services to the public, to ensure that they are compliant with Australia's obligations under international human rights law, and promote human rights in our domestic setting.
158. **Recommendation 13: That the Review Panel identify mechanisms to ensure the use of artificial intelligence and other new technologies in decision making across the APS is consistent with human rights and supported by measures to build the capability of the APS workforce.**

Part 2: Improving the employment experience in the APS

159. The employment experience for many across the APS has become fragmented, inequitable and dependent on factors often beyond individual agency's control.
160. Decreasing budgets, centralised controls and reduced independent decision making by Agency Heads, particularly for small agencies, has contributed to this experience and reduced capacity to produce a career service where mobility can broaden skills and experience and build overall capability.
161. The review creates an opportunity to address issues that have evolved over time and consider where change may be applied to correct deficiencies and drive a better employment experience with a flow-on benefit in employee engagement and retention.
162. Areas that would benefit from greater scrutiny during the course of the review include: enabling flexible access to work, enabling enterprise level control of work and creating a capable, mobile workforce.
163. Consideration should also be given to innovation grants and improved availability of technical assistance to small agencies so that they can trial new initiatives with the goal of wider implementation if successful.

a) Enabling flexible access to work

164. **Improved technology to enable virtual offices:** The capacity of the APS workforce would increase exponentially if the workforce was technologically connected from remote locations or central regional workhubs creating a

virtual workforce. This would reduce commuter traffic in peak periods, provide incentive for workforces to be located outside major centres, aid the decentralisation argument and ease the facilities management costs of operating large office space.

165. Greater support for agencies to consider new ways of working would include support for technology upgrades, consideration of workhub sites and creating a new narrative around virtual working. IP Australia has been operating an effective remote workforce for 5 years and is a trailblazer in this area.
166. Flexibility creates access for a more diverse workforce. By using technology and remote working arrangements, the APS could open up many more employment opportunities for those who find access to public transport and standard office environments difficult or unsafe.
167. Consistent with successive APSC disability employment strategies, greater technological capacity and adjustment can create a more diverse workforce reflective of the Australian community and with first-hand knowledge about issues that affect service delivery and other APS operations. A virtual working environment could make some disabilities invisible and thereby irrelevant in standard working environments.
168. **Recommendation 14: That the APS introduce a virtual working policy, with innovation grants for small agencies for technological upgrades and support to implement this. This should link to APS policies on disability recruitment and retention.**

b) Attention to attraction and retention of ICT capability across the APS

169. The capacity to harness new technology and more creative innovative solutions requires ICT capacity that is well developed, consistent, cost effective and fit for the 22nd century.
170. Successive budget cuts have made the APS uncompetitive in the ICT employment market place. Poor development resourcing and high risk aversion on technological change has reduced APS in-house capacity and exposed the APS to greater on-costs and information security risk. A more flexible approach to where resources operate may in turn create a more talented and diverse workforce by matching or exceeding private sector offerings.
171. **Recommendation 15: Consideration be given to new mechanisms for ICT sharing across the APS and access to innovation support to build excellence in use of new technologies.**

c) Enabling enterprise level control of work

172. **Pay inequality across the APS:** A long standing and problematic equity issue across the APS is the inadequate attention to salary disparity for work of equal value. The Commission is aware of substantial pay differentials¹³¹ and while these have not appeared to have grown, due to centralised salary

increase controls, there is no apparent strategy for addressing or resolving this disparity.

173. Salary differentials in the tens of thousands of dollars are unacceptable for public servants who are delivering work of equal value. Such pay differentials act as a powerful disincentive to the notion of a career service as no employee will move to take on a job of lesser notional value and small agencies in particular now face the growing trend of having to pay incoming employees from other APS agencies at rates above their own employees simply to attract this talent. This is unsustainable and inequitable.
174. **Controlled industrial arrangements:** For many years, centralised wage and industrial policy have constrained the capacity of individual agencies to genuinely negotiate industrial arrangements at an enterprise level as first determined by the move away from a centralised APS wide enterprise agreement environment. The APS needs to consider what the intended outcome is and move towards that end in a more coherent fashion.
175. If centralised control of wages policy and industrial conditions is desired then a move back to a centralised, APS wide enterprise agreement could create efficiencies, particularly for many small agencies who are not resourced with the staff or expertise to navigate these arrangements. If, however, the original intention prevails, then the centralised controls must be removed to enable agencies to determine what arrangements best suit agency specific circumstances. Currently, APS agencies are in a 'no man's land' of having the worst of both options — no control and no option to be creative or enterprising within their own environments.
176. **Controlled workforces and consequences:** Similarly, centralised controls on portfolio employee numbers and SES position caps reinforce that agencies are not trusted to manage their own workforces in accordance with agency needs. This erodes Agency Head capacity to determine what works efficiently and effectively for meeting their mandate to government. Further, arbitrary limits on numbers and position levels leads some agencies to create an underclass of employment arrangements designed to evade the watch of the APSC or Department of Finance and in doing so raise questions around integrity and transparency.
177. **Recommendation 16: The Review focus on the detrimental impact of enterprise level control of work, particular on small agencies. In particular, the Review should identify mechanisms for addressing pay disparities across agencies.**
178. **Commitment to a career service:** The APS has framed its workforce as a 'career service' where movement between agencies is encouraged and desirable in order to work collaboratively and productively for a common purpose.
179. The reality has been that there are few incentives to do so. As noted above, there are structural disincentives of long standing in terms of salary parity, employees will not move between agencies unless there is financial incentive

to do so and this significantly impacts on small agencies more than large agencies.

180. It is difficult for non-Canberra agencies to access training opportunities that are mainly offered in Canberra. Career development programs which were administered by the APSC have dried up and the few opportunities that now arise are usually brokered within Canberra based agency networks.
181. There is no incentive for non-Canberra based agencies to participate, and in fact, there are significant costs in terms of supports, limits on participation for employees with family responsibilities, mobility limitations and other personal commitment constraints. There is rarely any guaranteed return on investment and talent that moves is often talent leached from the sponsoring agency with no corresponding benefit.
182. **Future role of the APSC:** For many small agencies in particular, the role of the APSC has dramatically diminished. Once a centralised policy advice hub, a high calibre information source and a regionally resourced learning and support hub for non-Canberra based agencies, the current iteration is not providing a timely, responsive or useful service.
183. The APSC presence in Sydney, for example, offers no professional networking forums, no local learning and development and no sense of future.
184. The APSC services that emanate from Canberra have been on a user-pays trajectory for many years, gradually excising small agencies as they lose the capacity to pay and participate.
185. The best use of the APSC is to reset its focus on being a major Learning Centre for APS employment and future workforce capability. This role should prioritise the inclusion of small agency participation even if that needs to be subsidised by the larger players in the APS market.
186. **Recommendation 17: If it is to be retained, the APSC should be refocused as a centre of excellence for the APS focused on building APS workforce capability and technological innovation. Consideration must be given to supporting small agencies to participate and receive the benefits of innovation, noting that the current cost recovery model has locked small agencies out of gaining these benefits.**

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The Commission supported the Inquiry Report's recommendation that superannuation entitlements be provided to mothers, subject to certain conditions (Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report No. 47 (2009), 2.12. At <http://www.pc.gov.au/inquiries/completed/parental-support/report>.) (viewed 30 May 2018).

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- a) Actions supporting the reduction of gender segregation in Australian workplaces should be included as a priority in the forthcoming 2018-19 Implementation Plan for the Government Women's Workforce Strategy.
- b) The Commonwealth Government should develop and commit to a strategy for becoming a model 'industry' in reducing gender segregation:
 - i. as an employer (roles and occupations, management levels, flexibility, parental leave arrangements/inducements for men etc)
 - ii. in policy and program design/development, and
 - iii. when contracting (impose contractual terms requiring demonstrated efforts to improve gender balance to 40-40-20 in organisations engaged by Government.)
- c) The Government should fund a quantitative and qualitative study into the features of male and female-dominated workplaces industries and barriers to employees entering non-traditional fields. The study should build on the data held by the Workplace Gender Equality Agency, and of the relevant inquiries and reports previously conducted by the AHRC.
- d) Based on this study, a report should be prepared for Parliament, including:
 - i. proposed guidelines on the use of special measures to reduce gender segregation (i.e. using special measures to support women in male dominated and men in female dominated workplaces, including in non-paid caring roles), and
 - ii. Options for facilitating relationships between employers and women's networks to workshop solutions to segregation in male dominated industries, and similar with male workers in female dominated industries.
- e) Research should be conducted on whether there is higher prevalence of sexual harassment/sex discrimination in gender segregated workplaces, and if so, recommendations for change
- a. Noting that, as a first step, the Commission's 2017 workplace sexual harassment prevalence survey, to be conducted mid-year, can examine this issue.
- f) The Department of Foreign Affairs and Trade should partner with the Commission to consult internationally on special measures to reduce workplace gender segregation, focusing on States comparable to Australia in this context.

⁸⁷ The Commission draws the Committee's attention to recommendations made in the following submissions and reports, insofar as they remain relevant to addressing women's economic security, including in retirement: [Submission to the Productivity Commission on the Inquiry into Paid Maternity, Paternity and Parental Leave](#) (24 November 2008); [Investing in care: Recognising and valuing those who care](#) (2013); [Supporting Working Parents: Pregnancy and Return to Work National Review Report](#) (2014), and the relevant recommendations directed at government; [Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#) (2015); [Submission to the Senate inquiry into the economic security for women in retirement](#)

(2015); [Submission to the Finance and Public Administration References Committee inquiry into gender segregation in the workplace and its impact on women's economic equality](#) (2017).

The Commission also recommends the following reforms to the superannuation system:

- a) Removal of the \$450 superannuation guarantee threshold,
- b) Payment of a superannuation contribution on parental leave, family care leave and workers compensation,
- c) The Low Income Superannuation Contribution be extended permanently,
- d) The payment of superannuation on carer payments is costed with a view to implementation, and
- e) Encourage employers to implement initiatives aimed at reducing the gap in retirement savings.

⁸⁸ The relevant recommendations are:

- (a) Amend the *Sex Discrimination Act 1984* (Cth) (SDA) to:
 - extend the discrimination ground of 'family responsibilities' under the SDA to include indirect discrimination, and
 - include a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.
- (b) Strengthen the 'right to request' provisions under s 65 of the *Fair Work Act 2009* (Cth) (FWA) by:
 - removing the qualification requirements in section 65(2)(a) of the FWA (i.e. the requirements for 12 months continuous service)
 - introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements
 - establishing a procedural appeals process through the Fair Work Commission for decisions related to the right to request flexible working arrangements to ensure processes set out in the FWA have been complied with.
- (c) Clarify the provisions under the National Employment Standards of FWA to:
 - allow employees to use existing personal/carer leave entitlements under s97 of the FWA to attend prenatal appointments (including IVF)
 - allow employee breaks from work for the purposes of breastfeeding or expressing.
- (d) Increase understanding of legal requirements to not discriminate on the basis of pregnancy and return to work including by:
 - developing guidance material for employers in relation to their legal obligations and in relation to the work, health and safety needs or requirements of pregnant employees, employees undergoing IVF and employees returning to work after miscarriage or childbirth (including employees who are breastfeeding). This guidance material should be developed with a view to introducing a 'code of practice' to have effect under Work Health and Safety laws in every jurisdiction.
- (e) Allocate funding to conduct a regular national prevalence survey on discrimination related to pregnancy, parental leave and return to work after parental leave (every four years)
- (f) Conduct further research into identified gaps, such as the most effective mechanisms for reducing the vulnerability of pregnant women, employees on parental leave and working parents to redundancy and job loss.

⁸⁹ Australian Human Rights Commission, *Working without fear: Results of the sexual harassment national telephone survey* (2012), 5. At:

https://www.humanrights.gov.au/sites/default/files/document/publication/SHSR_2012%20Community%20Guide%20Web%20Version%20Final.pdf (viewed 26 July 2018).

⁹⁰ See further: Australian Human Rights Commission, *Ending workplace sexual harassment: A resource for small, medium and large employers* (May 2014). At: <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/ending-workplace-sexual-harassment-resource-small-medium> (viewed 26 July 2018).

⁹¹ The draft National Principles for Child Safe Organisations are available on the Australian Human Rights Commission website at

<https://www.humanrights.gov.au/sites/default/files/National%20Principles%20for%20Child%20Safe%20Organisations.pdf> (viewed 27 June 2018).

⁹² The British Institute of Human Rights, *The Human Rights Act: Changing Lives* (2008), p 5. At <http://www.bih.org.uk/sites/default/files/The%20Human%20Rights%20Act%20-%20Changing%20Lives.pdf> (viewed 7 June 2009).

⁹³ Victorian Equal Opportunity and Human Rights Commission, *The 2007 Report on the Operation of the Charter of Human Rights and Responsibilities: First steps forward* (2008), p 6. At <http://www.humanrightscommission.vic.gov.au/publications/annual%20reports/2008charterreport.asp> (viewed 4 June 2009).

⁹⁴ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), ss 3, 8, 9. At <https://www.legislation.gov.au/Details/C2011A00186> (viewed 11 September 2017). The relevant instruments are: International Convention on the Elimination of all Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; and Convention on the Rights of Persons with Disabilities.

⁹⁵ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) s 8-9.

⁹⁶ See Parliamentary Joint Committee on Human Rights, *Guidance Note 1: Drafting statements of compatibility* (2014). At

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources (viewed 8 February 2017).

⁹⁷ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), s 7.

⁹⁸ Parliamentary Joint Committee on Human Rights, *Annual Report 2015–16* (5 December 2017) [2.7]–

[2.9]. At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/Annual_Reports/Annual_Report_2015-16 (viewed 1 February 2017).

⁹⁹ Since the beginning of 2016, the PJCHR has reviewed over 74 other legislative instruments. Parliamentary Joint Committee on Human Rights, *Index of Bills and Legislative Instruments*. At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Index_of_bills_and_instruments (viewed 11 September 2017).

¹⁰⁰ The Commission notes that the United Nations Human Rights Committee expressed a similar concern in 2017 in its concluding observations on Australia's compliance with the International Covenant on Civil and Political Rights as follows:

While appreciating the establishment of the Parliamentary Joint Committee on Human Rights to scrutinize bills with a view to ensuring their compatibility with international human rights treaties, including the Covenant, the Committee is concerned that bills are sometimes passed into law before the conclusion of review by the Parliamentary Joint Committee, and about reports questioning the quality of some statements of compatibility, notwithstanding the guidelines issued by the Attorney-General and the Parliamentary Joint Committee (art. 2).

Source: UN Human Rights Committee, *Concluding observations: Australia*, UN Doc: CCPR/C/AUS/CO/61 December 2017.

¹⁰¹ Victorian Equal Opportunity & Human Rights Commission, *Positive duty*. At <https://www.humanrightscommission.vic.gov.au/the-workplace/employer-responsibilities/positive-duty#who-does-the-positive-duty-apply-to> (viewed 5 July 2018). The positive duty also applies to employers and people who provide accommodation, education, and goods and services. It further applies to clubs and sporting organisations, and to people in business and the community sector.

¹⁰² Victorian Equal Opportunity & Human Rights Commission, *Positive duty*. At <https://www.humanrightscommission.vic.gov.au/the-workplace/employer-responsibilities/positive-duty#who-does-the-positive-duty-apply-to> (viewed 5 July 2018). The positive duty also applies to employers and people who provide accommodation, education, and goods and services. It further applies to clubs and sporting organisations, and to people in business and the community sector.

¹⁰³ See *Human Rights Act 2004* (ACT) (ACT Charter); *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Victorian Charter).

¹⁰⁴ ACT Charter s 40B(1); Victorian Charter s 38(1).

¹⁰⁵ George Williams, 'The Distinctive Features of Australia's Human Rights Charters' in Matthew Groves and Colin Campbell (eds), *Australian Charters of Rights A Decade On* (Federation Press, 2017), 45.

¹⁰⁶ *Human Rights Act 1998* (UK), s 6(1). Section 6 of the UK Act says it is unlawful for a public authority to act in a way which is incompatible with a right under the European Convention on Human Rights. This obligation does not apply if under the law the public authority could not have acted differently.

¹⁰⁷ ACT Charter, s 40C(2)(b).

¹⁰⁸ C Evans and S Evans, *Australian Bills of Rights: The Law of the Victorian Charter and ACT Human Rights Act* (LexisNexis, 2008), 71. See also George Williams, 'The Distinctive Features of Australia's Human Rights Charters' in Matthew Groves and Colin Campbell (eds), *Australian Charters of Rights A Decade On* (Federation Press, 2017), 33.

¹⁰⁹ George Williams, 'The Distinctive Features of Australia's Human Rights Charters' in Matthew Groves and Colin Campbell (eds), *Australian Charters of Rights A Decade On* (Federation Press, 2017), 33.

- ¹¹⁰ Victorian Public Service Commission, *Code of Conduct for Victorian Public Sector Employees* (2015), 26–27. At <https://vpsc.vic.gov.au/resources/code-of-conduct-for-employees/> (viewed 6 July 2018).
- ¹¹¹ *Public Administration Act 2004* (Vic), s 7. See also Victorian Public Service Commission, *Code of Conduct for Victorian Public Sector Employees* (2015), 26–27. At <https://vpsc.vic.gov.au/resources/code-of-conduct-for-employees/> (viewed 6 July 2018).
- ¹¹² Victorian Equal Opportunity & Human Rights Commission, ‘Growing a human rights culture – 2016 report on the operation of the Charter of Human Rights and Responsibilities’ (2016) 18–20.
- ¹¹³ Victorian Equal Opportunity & Human Rights Commission, ‘Growing a human rights culture – 2016 report on the operation of the Charter of Human Rights and Responsibilities’ (2016).
- ¹¹⁴ Australian Government, ‘APS Values’.
- ¹¹⁵ Australian Government, ‘APS Values and Code of Conduct in practice – August 2017’ (2017) 19.
- ¹¹⁶ National Human Rights Consultation Committee, *National Report* (2009), 353.
- ¹¹⁷ National Human Rights Consultation Committee, *National Report* (2009), 354.
- ¹¹⁸ The Commission’s Issues Paper is available at: <https://tech.humanrights.gov.au/consultation>.
- ¹¹⁹ Innovation and Science Australia, *Australia 2030: Prosperity through Innovation* (2017), 52 (Recommendation 8), at <https://industry.gov.au/Innovation-and-Science-Australia/Documents/Australia-2030-Prosperity-through-Innovation-Full-Report.pdf> (viewed 5 July 2018).
- ¹²⁰ Oxford Dictionary, *Definition of artificial intelligence in English* (22 June 2018). At https://en.oxforddictionaries.com/definition/artificial_intelligence (viewed 22 June 2018).
- ¹²¹ Editorial Team, *The Intersection of AI and Big Data* (25 October 2017) Inside Big Data. At <https://insidebigdata.com/2017/10/25/intersection-ai-big-data/> (viewed 28 June 2018).
- ¹²² *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976) art 6; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12.
- ¹²³ See further: Australian Human Rights Commission, *Human rights and technology issues paper*, AHRC Sydney 2018, pp 28-31.
- ¹²⁴ Julia Angwin, Jeff Larson, Surya Mattu, Lauren Kirchner, *Machine Bias* (23 May 2016) Propublica. At <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> (view 5 July 2018).
- ¹²⁵ *Social Security (Administration) Act 1999* (Cth), s 6A.
- ¹²⁶ See, for example, the Australian Passports Amendment (Identity-matching Services) Bill 2018, Sch 1, Item 3, which would insert a proposed s 56A in the *Australian Passports Act 2005* (Cth).
- ¹²⁷ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976) art 17.
- ¹²⁸ The Commission’s submission is available at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/IMSBill/Submissions (viewed 5 July 2018).
- ¹²⁹ Innovation and Science Australia, *Australia 2030: Prosperity through Innovation* (2017), 63 (Recommendation 8), at <https://industry.gov.au/Innovation-and-Science-Australia/Documents/Australia-2030-Prosperity-through-Innovation-Full-Report.pdf> (viewed 5 July 2018).
- ¹³⁰ More information about the project can be found on the Commission website at <https://tech.humanrights.gov.au/> (viewed 5 July 2018).
- ¹³¹ <https://www.apsc.gov.au/chapter-3-base-salary>.