



Australian Government

National Anti-Corruption Commission

National Anti-Corruption Commission (National Anti-Corruption Commission Act 2022) Delegation 2023

I, the Hon. Paul Brereton AM RFD SC, National Anti-Corruption Commissioner (the Commissioner), make the following delegations under the *National Anti-Corruption Commission Act 2022* (Cth) (the Act).

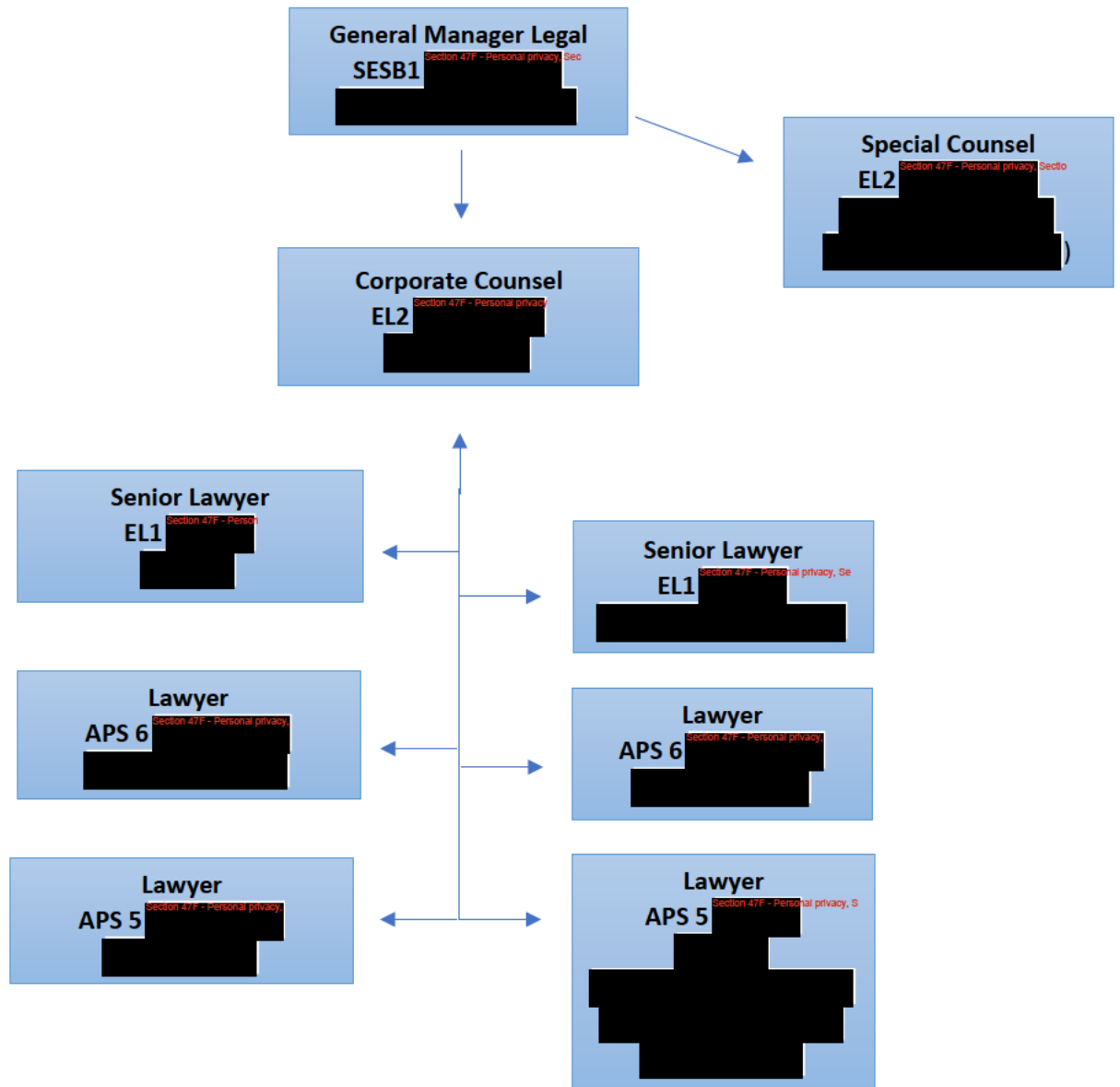
- (1) Under subsection 276(1) of the Act, I delegate all of my functions, powers and duties under the Act, other than my functions, powers and duties under section 254 of the Act (appointment of CEO), to:
 - a) each National Anti-Corruption Deputy Commissioner, and
 - b) each staff member of the National Anti-Corruption Commission holding or acting in a position at the SES classification level, provided that, in accordance with subsection 276(3) of the Act, the delegation in paragraph (1)(b) does not apply to:
 - (i) a function, power or duty under Subdivisions A to D of Division 3 (hearings) of Part 7 of the Act, including those Subdivisions as applied by section 163 of the Act; or
 - (ii) a function, power or duty under Division 7 (search powers) of Part 7 of the Act, including that Division as applied by section 163 of the Act; or
 - (iii) a function, power or duty under Part 8 (reporting on corruption investigations) of the Act; or
 - (iv) a function, power or duty under Part 9 (public inquiries) of the Act, other than the provisions of Part 7 as applied by section 163 and not covered by subparagraph (i) or (ii); or
 - (v) a function, power or duty under section 230 (disclosure by authorised discloser in public interest) of the Act; or
 - (vi) a function, power or duty under section 276 of the Act; or
 - (vii) in relation to making an arrangement mentioned in subsection 239(1) (arrangements for dealing with intelligence information) of the Act.
- (2) Under subsection 276(1)(a) of the Act, I delegate my powers under subsection 110(2) of the Act to each staff member of the National Anti-Corruption Commission holding or acting in a position at the Executive Level 2 classification level.
- (3) Under subsection 276(2)(b) of the Act, I delegate my power under subsection 41(6) of the Act to each staff member of the National Anti-Corruption Commission in the Intake and Triage Team or the Assessments Team from time to time holding or acting in a position at the Executive Level 2 classification level.

Dated 03/07/2023

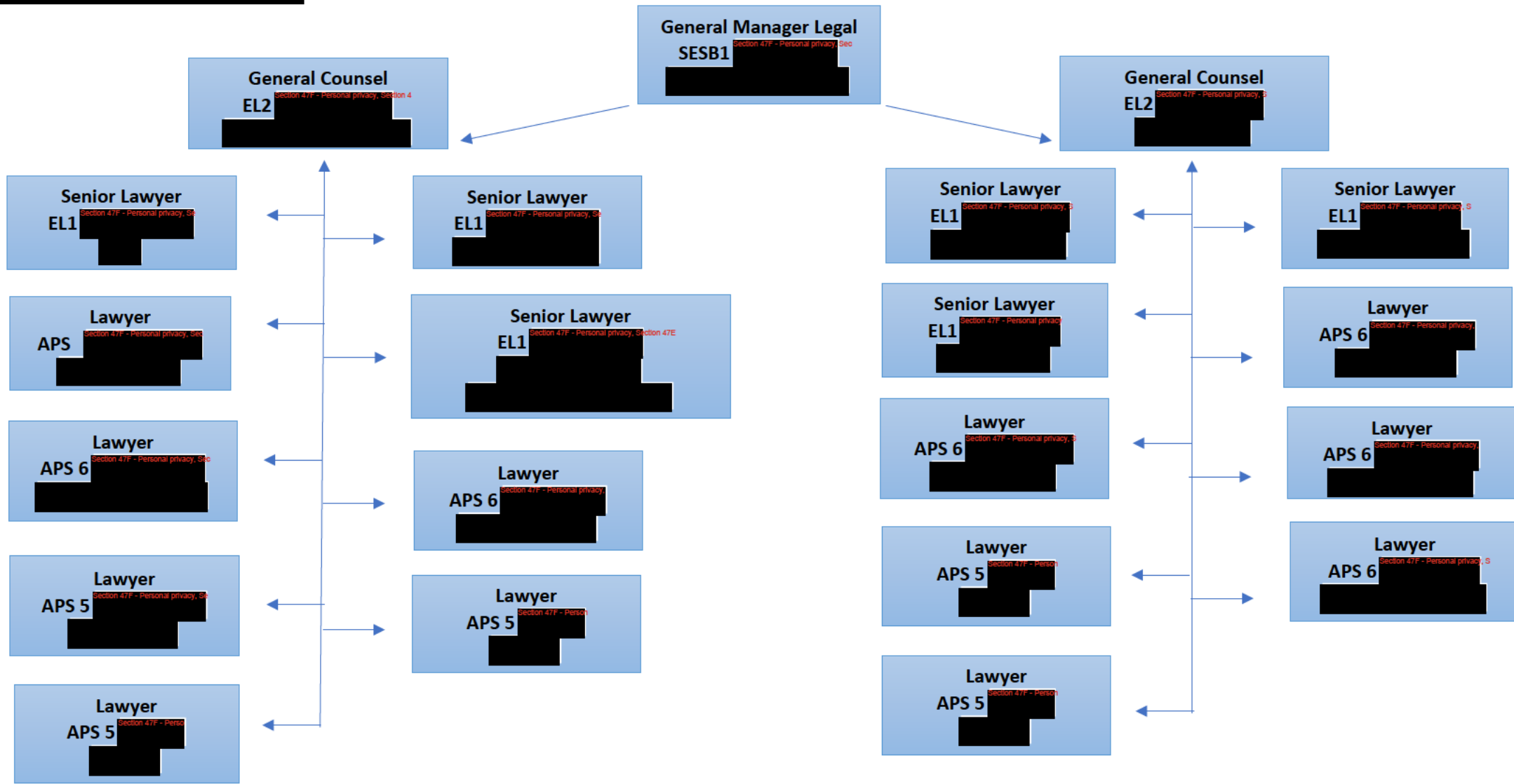
Section 47F - Personal privacy

The Hon. Paul Brereton AM RFD SC
National Anti-Corruption Commissioner

Legal Branch
Corporate Legal Services Team



Legal Branch
Operations Legal Services Team





National Anti-Corruption Commission

22 April 2024

Section 47F - Personal privacy, Section 37 - Documents affecting

Section 47F - Personal privacy

By email: Section 47F - Personal privacy

Dear Section 47F - Personal privacy, SA

Referral by the Royal Commission into the Robodebt Scheme

As you are aware, the National Anti-Corruption Commission (Commission) received a referral from the Royal Commission into the Robodebt Scheme (Robodebt Royal Commission) on 6 July 2023 pursuant to section 6P(2B) of the *Royal Commissions Act 1902* (Cth), to consider whether you may have engaged in corrupt conduct within the meaning of section 8 of the *National Anti-Corruption Commission Act 2022* (Cth) (the Act).

The Commission has considered the referral from the Robodebt Royal Commission in accordance with its usual processes. This consideration has included reviewing the extensive evidentiary material that was provided by the Robodebt Royal Commission.

Following the conclusion of these processes, the Commission has concluded that it will not commence a corruption investigation into the matters raised in the referral from the Robodebt Royal Commission. Rather, the Commission will focus, through its corruption prevention, education and investigation functions, on the integrity issues raised in the report, particularly in relation to ethical decision making.

Given the importance of the findings of the Robodebt Royal Commission to the public, and that it is already in the public domain that it made several referrals to the Commission, it is proposed that the statement at **Attachment A** about the referrals from the Robodebt Royal Commission, is released pursuant to section 48 of the Act.

Please advise within 14 days whether you have any concerns with the proposed public statement, and the basis for any such concerns. Please send your advice to [REDACTED] for the attention of the General Manager, Legal.

Yours sincerely

Section 47F - Personal privacy

Nicole Rose PSM
Deputy Commissioner

ATTACHMENT A

Draft Public Statement: National Anti-Corruption Commission decides not to pursue Robodebt referrals

On 6 July 2023, the National Anti-Corruption Commission (Commission) received referrals concerning six public officials from the Royal Commission into the Robodebt Scheme (Robodebt Royal Commission) pursuant to section 6P(2B) of the *Royal Commissions Act 1902* (Cth).

The Commission has carefully considered each referral and reviewed the evidentiary material provided by the Robodebt Royal Commission, including its final report, and the Confidential Chapter.

Five of the six public officials were also the subject of referrals to the Australian Public Service Commission (APSC).

The Commission is conscious of the impact of the Robodebt Scheme on individuals and the public, the seniority of the officials involved, and the need to ensure that any corruption issue is fully investigated.

However, the matter has already been extensively investigated by the Robodebt Royal Commission, and the conduct has been fully exposed in that Commission's final report. After close consideration of the evidence that was available to the Royal Commission, the Commission has concluded that it is unlikely it would obtain significant new evidence beyond that available to the Robodebt Royal Commission.

In the absence of a real likelihood of a further investigation producing significant new evidence, it is undesirable for a number of reasons to conduct multiple investigations into the same matter. This includes the risk of inconsistent outcomes, and the oppression involved in subjecting individuals to repeated investigations of the same matter.

In deciding whether to commence a corruption investigation, the Commission takes into account a range of factors. A significant consideration is whether a corruption investigation would add value in the public interest, and that is particularly relevant where there are or have been other investigations into the same matter. There is not value in duplicating work that has been or is being done

by others, in this case with the investigatory powers of the Royal Commission, and the remedial powers of the APSC.

Beyond making a finding that the conduct in question amounted to corrupt conduct within the meaning of the Act, the Commission cannot grant a remedy or impose a sanction (as the APSC can). Nor could it make any recommendation that could not have been made by the Robodebt Royal Commission. An investigation by the Commission would not provide any individual remedy or redress for the recipients of government payments or their families who suffered due to the Robodebt Scheme.

The Commission has therefore decided not to commence a corruption investigation as it would not add value in the public interest. The Commission will continue to focus, through its corruption prevention, education and investigation functions, on the integrity issues raised in the final report, particularly in relation to ethical decision making.

In order to avoid any possible perception of a conflict of interest, the Commission's decision in this matter has been made by a Deputy Commissioner who has no historical connection with any of the individuals involved.

The Commission will not be making further comment.



HERBERT
SMITH
FREEHILLS

Nicole Rose PSM
Deputy Commissioner
National Anti-Corruption Commission
GPO Box 605
CANBERRA ACT 2601

Section 47E - Certain operations of agencies

1 May 2024
By Email

Dear Deputy Commissioner

Private and Confidential

Referral by the Royal Commission into the Robodebt Scheme

We refer to your letter dated 22 April 2024.

Thank you for providing Section 47F - Personal privacy with the opportunity to review the press release at Attachment A of your letter (**Draft Press Release**).

In circumstances where the National Anti-Corruption Commission (**NACC**) has determined it will not conduct a corruption investigation into the matters raised in the referral from the Royal Commission into the Robodebt Scheme (**Robodebt Royal Commission**) and Section 47F - Personal privacy continues to strongly refute all of the adverse findings made by the Robodebt Royal Commission in respect of Section 47F - Personal privacy conduct (including in the APSC Task Force investigation, which remains on foot), our client is concerned to ensure that any public statement to be made by the NACC does not convey, expressly or implicitly, that the allegations of the Robodebt Royal Commission would have been substantiated by the NACC had it investigated those matters.

Accordingly, we **enclose** a Word version of the Draft Press Release containing some minor suggested amendments in tracked changes to address these concerns. We would be grateful if you could please consider these proposed changes prior to issuing the release publicly.

Yours sincerely

Section 47F - Personal privacy



Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Doc 113335817.1

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The Commission has carefully considered each referral and reviewed the evidentiary material provided by the Robodebt Royal Commission, including its final report, and the Confidential Chapter.

Five of the six public officials were also the subject of referrals to the Australian Public Service Commission (APSC).

The Commission is conscious of the impact of the Robodebt Scheme on individuals and the public, the seniority of the officials involved, and the need to ensure that any corruption issue is fully investigated.

However, the matter has already been extensively investigated by the Robodebt Royal Commission, and the conduct has been fully ~~exposed~~canvassed in that Commission's final report. After close consideration of the evidence that was available to the Royal Commission, the Commission has concluded that it is unlikely it would obtain significant new evidence beyond that available to the Robodebt Royal Commission.

In the absence of a real likelihood of a further investigation producing significant new evidence, it is undesirable for a number of reasons to conduct multiple investigations into the same matter. This includes the risk of inconsistent outcomes, and the oppression involved in subjecting individuals to repeated investigations of the same matter.

In deciding whether to commence a corruption investigation, the Commission takes into account a range of factors. A significant consideration is whether a corruption investigation would add value in the public interest, and that is particularly relevant where there are or have been other investigations into the

same matter. There is not value in duplicating work that has been or is being done by others, in this case with the investigatory powers of the Royal Commission, and the remedial powers of the APSC.

Beyond ~~considering making a finding that the~~ whether the conduct in question amounted to corrupt conduct within the meaning of the Act and, if satisfied, making such a finding, the Commission cannot grant a remedy or impose a sanction (as the APSC can). Nor could it make any recommendation that could not have been made by the Robodebt Royal Commission. An investigation by the Commission would not provide any individual remedy or redress for the recipients of government payments or their families who suffered due to the Robodebt Scheme.

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In order to avoid any possible perception of a conflict of interest, the Commission's decision in this matter has been made by a Deputy Commissioner who has no historical connection with any of the individuals involved.

The Commission will not be making further comment.