

How to make a proactive disclosure

This factsheet has been developed to help agencies make a proactive disclosure to the Ombudsman where they have identified an issue of legislative non-compliance.

The Commonwealth and ACT Ombudsman (the Ombudsman) has seen a welcome increase in agencies proactively disclosing issues of legislative non-compliance. Legislative non-compliance can occur in situations including but not limited to when an agency's policies, processes or systems are not designed to support compliance with the law, or where agency staff intentionally or unintentionally do not apply the law. We see these proactive notifications as indicators of good accountability culture. Proactively disclosing an issue assists us to engage with complaints we may be receiving about the issue. It also helps us to consider whether there are aspects of the issue that merit closer engagement, such as how the issue arose, how it is being remedied and whether there are lessons to be learnt from it.

To assist agencies in making proactive notifications, this factsheet outlines the type of information we ask agencies provide when telling us about an issue. While the nature of issues will vary significantly, we anticipate this information will be relevant to help us understand most issues.

Where information about the issue or the agency's planned response is not known or not currently available, agencies should not delay making the disclosure but rather just identify that there are currently unknowns (if possible include when this information is expected to be known).

Help us understand the issue

Please provide information to help us understand the issue. This is likely to include information regarding:

- how the issue of legislative non-compliance arose (for example, because of systems not being designed correctly, staff misunderstanding legislative requirements etc) and when the issue commenced
- how and when the agency first identified the issue
- how relevant policy, procedure or practice does not comply with the law
- the impact (or anticipated impacts) of the issue on people, including:
 - how the issue impacts people, and whether it is a point in time impact or an ongoing impact
 - the number of people that may be affected and how these people were identified
 - estimates of financial or non-financial loss experienced, or expected to be experienced, by people as a result
 - whether the people impacted by the issue have any particular vulnerabilities
 - if there is more than one cohort of people impacted, the nature and numbers for each cohort
 - if the agency has not yet identified all people impacted by the issue, when does it expect to have done so
 - if the agency cannot identify all people impacted by the issue, why not and what attempts have been made to do so.

Tell us what action you have taken

Please provide information to help us understand what action has been taken to address the issue. This is likely to include information regarding:

- Any requests for legal advice made by the agency (either internal or external), including when requests were made and when advice was received.
- Action taken or planned to be taken by the agency to mitigate any ongoing impact on people once the issue was identified (with relevant dates).



- How the agency plans to remediate the issue. Please include details (with relevant dates) about:
 - action taken or planned to be taken to remediate the impact on individuals
 - communication undertaken, or planned, with impacted people
 - escalation of the issue to Senior Executive and, if appropriate, relevant Ministers
 - action taken or planned to be taken to mitigate risk of the issue reoccurring. This may include but is not limited to the suspension of systems or policies; system changes; development and implementation of new or amended policy, procedure, guidance or training for staff; legislative amendment
 - the overall expected timeframe for completing remediation.

Are there any other entities involved?

Please provide information to help us understand where there are any other entities (e.g. other departments or agencies) involved in the remediation process. Relevant information is likely to include:

- Details of any other agency with a responsibility for, or role in, responding to and remediating this issue. If relevant, please provide a point of contact for other agencies.
- Details of any communication or consultation undertaken with other agencies.

Please note: This document is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document.

For more information visit ombudsman.gov.au or ombudsman.act.gov.au or you can call 1300 362 072.

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