

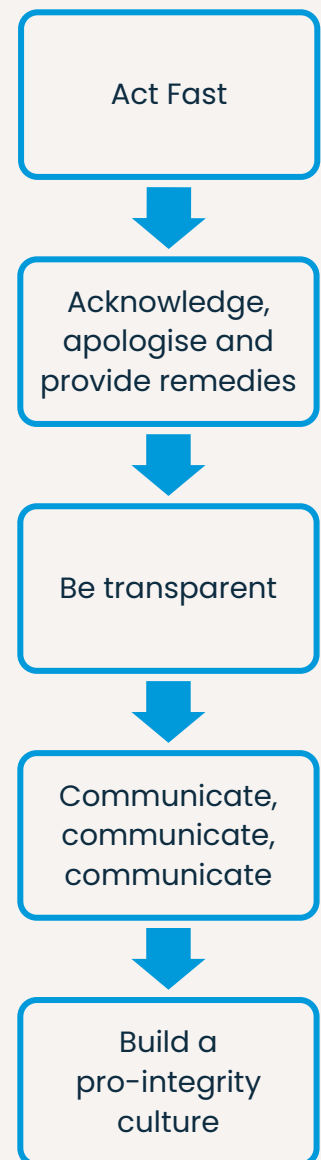
# How to respond to an issue of legislative non-compliance

This factsheet has been developed to help agencies take appropriate action to respond to instances where policy, procedure or practice has been identified as not complying with the law.

Agencies are always required to follow the law. However, there will be times where an agency identifies (either internally or through external oversight) that it is not acting in compliance with legislative requirements. When this occurs, the agency must ensure it takes appropriate and timely steps to correct this. It is the responsibility of an agency to rectify adverse impacts on members of the community arising from the agency's non-compliance.

Knowingly and deliberately not complying with the law is not acceptable. It is likely to be contrary to the *Public Service Act 1999* and APS Code of Conduct for Commonwealth agencies, and contrary to the *Public Services Management Act 1994 (ACT)* and ACT Public Sector Code of Conduct for ACT agencies.

This factsheet outlines key principles that will help agencies respond to these issues in an appropriate way. While not an exhaustive list, and each instance of legislative non-compliance will require a tailored approach, following these foundational principles is a good start.



## Act fast

- The longer an agency delays, the greater the impact on affected people. This also erodes trust in the public service.
- Agencies should take immediate steps to start understanding the issue as soon as they identify it. Ideally, agencies will have robust internal processes in place that allow for active identification, recording and reporting of issues.
- Understanding the financial and non-financial impacts of an issue on affected people should inform an agency's remediation strategy. Testing by sampling can help to understand the number of people impacted and the nature of the impacts, rather than just making assumptions.
- Where action required to fix an issue is by nature going to take time (i.e. legislative reform or major system updates), agencies should consider whether it is appropriate to implement an interim solution to immediately address the issue while continuing to prioritise a permanent fix.
- If a remediation strategy is taking too long to implement, this should be a sign to the agency that it is not working and needs to be adjusted.
- Don't fall into the trap of putting the issue in the 'too hard' box - it will only make things more difficult in the long run.
- Agencies should consider whether the factors that led to the instance of non-compliance identified, may also suggest that there are other instances of non-compliance.

### **Case Study - Services Australia's Legal Compliance and Remediation Program**

In 2024, Services Australia established the 'Legal Compliance and Remediation Program', which aims to centrally coordinate reporting and escalation of all matters involving legal non-compliance. The steps taken by the agency to establish the program are commendable, and we believe should improve the agency's ability to more quickly and more consistently respond to situations where its policies and practices are not compliant with the law. The Ombudsman will continue to monitor the development of this program and encourages all agencies to consider whether standing up a similar program would be appropriate for their agency.



# Acknowledge, apologise and provide remedies

- Where an issue has impacted people, the agency should directly acknowledge and explain its mistake and apologise.
- As part of the necessary remedial action taken to address the non-compliance, agencies should proactively provide remedies to affected people where it is within the bounds of legislation to do so. For example, where an agency has identified an error with its processing of refunds, it should proactively refund the correct monies to affected people, without waiting to see if the people become aware of the issue, identify that they were impacted by it and seek the correct refund.
- Agencies should consider proactively adjusting the amount payable to affected people to take into account changes to the real value of the money during the time the agency held the original monies, if that has been a long period.
- People affected by an issue should be advised of other remedies that may be available to them that cannot be proactively granted by the agency. This should include their right to apply for compensation, including under the Scheme for Compensation for Detriment caused by Defective Administration. Affected people must be provided clear advice on how to avail themselves of such rights.

## **Case Study - What if the computer is wrong? report - Department of Home Affairs**

In September 2025, the Ombudsman published his report, [What if the computer is wrong?](#), which found that the Department of Home Affairs (Home Affairs) unlawfully cancelled Mr D's visa. The Ombudsman expressed the view that it would have been appropriate for Home Affairs to have apologised to the individual at the time that it discovered and corrected its initial error and, noting this did not occur, made a recommendation to Home Affairs that it apologise to Mr D. Home Affairs agreed to this recommendation.



## Be transparent

- The rule of law and trust in Government are dependent on agencies complying with the law. Where non-compliance has occurred, agencies must be transparent with stakeholders, including the public, to preserve this trust.
- Telling affected people the facts of how an issue arose and its impact is a basic requirement. This allows people to make informed choices including whether to pursue internal or external review of the decision or seek compensation for an action. It also lessens stress and confusion.
- Where an agency considers it will have difficulties applying the law, it should seek Government approval of its approach and the consequences, and tell the public.



**Being open and accountable to the Australian community is an APS Value.**

### **Case Study – Following the law is not optional report – Services Australia and the Department of Social Services (DSS)**

In January 2026, the Ombudsman published his report, [Following the law is not optional](#), which looked at a decision not to apply the law for a period of 6 years while seeking legislative amendment. The Ombudsman recommended that Services Australia and DSS should, as a priority, propose to relevant Ministers a public statement of government intent to amend the legislation retrospectively.

In response, DSS published a [statement](#) on its website. The Ombudsman welcomed this statement and considered that it went towards implementing his recommendation.



# Communicate, communicate, communicate

- Communication is key. Agencies must sufficiently communicate with all involved parties including senior decision-makers, Government, our Office and other oversight bodies, and the public. This includes telling our Office,<sup>1</sup> and any other relevant oversight bodies early.
- Staff should not hesitate to tell senior executives and Government when something has gone wrong. Telling senior executives and Government early can help get the traction needed to resolve the issue fast. Staff must be encouraged, and given the confidence, to be frank and fearless in providing advice.
- Communication with the public should use plain English and clearly explain the issue, the impact on affected people and what the agency is doing to fix the issue.
- Agencies must consider the method of planned communication. If an agency is not planning to engage directly with affected people, it should ensure that the chosen communication method will appropriately bring the issue to the affected peoples' attention.
- Agencies should provide agency contacts for people to find more information, ask questions or make a complaint.

## **Case Study – Department of Education proactive notification**

In 2025, the Department of Education (Education) proactively disclosed an issue of legislative non-compliance to the Ombudsman. In liaising with Education, we raised concerns regarding Education's planned communication strategy. Education intended to publish information on its website about the issue and its remediation action, but not reach out to affected people more directly. We were concerned that affected people would not be made aware of the issue (and their right to apply for compensation) as it was not realistic to expect that people are routinely checking government websites for updates. Education has advised that it has amended its communication strategy to also include information in its newsletter and would look for further opportunities to draw attention to the issue.

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<sup>1</sup> Agencies should refer to the Ombudsman's Factsheet – How to make a proactive disclosure.



## Build a pro-integrity culture

- Staff need to have the confidence to identify issues and speak up about them. This confidence comes from the top down. Staff should be encouraged and given the tools needed to do so.
- [Louder Than Words: An APS Integrity Action Plan](#) talks about the need to build a pro-integrity culture by creating a safe environment for staff to *'raise issues, ask questions and point out where lines are crossed'* with the need for the *'right tone and demonstration from the top'* to achieve lasting impact.
- Part of 'setting the tone' for agency culture comes from ensuring that senior leadership takes recommendations from external oversight bodies seriously and prioritises action to implement such recommendations.
- Agencies should have processes whereby they capture and apply lessons learnt from individual instances of non-compliance more broadly to mitigate risks of future non-compliance.

### **Case Study - Annual Report on the Australian Federal Police's handling of complaints against its appointees**

The Ombudsman reviews and reports on the Australian Federal Police's handling of complaints against its appointees under Part V of the *Australian Federal Police Act 1979* (the AFP Act) (for example see the 2025 [Annual Report on the Australian Federal Police's handling of complaints against its appointees](#) which covered records for the period 1 July 2023 to 30 June 2024).

The Ombudsman has commented on the AFP's failure to adequately address issues that had been the subject of previous recommendations by the Ombudsman, arising from concerns including regarding the application of discretion under s 40TF of the AFP Act over consecutive reviews. While the AFP had responded to previous recommendations by taking certain action, the Ombudsman's ongoing concerns were indicative of a broader systemic issue of a complaints management system that was not meeting legislative requirements.

The AFP subsequently undertook to conduct an external review of its complaints management system and act on the outcomes of that review.



*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 the most up-to-date versions of cited Acts, please refer to the [Federal Register of Legislation](#) or [ACT Legislation Register](#).*

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