

Referral for Prosecution Policy

Policy Name: Referral for Prosecution Policy

Level 1 Policy Owner: Australian Statistician

Level 1 Approved: 8 September 2016

Purpose

This policy provides guidance on the circumstances in which referral for prosecution is appropriate and on the legislative and corporate requirements that staff must consider and comply with prior to pursuing actions that may result in prosecution.

Referral for prosecution for collection non-compliance should only be considered as a last resort, when all reasonable attempts to achieve compliance using a cooperative approach have been unsuccessful.

Scope

Prosecutable actions include:

- (a) collection non-compliance
- (b) other offences under legislation that could warrant referral to the CDPP or Australian Federal Police (AFP) under legislation (e.g. breaches of the *Census and Statistics Act 1905*, the *Criminal Code Act 1995* or the *Crimes Act 1914*)

Principles

The principles that underpin this policy are:

1. The Australian Statistician must approve all referrals to the CDPP for prosecution.
2. When collecting data, the ABS encourages trust and positive relationships between data providers and the ABS. Recommendations to refer a matter for prosecution should only be made after all reasonable attempts to achieve compliance using a cooperative approach have been unsuccessful.
3. Consideration should be given to each of the following in deciding whether to recommend prosecution:

[Redacted content]

- [REDACTED]
4. It may be necessary for a matter to be referred for investigation by an appropriate body (e.g. the AFP) before the matter is referred for prosecution.

Definitions

A **person** can be an individual, body corporate (company, corporation) or body politic (local council, state, territory or Commonwealth department or agency), or unincorporated business.

A **Notice of Direction (NoD)** is a formal legal direction which the Australian Statistician (or their delegate) may issue where a data provider has failed to comply with the request to complete a questionnaire or answer a question for statistical purposes.

A **data provider** is any person who has been requested to supply information, in any format, to the ABS.

Prescribed premises are detailed in Regulation 5A of the *Statistics Regulations 1983* and enabled under the Section 18 of the *Census and Statistics Act 1905*. Authorised Officers may access prescribed premises at all reasonable times for specified purposes as provided by subsection 18 (1) of the *Census and Statistics Act 1905*. Refusal by a person to allow an Authorised Officer such access is considered an obstruction of a Commonwealth officer in the discharge of official duties, and is a prosecutable offence.

Access to a private dwelling includes access via an unobstructed pathway to a front door of a dwelling. For group dwellings, this includes entry to communal areas (e.g. such as a foyer of a hotel) in order to distribute or administer an ABS survey or census. Access does not permit entry *inside* a private dwelling.

Collection non-compliance refers to a range of potentially prosecutable offences with regard to responding to an ABS request to provide statistical information for a compulsory questionnaire (whether survey or census) in accordance with the *Census and Statistics Act 1905*. It may be in the form of a person:

- a) refusing to comply with a Notice of Direction issued under Sections 10(4) or 11(2) of the *Census and Statistics Act 1905* (an offence under Section 14 of the *Census and Statistics Act 1905*);
- b) refusing to take reasonable steps to allow an Authorised Officer access to prescribed premises to distribute a survey or census questionnaire (an offence under the *Statistics Regulations 1983* and the *Crimes Act 1914*);
- c) knowingly providing false or misleading information on a questionnaire (an offence under Section 15 of the *Census and Statistics Act 1905*).

Level 2 Policy Owner: General Manager, Census and Statistical Network Services Division.

Level 2 approved: 8 September 2016

Level 2 includes some Level 1 material for readability. These parts are marked in *italics*.

Delegations

1. The General Manager, Census and Statistical Network Services Division is accountable for the currency of Level 2 of this policy and delegations and may amend them at any time provided they remain consistent with the Level 1 principles and arrangements approved by the Australian Statistician.
2. *The Australian Statistician must approve all referrals to the CDPP for prosecution.*
3. *It may be necessary for a matter to be referred for investigation by an appropriate body (e.g. the AFP) before the matter is referred for prosecution.* Referral for investigation must be approved by either a Deputy Australian Statistician or the Australian Statistician.
4. The Program Manager, Governance and Parliamentary Liaison Branch must provide advice on any briefs that are prepared for the Australian Statistician seeking approval to pursue or recommend the discontinuation of a prosecution.
5. The Director, Policy, Legislation and Assurance Section (PLAS) must:
 - a) provide advice on evidence required to support a successful prosecution where there is uncertainty; and
 - b) manage all liaison with the CDPP.
6. The Director, Protective Security Section and the Director, Population Survey Operations may liaise with enforcement bodies where an incident relating to personnel safety is referred for investigation.
7. The Australian Statistician may approve the discontinuation of a prosecution.

Timing of prosecutions

8. [REDACTED] As per the *Crimes Act 1914*, prosecution for an alleged offence that does not include a sentence of more than six months must commence within one year from the date of an alleged offence being committed.
9. Proposed prosecutions for alleged offences that carry a maximum penalty of more than six months do not have a specified time frame within which a prosecution must commence.

Additional Material

Policies

CDPP Prosecution of the Commonwealth policy <<https://www.cdpp.gov.au/prosecution-process/prosecution-policy> >

Legislation

Census and Statistics Act 1905 < www.legislation.gov.au>

Statistics Regulation 1983 < www.legislation.gov.au>

Crimes Act 1914 < www.legislation.gov.au

Manual Category : **B. Policy and Legislation**

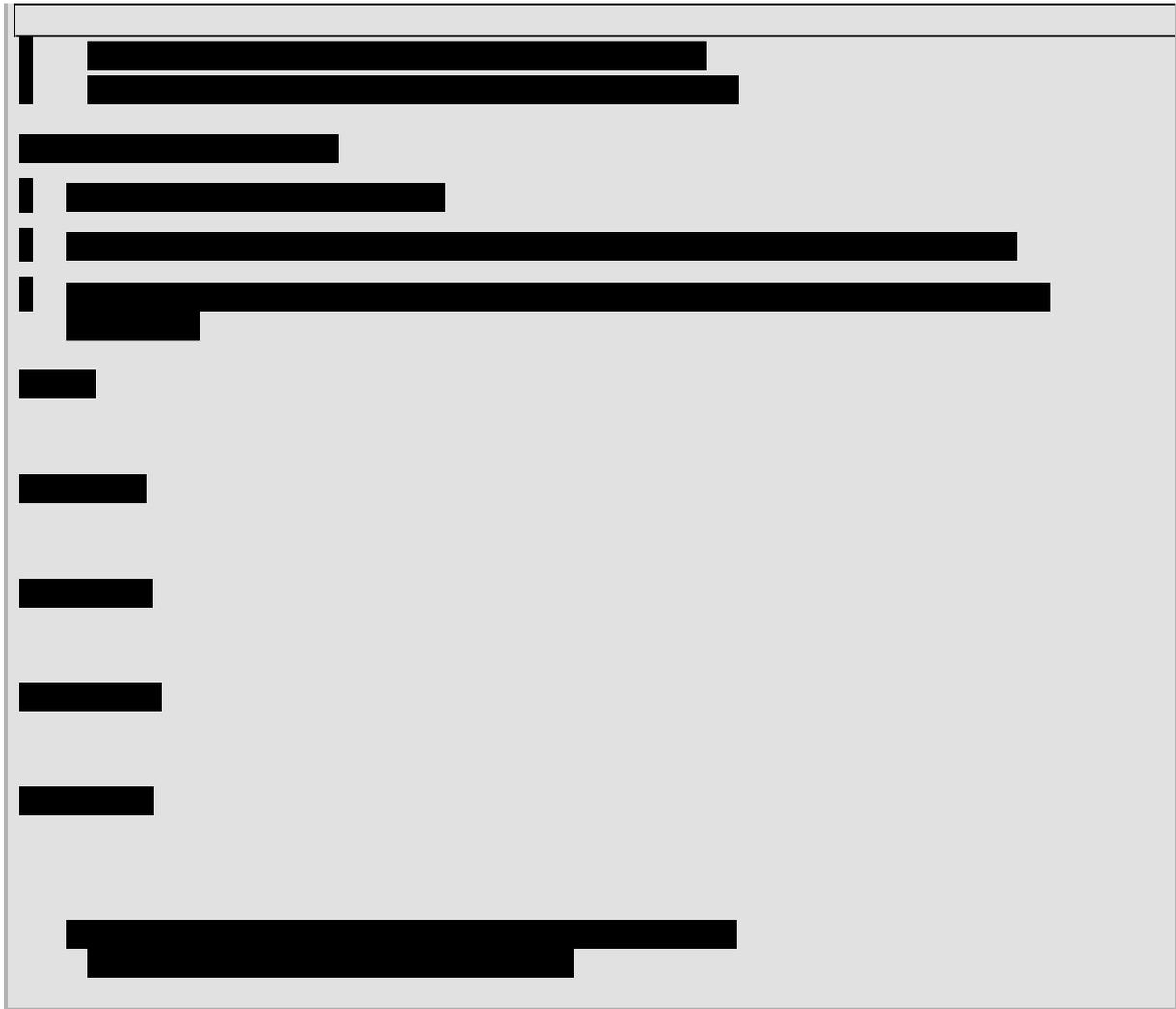
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Manual ID - No & Title: **Policy - Policy and Legislation**

Chapter No. & Title: **10. Developing and Conducting Statistical Collections**

Section No. & Title: **16. Issuing Notices of Direction for Non-Response**

[Redacted]



ISSUING NOTICES OF DIRECTION FOR NON-RESPONSE

Purpose

- 1 Where a respondent refuses to fill in a form or answer a question as requested by an authorised officer of the ABS, a Notice of Direction (NoD) can be issued under either section 10(4) (fill in a form) or section 11(2) (answer a question) of the [Census and Statistics Act 1905](#).
- 2 If a respondent doesn't comply with a NoD, then the ABS can commence a prosecution under section 14 of the CSA. For more information about prosecutions for non-response (see relevant policy).

Legislation

- 3 Section 10(4) of the *Census and Statistics Act 1905* provides that, where a person fails or refuses to fill up a form as requested by an authorised officer of the ABS, the Statistician may, by notice in writing, direct the respondent to fill up the form in accordance with the instructions provided and supply that completed form to the Statistician, or an authorised officer, in accordance with instructions provided.

- 4 Section 11(2) of the *Census and Statistics Act 1905* provides that where a person fails or refuses to answer a question that is necessary to obtain statistical information as requested by an authorised officer of the ABS the Statistician may, by notice in writing, direct the person to answer the specified question within a period specified in the Notice but not less than 14 days from the date of service.
- 5 It should be noted that, in accordance with the *Acts Interpretation Act 1901*, the use of the singular such as the word “question” also includes the plural (ie “questions”) and vice versa.

[REDACTED]

Issuing a NoD

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- 13 A non-respondent is deemed to not have complied with a NoD if no reply, or a reply of non-compliance, is received within 15 days of service of the notice. If no response is received from the respondent in response to the NoD then consideration should be given to prosecution of the respondent. The procedures and policy relating to prosecution are found at (ref to policy)

[Redacted]

Methods for issuing a NoD

- 16 A recommendation should also be made as to how the NoD should be served on the non-respondent. Service of the Notice is a very important issue to the Court if a prosecution is later pursued. If the Court concludes that proper service has not been effected, the proposed prosecution may not be able to continue.

[Redacted text block]

Referral for Prosecutions policy - Frequently Asked Questions (FAQs)

Summary:

This knowledge document provides a list of FAQs to help staff apply the **<ABS Referral for Prosecutions Policy>**.

Detail:

1. What offences are prescribed in the *Census & Statistics Act 1905 (C&S Act)*?

The ABS has the ability to refer a matter for prosecution under the C&S Act for four different types of breaches:

- an ABS Officer can be prosecuted under section 19 of the C&S Act for disclosing information protected by the Act;
- a person or Responsible Officer can be prosecuted under section 19(3) of the C&S Act for breaching an undertaking related to section 13 of the Act;
- a provider who has provided false or misleading information can be prosecuted under section 15 of the Act; and
- a person who fails to comply with a Notice of Direction (NoD), can be prosecuted under section 14 of the C&S Act.

2. What steps are involved in proceeding to a prosecution?

To proceed with a prosecution, the following steps are involved:

1. preparing the brief of evidence;
2. seeking the Australian Statistician's approval through the Program Manager, Governance and Parliamentary Liaison Branch (GAPL); and
3. referring the brief to the Commonwealth Director of Public Prosecutions (CDPP) or the Australian Federal Police (AFP).

All materials forming a brief, plus the recommendation to prosecute, should be submitted through the Program Manager of GAPL.

3. What information should be included in a brief for prosecution regarding collection non-response?

The brief of evidence should include:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Witness statements are statements by people who are able to say something about their part in the process. For example, some ABS staff may have sent earlier letters and should provide a written statement to that effect. The person sending the NoD should provide a statement. Anyone having personal contact (e.g. phone calls, interviews) with the proposed defendant should also provide a statement.

4. What happens after a prosecution is recommended by the Statistician to the CDPP or another relevant body for investigation, such as the AFP?

After the Statistician recommends a case to the CDPP or another relevant body for investigation, such as the AFP, the CDPP or other relevant body then assesses the case against its own test for prosecutions. For the CDPP or other relevant body to proceed, there must be sufficient evidence to prosecute the case and the case must be in the public interest. If the case passes this test, then the CDPP or other relevant body will initiate proceedings with the court. The ABS no longer has custody of the case at this stage, but the Australian Statistician can still recommend to the relevant body discontinuation of a prosecution in line with the <Prosecutions Policy>.

5. What do I do if I am contacted by a provider following referral to the CDPP or another relevant body for investigation, such as the AFP?

If a provider whom the ABS is prosecuting contacts the ABS, you should immediately refer the correspondence, or the details of the correspondence, to the Director of the Policy, Legislation and Assurance Section. You should also ask the provider to direct all future correspondence to the CDPP or the other relevant body to whom the matter has been referred. The ABS must not negotiate with any defendant after the ABS has referred the case to the CDPP or other relevant body.

If the provider who is being prosecuted contacts the ABS via post or email, the correspondence must be forwarded to the CDPP or the other relevant body as soon as is practicable. The ABS must not respond to this correspondence.

If the provider who is being prosecuted contacts the ABS via phone, the defendant must be advised the ABS cannot discuss the case with them and they should contact the CDPP or the other relevant body as they have custody of the case. The ABS officer speaking with the defendant should take their contact details and forwarded them to the CDPP or the other relevant body as soon as is practicable.

If the provider who is being prosecuted appears at an ABS office in person, the delegate who issued the relevant NoD must be notified immediately.

Only the delegate who issued the NoD should make contact with the defendant. The defendant must be advised that the ABS cannot discuss the case with them and they should contact the CDPP or the other relevant body as they have custody of the case. The contact details for the defendant should be taken and forwarded to the CDPP or the other relevant body as soon as is practicable. The delegate must also report a security incident ticket.

6. Do ABS officers have to attend court?

It is unlikely that ABS officers will be required to attend a hearing. However, in the rare instance that a staff member is required to attend court, the Policy, Legislation and Assurance Section will provide materials to help the staff member prepare.