

Practitioner Advisory Group

AGENDA ITEM: PAGFG02-03

20 June 2024 – Online

Sensitive Information (for Narrative Reporting)

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| Summary | This paper provides PAG with an update on the exception in the narrative report for the non-disclosure of information which is sensitive or which may prejudice the ability of the NPO to deliver its mission. |
| Purpose/Objective of the paper | The purpose of this paper is to seek PAG's views on the approach to the non-disclosure of sensitive information that has been further developed following the analysis of responses to ED1. |
| Other supporting items | N/A |
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| Actions for this meeting | Comment on: <ul style="list-style-type: none">(i) the INPAG approach to the core guidance for the non-disclosure of information which is sensitive or which may prejudice the ability of the NPO to deliver its mission; and(ii) the approach to the INPAG implementation guidance including the use of examples, parameters and what should be reported. |

Practitioner Advisory Group

Sensitive Information (for Narrative Reporting)

1. Introduction

- 1.1 This paper:
- provides PAG with an update of the developments on the exception in the narrative report for the non-disclosure of information which is sensitive or which may prejudice the ability of the NPO to deliver its mission
 - seeks PAG's views on the Secretariat's proposed approaches to developing the final guidance for NPOs following the views of TAG, the focus group and respondents' feedback.

2. Background

- 2.1 At its last meeting PAG members considered:
- the feedback from the responses to ED1;
 - a summary of the comments from a survey conducted in February/March 2023; and
 - a verbal update on the views from the focus group held in April 2024.
- 2.2 TAG considered all aspects of the feedback on Section 35 and provided advice on the way forward.
- 2.3 Section 35 includes an exception allowing NPOs not to disclose information if it is sensitive or prejudices the ability of the NPO to deliver its mission. Recognising that there is a risk that exercising a permission to not disclose sensitive information could be misused by NPOs as a way of hiding poor performance or financial problems, Section 35 also requires disclosure that the narrative report has been prepared in accordance with the requirements of the sensitive information exemption paragraph. NPOs are not, however, required to provide any information that would have the effect of highlighting the nature or substance of the sensitive information.
- 2.4 Following TAG's advice and the comments by the focus group, PAG's views are sought on the further development of the final guidance for the non-disclosure of sensitive information and particularly the practical aspects of the proposed changes.

3. Approaches to Drafting the Prescriptions for the Non-Reporting of Sensitive Information

- 3.1 The focus group in April recognised that the issue of non-disclosure of sensitive information is difficult and was not easy to resolve solely in standards. There are risks to the service users, the NPO and staff. However, there are challenges to non-disclosure as this will increase the possibility of presenting an incomplete narrative report and provide less transparency and accountability for the primary users of general purpose financial reports.
- 3.2 TAG members also recognised the difficulties encountered with regard to the non-disclosure of sensitive information in the narrative report. It was of the view that more guidance could be provided to support the preparers of NPO general purpose financial reports. TAG members suggested that guidance from; the Australian Charities and Not-for-Profits Commission *Commissioner's Interpretation Statement: Commercially Sensitive Information* (ACNC Commissioner's Statement)¹ and the IFRS Foundation Advisory Council Agenda Paper on the *Disclosure of Sensitive Information* (IFRS Foundation Agenda Paper)², March 2019 could be used to further develop the guidance using a principles based approach.
- 3.3 It should be noted that the focus group cautioned that even principles based guidance could not resolve all the challenges which might arise. It was also of the view that where non-disclosure was used the narrative report would have to refer to what was not being disclosed (for example, noting any limitations on information).
- 3.4 Taking account of all of the feedback received, as set out in Annex A the Secretariat proposes to:
- split G35.7 into two paragraphs for readability purposes, so that the specifications of this paragraph are more easily understood by readers;
 - edit G35.7 so that the sensitive information prescriptions can be applied to all mandatory content rather than just the content related to performance information and the financial statements;
 - edit IG35.6 to be consistent with G35.7 (ie to be clear that the exception applies to all mandatory content);
 - move the implementation guidance in IG35.5 to G35.9. This moves the content from non-authoritative guidance to authoritative guidance. This

¹ Refer to <https://www.acnc.gov.au/tools/guidance/commissioners-interpretation-statements/commissioners-interpretation-statement-commercially-sensitive-information#:~:text=Information%20on%20the%20ACNC%20Register,may%20be%20considered%20commercially%20sensitive>

² Refer to <https://www.ifrs.org/content/dam/ifrs/meetings/2019/march/advisory-council/ap3-disclosure-of-sensitive-information.pdf>

followed a suggestion by a respondent to ED1 because the paragraph provided important clarification about how the exemption on sensitive information should and should not be used (ie it should not disguise poor performance).

- 3.5 The Secretariat is not proposing at this point to make further substantial changes to the core or application guidance. This reflects the views of the focus group about the difficulties of prescribing the detailed treatment, or lists of examples, and taking into account the substantial support to ED1 on the relevant SMC.
- 3.6 The Secretariat is, however, planning to develop two or three case studies to test the proposals. These case studies will be used to inform any further proposals.

Question 1: Do PAG agree that splitting paragraph G35.7 aids understandability?

Question 2: What are PAG members' views on the inclusion of the proposed content of G35.9?

- 3.7 PAG members will be aware that respondents to ED1 sought more guidance on what constitutes sensitive information. The Secretariat therefore proposes to add examples of the types of circumstances which could mean that the sensitive information exception is used. This is located at new paragraph IG35.7, shown in Annex A. The proposals are based on suggestions made at the April 2024 focus group.

Question 3: Do PAG members agree with the list of examples of the types of circumstance which might give rise to sensitive information at paragraph IG35.7?

- 3.8 Respondents to ED1 sought more guidance on when the exemption on sensitive information might be used. Comments were also made about whether parameters or principles could be developed to support the decisions which might need to be taken. New guidance has therefore been developed at paragraph IG35.9 in Annex A.
- 3.9 This guidance, provides parameters for considering how an NPO might determine whether the sensitive information exception should be used. These proposals have been adapted from the ACNC Commissioner's Statement. This additional guidance is proposed to be non-authoritative and seeks to avoid introducing a rules, instead of a principles based judgement.

Question 4: What are PAG members' views on the proposed new non-authoritative guidance, which provides parameters for decisions on sensitive information?

Question 5: Do PAG members agree that this guidance should be non-authoritative?

3.10 ED1 responses were also concerned with how sensitive information might be disclosed without revealing pertinent aspects of the information. New guidance is proposed at paragraph IG35.10 in Annex A on what should be disclosed if sensitive information is not reported. This was adapted from the IFRS Foundation Agenda Paper based on work on the management commentary. It should be noted that this content was not included in the Exposure Draft³ that was subject to consultation in 2021, but the Secretariat is of the view that the approach to non-disclosure is useful in addressing issues of transparency and accountability.

Question 6: Are PAG members' of the view that the proposed guidance at paragraph IG35.10 is useful in assisting with how sensitive information might be reported? What are its advantages or disadvantages?

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³ IFRS Practice Statement Exposure Draft, Management Commentary refer <https://www.ifrs.org/content/dam/ifrs/project/management-commentary/ed-2021-6-management-commentary.pdf>

Annex A –Suggestions for change to Core Guidance and Implementation Guidance for Section 35

Proposed Changes to Core and Application Guidance for Sensitive Information

G35.7 Exceptionally, an NPO shall not disclose ~~aspects of performance information and financial statement commentary~~ the narrative reporting information required by this section ~~that where this~~ would compromise the safety or wellbeing of individuals working/volunteering for the NPO, or those to whom it provides goods and services. This is because the information ~~is sensitive and/ or~~ could prejudice the ability of the NPO to deliver its mission. An NPO will remain in compliance with the requirements of INPAG where this exception is utilised.

G35.8 When a sensitive information exception has been used, the NPO ~~should~~ shall disclose that the narrative report has been prepared in accordance with the requirements of paragraph G35.7. An NPO is not required to provide any information that would have the effect of highlighting the nature or substance of the sensitive information. An NPO shall present ~~performance narrative reporting-~~information required by this section ~~and financial statement commentary~~ related to those operations and activities that does not result in sensitive information.

G35.9 ~~Paragraphs G35.7 and G35.8 shall not be used by NPOs as a way of hiding poor performance or financial problems that may have arisen with aspects of its operations. It is reserved solely for situations where disclosure would jeopardise the safety and security of staff, volunteers or the public that benefit from the goods and services provided by the NPO or prejudice the ability of the NPO to deliver its mission.~~

Proposed Changes to Implementation Guidance for Sensitive Information

What is meant by sensitive information or information that could prejudice the ability of the NPO to deliver its mission?

IG35.~~46~~ NPOs are permitted ~~to~~ not to disclose aspects ~~of performance information and financial statement commentary~~ narrative reporting information required by section 35 where the information is sensitive or could prejudice the ability of the NPO to deliver its mission. ~~Given the diversity of activities undertaken by NPOs, it is not possible to provide a definition or exhaustive list of the activities that could give rise to such information~~ It is intended to include situations where there is a risk of harm, including of physical harm, to an NPO's staff, its volunteers or the public who engages with the NPO, or that would provoke significant ongoing disruption to the NPOs operating activities in a locality if information was publicly disclosed in the general purpose financial reports.

IG35.7 It is not possible to provide an exhaustive list of types of sensitive information or circumstances which could prejudice the ability of an NPO to deliver its mission. The following are therefore provided to be illustrative, when the disclosure of information might lead to:

- risk of personal harm, either physical or otherwise, to employees or members of their close family;
- risk of persecution, harassment, social exclusion or displacement of service beneficiaries;

- disruption to services, for example, by risk of damage to buildings, other assets or equipment or logistical difficulties in delivering services to service recipients;
- release of the personal information about service recipients or beneficiaries, for example, patient details.

~~IG35.5 — Permission to not disclose information must not be used by NPOs as a way of hiding poor performance or financial problems that may have arisen with aspects of its operations. It should be reserved solely for situations where disclosure would jeopardise the safety and security of staff, volunteers or the public that benefit from the goods and services provided by the NPO.~~

IG35.68 Examples of sensitive or mission prejudicial information that an NPO may not disclose could include, but ~~is~~ are not limited to:

- information that identifies the nature of activities being undertaken by an NPO;
- information that discloses the scope of geographic activities being undertaken by an NPO;
- information that identifies the individuals, communities or groups that benefit from the goods and service provided by the NPO.

IG35.9 NPOs will need to make a judgement about whether information or potential information to be included in the narrative report is sensitive or could prejudice the ability of the NPO to deliver its mission. Factors that an NPO may consider in making this judgement include:

- whether the harm caused by sensitive information or which might prejudice to the delivery of its mission is real, actual or in-substance – the reporting of the information must at least have the potential to cause harm to an individual, an NPO, or its employees. The NPO should consider the specific nature of the likelihood for harm or prejudice its mission (for example, information on a group of individuals that benefit from the NPO’s activities), rather than a mere assertion that the detriment is likely to eventuate (for example, some possible future harm may befall the individuals);
- is there a causal link between the reporting of the information and the harm caused by sensitive information or the perceived prejudice to the NPO’s mission. This requires NPOs to establish that the harm or prejudice is at least possible, and there are circumstances in which it may arise;
- the timing of the reporting of narrative information and whether it impacts on the potential harm caused by sensitive information or how it might prejudice the delivery of an NPOs mission. Circumstances requiring the non-disclosure of information, which might be sensitive or prejudice the NPO’s mission, may change from the reporting date, so should be subject to annual review.

IG35.10 Where an NPO is of the view that information is sensitive or mission prejudicial an NPO should:

- provide summarised information at the most detailed level that is not sensitive or mission prejudicial;
- consider whether other information in the narrative report may be misleading in the context of the information not disclosed and ensures that the content and tone of the narrative report is appropriately amended;
- describe the process undertaken to determine that it was appropriate to not disclose the sensitive or mission prejudicial information.