

# Gaps in disclosure a matter for Robert McClelland

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**FIRST the good news: the federal Attorney-General's Department has gone some of the way to making amends for a mistake that annoyed its boss, Robert McClelland.**

The Attorney-General was not happy that his department had stopped disclosing how many government agencies were conducting their legal affairs in ways that breach the government's rules.

So at McClelland's request, the department posted on its website data that was missing from its last annual report.

But for some reason, the department has decided not to disclose all of the missing information. The gaps can be seen in the accompanying chart.

The data that has been made public shows that when it comes to legal matters, federal agencies are no longer as bad as they were in 2008-09. That was the year in which confirmed breaches of the government's legal services directions grew by 289 per cent.

The directions cover the way agencies buy legal services and the standard of conduct they are expected to maintain in court.

Had the department kept disclosing that data, the decline in breaches in subsequent reporting periods might well have kept this issue out of the spotlight.

But the department's mistake -- and its subsequent decision to reveal only part of what it formerly revealed -- has ensured continued interest.

The Rule of Law Institute, which first noticed the lack of disclosure, has pointed out that the department once revealed three indicators: confirmed breaches of the legal services directions, investigations that revealed there had been no breach, and matters still under investigation.

Now, all it is disclosing is the number of possible breaches that were notified to the department and the number of confirmed breaches.

The institute's chief executive, Richard Gilbert, says the department has failed to produce any data on the number of possible breaches still under investigation and the number of investigations where no breach was found.

This might not appear to be significant. But it takes on much more importance due to last year's article in volume 21 of the Public Law Review by Michelle Taylor-Sands and Camille Cameron. They are both from the law school at Melbourne University.

Gilbert says their article found there was little correlation between the substantiated breaches of the rules recorded by the department and the breaches reported by the Federal Court and the Administrative Appeals Tribunal.

He says that in two reporting periods, Taylor-Sands and Cameron found 40 breaches of the model litigant rules in judgments, which was more than twice the number identified by the Attorney-General's Department for the same periods.

So even before the department decided to change the way it reports breaches, it had adopted an approach that could be described as under-reporting. Over to you Mr Attorney.