



111. LEGISLATIVE COMPLIANCE POLICY

The activities of Local Government are affected by more than 100 state acts, the main two being the Local Government Act (NSW) 1993 – administered by the Department of Local Government, and the Environmental Planning and Assessment Act (NSW) 1979 – overseen by the Department of Planning, and subsequent amendments thereto. In an environment of continuous legislative change, creating a risk of non-compliance, it is important for the Council to develop strategies to ensure conformity with applicable laws.

This policy demonstrates a clear commitment by the Council to ensuring compliance with all applicable legislation. To facilitate this, the policy provides guidance on:

- The obligations of staff members in ensuring legislative compliance,
- The consequences of non-compliance,
- The application of legal requirements,
- Moral and ethical objections, and
- Strategies for ensuring compliance.

Obligations of Staff Members

All Council staff members have a responsibility to help ensure legislative compliance within the organisation is achieved. These responsibilities however differ across the organisation, based on the position requirements of the individual and their direct involvement in statutory functions.

General Responsibilities

While the Council does not expect its staff to be fully conversant with every State and Federal law, all staff members are expected to be aware of the common areas of legislation that affect their day to day work.

In addition, staff members are expected to be aware of a range of employment related laws (for example legislation relating to occupational health and safety, equal opportunity and sexual harassment), and are expected to be aware that certain actions may be subject to the criminal code (such as theft, assault etc.).

Staff members should also be aware of any Council policies, codes or statements that are relevant to their areas of responsibility.

Additional Responsibilities

Staff members with a direct responsibility for carrying out statutory requirements are expected to develop a clear understanding of the relevant provisions as they relate to their responsibilities, and make themselves aware of changes to the legislation and its impact on Council activities.

Senior Staff

Senior staff members are responsible for ensuring that risk due to non compliance is minimized. As such, senior staff have an obligation to ensure that staff members under their responsibility are kept fully informed, briefed and/or trained about the key legal requirements relevant to their work.

They are also required to make sure that information about legislative changes are disseminated to the appropriate staff members, and that recordkeeping systems and practices that capture evidence of compliance are in place.

Consequences of non-compliance

Staff should be aware that any failure to comply with the law could be a criminal act, or result in a breach of the law or a breach of discipline.

Failure to comply with legal requirements could result in such things as:

- Disciplinary proceedings.
- A hearing by the Pecuniary Interest Tribunal into complaints concerning alleged failures by councillors, staff, delegates and advisers to disclose pecuniary interests.
- Dismissal of the Mayor and councillors and the appointment of an administrator for the Council.
- Removal of a council's planning powers and the appointment of an administrator.
- The appointment of an environmental administrator (under relevant environmental legislation).
- Legal proceedings against the Council for orders to remedy or restrain breaches of certain Acts, or for other legal challenges relating to such things as acting beyond the scope of authority or power or failing to provide natural justice. This could result in costly litigation and possible awards of damages.
- Complaints about the conduct of the council or a staff members being referred to the Ombudsman, ICAC, Audit Office, Administrative Decisions Tribunal or other relevant body.
- Criminal proceedings
- Disruption to management, staff morale problems and bad publicity that will result from any of the above.

Application of legal requirements

The obligation to comply with legal requirements does not relieve the Council or individual staff members of the moral or ethical obligation to mitigate the effects of rigid adherence to the letter of the law where that results in, or would result in, unintended or manifestly inequitable or unreasonable treatment of an individual or organisation. For example:

- If the law gives the Council discretion, it should be exercised in a fair and reasonable way.
- If the law does not give the Council discretion, fairness may mean adopting a broad interpretation in certain circumstances, rather than a rigid adherence to legality.
- Other options may be available to the Council to mitigate any unreasonable or inequitable effects of compliance with the law. These could include, for example, waiving debts, refunding fees or charges, offering an expression of regret or an apology, deferring regulatory action to allow for an authorisation to be obtained, fast tracking an assessment and determination of an application, and the like.

In a similar manner, policies, codes and the like should not be applied inflexibly, but on the basis of merit, with proper consideration being given to the particular circumstances of each individual case.



Staff members should have regard to circulars, practice notes, codes, guidelines and the like issued by government or relevant central agencies. They should comply with their terms unless there are justifiable grounds for taking another course of action within the scope of the discretion available to the decision-maker.

Dealing with moral or ethical objections

There can be limited occasions where a staff member believes, on moral or ethical grounds, that he or she cannot give effect to a lawful policy. Where such objection is based on a *bona fide* moral belief that is honestly and strongly held (as opposed to a mere personal or political preference), the staff member concerned should be relieved of responsibility for the implementation or enforcement of that policy. As well as recognising moral objections, such an approach helps to ensure the actual and perceived impartiality and fairness of the Council.

Strategies for ensuring compliance

Due to the number of acts affecting council's operations, it is not possible to be fully aware of every State and Federal law and the changes that are being made. There is however a range of methods that the Council will employ to make sure that it complies with key legislative changes. These include:

- Utilisation of the Local Government and Shire Association's Local Government Weekly to determine the latest developments in local government in NSW.
- Review of the NSW Legislative Events Weekly Bulletin.
- Regard to circulars, practice notes, codes, guidelines and the like issued by government or relevant central agencies.
- Attendance, where possible, at seminars, conferences and training sessions that relate to legislative changes.

In addition, staff members will implement recordkeeping systems and practices that capture evidence of compliance and non-compliance. These systems could include:

- Reference to relevant legislation, codes and policies in written reports.
- Appropriate filing of circulars and notices advising of legislative changes.
- Notes to file on changes that have been made and their impact, or otherwise, on council activities.

Compliance to this policy will be assessed through an internal audit function, where periodic examinations are conducted into key operational areas.

Legislative functions under the Local Government Act 1993

Chapter 5 of the Local Government Act 1993 confers or imposes a number of different functions on a council including:

Service Functions	Regulatory Functions	Ancillary Functions	Revenue Functions	Administrative Functions	Enforcement Functions
<p>For example:</p> <ul style="list-style-type: none"> • Providing community health, recreation, education and information services • Environmental protection • Waste removal & disposal • Land & property, industry & tourism development & assistance <p>For other functions, see the Introduction to Chapter 6 of the Local Government Act.</p>	<ul style="list-style-type: none"> • Approvals • Orders • Building Certificates 	<ul style="list-style-type: none"> • Resumption of land • Powers of entry and inspection 	<ul style="list-style-type: none"> • Rates • Charges • Fees • Borrowings • Investments 	<p>For example:</p> <ul style="list-style-type: none"> • Employment of staff • Management Plans • Financial Reporting • Annual Reports 	<p>For example:</p> <ul style="list-style-type: none"> • Proceedings for breaches of the Act • Prosecution of offences • Recovery of rates and charges

While the main functions of councils are provided for under the Local Government Act 1993, councils also have functions under other Acts. These include, but are not limited to the following:

- | | |
|--|--|
| • <i>Interpretation Act 1987 (part. Section 50)</i> | Statutory corporations |
| • <i>Community Land Development Act 1989</i> | Planning functions as consent authority |
| • <i>Companion Animals Act 1998</i> | Companion animal registration and control |
| • <i>Conveyancing Act 1919</i> | Placing covenants on council land |
| • <i>Environmental Planning and Assessment Act 1979</i> | Environmental planning |
| • <i>Fire Brigades Act 1989</i> | Payment of contributions to fire brigade costs and furnishing of returns. |
| • <i>Fluoridation of Public Water Supplies Act 1957</i> | Fluoridation of water supply by council |
| • <i>Food Act 2003</i> | Inspection of food and food premises |
| • <i>Impounding Act 1993</i> | Impounding of animals and articles |
| • <i>Library Act 1939</i> | Library services |
| • <i>Protection of the Environment Operations Act 1997</i> | Pollution control |
| • <i>Public Health Act 1991</i> | Inspection of systems for purposes of microbial control |
| • <i>Recreation Vehicles Act 1983</i> | Restricting use of recreation vehicles |
| • <i>Roads Act 1993</i> | Roads |
| • <i>Rural Fires Act 1997</i> | Issue of permits to light fires during bush fire danger periods. |
| | Requiring the furnishing of information to the Rural Fire Service Advisory Council and its Coordinating Committee. |
| • <i>State Emergency Service Act 1989</i> | Recommending appointment of local controller. |
| • <i>Strata Schemes (Freehold Development) Act 1973</i> | Approval of strata plans |
| • <i>Strata Schemes (Leasehold Development) Act 1986</i> | Approval of leasehold strata plans |
| • <i>Swimming Pools Act 1992</i> | Ensuring restriction of access to swimming pools. |



The exercise by a council of its functions under the Local Government Act may also be modified by the provisions of another Act. Some of those Acts and some of the modifications they effect include:

- *Coastal Protection Act 1979* Limitation on coastal development by councils.
- *Environmental Offences and Penalties Act 1989* Forfeiture of council functions to person appointed by Governor
- *Freedom of Information Act 1989* Council required to publish certain information, to grant access to certain documents and to amend certain records that are shown to be incomplete, incorrect, out of date or misleading.
- *Heritage Act 1977* Rating based on heritage valuation
- *State Emergency and Rescue Management Act 1989* Council required to prepare for emergencies
- *Unclaimed Money Act 1995* Unclaimed money to be paid to the Chief Commissioner of Unclaimed Money

(Adopted by Council 17/10/07)