



Policy

24. LEGISLATIVE COMPLIANCE

Version 02

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Strategic Outcome: Good government

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Responsible Officer: Enterprise and Risk Manager

1. POLICY STATEMENT

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 Environment, 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.

2. PURPOSE

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

1. The obligations of staff members in ensuring legislative compliance;
2. The consequences of non-compliance;
3. The application of legal requirements;
4. Moral and ethical objections, and
5. Strategies for ensuring compliance.

3. SCOPE

This policy applies to all staff of the Berrigan Shire Council including volunteers and contractors.



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4. OBJECTIVE

This policy is designed to assist the Council to meet the following Community Strategic Plan objectives:

2.2 Ensure effective governance by Council of Council operations and reporting.

5. DEFINITIONS

Legislation - Laws that are made by Parliament, or under the authority of Parliament are called legislation, or statutes. "Acts" are primary legislation. Acts may authorise the making of Regulations, Orders and Notices and there are referred to as subordinate legislation.

Legislation compels or directs the action of individuals, industry and other groups in specified circumstances and also outlines actions that are not to be taken, in order to achieve certain policy objectives.

Delegation Register – Councils have certain duties which they must perform, and certain powers which they must exercise, pursuant to the Local Government Act 1993, as well as a number of other Acts. Under the Local Government Act 1993, Council is able to delegate those duties to staff and Committees of Council.

The Delegation Register is a listing of those functions which Council has delegated to appropriate staff and Committees of Council.

6. POLICY IMPLEMENTATION

6.1 Staff Obligations

All Council staff are responsible for ensuring the Council complies with all relevant legislation. These responsibilities however differ across the organisation, based on the position requirements of the individual and their direct involvement in statutory functions.

6.1.1. General Responsibilities

While the Council does not expect 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 member are expected to be aware of a range of employment related laws (for example legislation relating to work, health and safety, equal opportunity, bullying and harassment), and are expected to be aware that certain actions may be subject to the criminal code (such as theft, assault, etc.).



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

6.1.2. Delegated Responsibilities

Staff members with delegated authority for carrying out statutory requirements (in accordance with the Delegation Register) are expected to develop a clear understanding of the relevant provisions as they relate to their responsibilities, and make themselves aware of changes to legislation and its impact on Council activities.

6.1.3 Management Responsibilities

Any staff member responsible for the management or supervision of staff must ensure appropriate information is disseminated to all workers under their responsibility. They are responsible for ensuring that risk due to non-compliance is minimised and workers 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 ensure that information relating to legislative changes is disseminated to appropriate staff members, and that recordkeeping systems and practices that capture evidence of compliance are in place.

6.2 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:

1. Disciplinary proceedings;
2. A hearing by the Pecuniary Interest Tribunal into complaints concerning alleged failures by Councillors, staff, delegates and advisors to disclose pecuniary interests;
3. Dismissal of the Mayor and Councillors and the appointment of an Administrator;
4. Removal of a Council's planning powers and the appointment of an Administrator;
5. The appointment of an Environmental Administrator (under relevant environmental legislation);
6. 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 of power, or failing to provide natural justice, possibly resulting in costly litigation and awards of damages;



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7. Complaints about the conduct of the Council or staff members being referred to the Ombudsman, ICAC, Audit Office, Office of Local Government, or other relevant bodies;
8. Criminal proceedings;
9. Disruption to management, staff morale problems and bad publicity resulting from any of the above.

6.3 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:

1. If the law gives the Council discretion, it should be exercised in a fair and reasonable way;
2. If the law does not give the Council discretion, fairness may involve adopting a broad interpretation in certain circumstances rather than a rigid adherence to legality;
3. 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 authorization to be obtained, fast tracking an assessment and determination of an application, etc.

In a similar manner, policies, codes, standards, etc. 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, etc. 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.

6.4 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* 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.



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6.5 Strategies for Ensuring Compliance

The General Manager will ensure a range of methods are adopted for use by Council staff to ensure compliance with key legislative changes.

7. RELATED LEGISLATION, POLICIES AND STRATEGIES

7.1 Policies and Strategies

- Berrigan Shire Council Community Strategic Plan
- Berrigan Shire Council Local Environmental Plan
- Delegation Register
- All Council policies and plans developed in accordance with legislation