

Portfolio and general legislation compliance management

Department of Health Policy

QH-POL-482:2021

1. Statement

Queensland Health (the Department) effectively administers obligations under health portfolio legislation (portfolio legislation), for which the Minister for Health and Ambulance Services (the Minister) is responsible, and the Director-General (as Chief Executive) is accountable, as set out in the Administrative Arrangements Orders.

The Director-General is also accountable for ensuring compliance with general legislation obligations.

2. Purpose

The Department is both a regulator, and an entity accountable for complying with all applicable Queensland and Commonwealth legislation (general legislation). This policy is intended to fulfil the requirements of the *Public Service Act 2008*, *Public Sector Ethics Act 1994* and the *Financial Accountability Act 2009* and to fulfil the Department's role in administering portfolio legislation. This is to ensure we drive the safest and highest quality services and better health outcomes for Queenslanders.

The Department utilises a network of Legislation Custodians (Custodians) and Compliance Managers responsible for the identification, monitoring and oversight of legislative obligations. Through this policy, the Department establishes clear and consistent accountabilities to ensure:

- roles and responsibilities for all employees, contractors and consultants in relation to administration of portfolio legislation and compliance with general legislation are made clear
- effective processes are established to identify, monitor, record, enforce where relevant, and report on legislative compliance performance in a systematic and transparent manner.

3. Scope

This policy applies to all employees, contractors and consultants within the Department's divisions, including the Queensland Ambulance Service (QAS). QAS compliance with the Principles of this policy is achieved through the QAS *Legislative compliance procedure*. This includes annual, quarterly by exception, (or as required) reporting of legislative compliance information for combined reporting to departmental senior management (where relevant).

4. Principles

The following principles guide all actions and practices related to legislative compliance:

- **Responsibility:** roles, responsibilities, reporting lines and minimum requirements are clear, enabling robust administration of, and compliance with, legislation¹
- **Accountability:** effective, documented and regularly reviewed compliance plans, and a senior accountable officer identified for each piece of legislation in the *Portfolio* and *general legislation schedule*
- **Consistency:** monitoring and performance data captures minimum data requirements to inform consistent, complete compliance performance monitoring
- **Collaboration:** Department-wide collaboration and sharing of resources and information to ensure currency and accuracy of information and to find efficiencies
- **Continuous improvement:** aligned with best practice models and striving for continuous improvement to minimise administrative and regulatory burden in line with risk
- **Fairness and human rights:** the Department meets and administers compliance obligations fairly, considering procedural fairness and human rights that are relevant to an action or decision.

In addition to the above, the following principles guide regulatory compliance practice:

- **Equity:** standardised, documented processes to administer legislative obligations in an equitable manner
- **Proportionality:** efficient and effective mix of approach to achieve compliance, informed by risk, relative severity and likelihood of harm, and historical compliance performance
- **Transparency:** open and transparent compliance expectations including consequences of non-compliance and enforcement decision-making processes.

5. Requirements

This section articulates the broad approach including key requirements, roles and responsibilities to be applied to achieve the policy intent.

5.1. Leadership and governance

5.1.1. The Director-General is responsible for:

- ensuring a legislative compliance management framework (LCMF) is established and maintained within the Department to effectively manage enterprise compliance risks
- the appropriate, effective and efficient administration of portfolio legislation

¹ Legislation – an Act of Parliament or subordinate legislation which includes (without limitation) General Legislation and Portfolio Legislation

- ensuring that as a regulator, the Department has systems and processes in place for promoting, monitoring, reporting on, and where relevant, enforcing compliance with portfolio legislation
- cultivating a positive culture of integrity and compliance throughout the Department.

5.1.2. Senior Compliance Executive (Deputy Director-General, Corporate Services Division (DDG CSD)), or their delegate, is responsible for:

- ensuring the LCMF is published on the Department's intranet – QHEPS, and staff are aware of the LCMF
- ensuring Custodians are nominated to take responsibility for administering portfolio legislation in accordance with this policy and the associated standard
- ensuring Compliance Managers are nominated to take responsibility for managing the Department's compliance with the relevant general legislation they are responsible for in accordance with this policy and the associated standard
- overseeing a process for compliance reporting to the Executive Leadership Team (ELT) and the Department's Audit and Risk Committee (ARC)
- reporting to senior management and other relevant stakeholders on the effectiveness of, and compliance with, the LCMF.

5.1.3. ELT also has a leadership role to play by:

- setting the Department's risk appetite for legislative non-compliance and regulatory failure through the Risk Appetite Statement
- considering legislative compliance performance reports annually, including a statement of significant breaches of general legislation and portfolio legislation
- resourcing the regulatory and compliance functions to effectively implement the Department's LCMF.

5.1.4. The Risk, Assurance and Information Management Branch (RAIM), Corporate Services Division (CSD) support the Senior Compliance Executive in the following governance activities:

- maintenance of the LCMF
- developing processes and coordinating annual legislative compliance performance reporting to ELT, ARC and other stakeholders via the Department's Annual Report and Legislation Compliance Statements
- coordinating reporting on the efficacy of, and compliance with, the LCMF

- coordinating quarterly reviews of the *Portfolio and general legislation schedule* (the legislation schedule), including a periodic risk-based review of the schedule 2 – General Legislation
- driving continuous improvement of the LCMF to improve its suitability, adequacy, and effectiveness.

5.1.5. Compliance Managers and Custodians have management, monitoring and reporting responsibilities relating to compliance with requirements in legislation, including subordinate legislation.

5.1.6. Departmental supervisors and managers have responsibilities relating to reporting and managing actual and potential breaches in their work areas. The specific responsibilities are set out in the related standards.

5.1.7. All Departmental employees, contractors and consultants are responsible for ensuring they are compliant with legislative requirements.

5.2. Legislation schedule

5.2.1. There is a single legislation schedule for the Department which identifies portfolio (including Monitored Agency) and general legislation, and a nominated Custodian or Compliance Manager for each.

5.2.2. General legislation is structured into a three-tier risk-based model, each with minimum requirements identified in the *Managing general legislation compliance standard*.

5.2.3. RAIM Branch coordinates quarterly reviews of the legislation schedule to maintain currency of information.

5.2.4. As part of quarterly reviews, Custodians and Compliance Managers are responsible for reviewing the legislation schedule and advising RAIM Branch of any changes required.

5.2.5. Changes to the Custodian or Compliance Manager must be approved by the Deputy Director-General or equivalent in the receiving area for the responsibility of monitoring and reporting compliance of the legislation being transferred.

5.2.6. The Legislative Policy Unit is responsible for advising DDG, CSD (via RAIM Branch) of required changes to the list of portfolio legislation identified in the legislation schedule, including new legislation or subordinate legislation.

5.2.7. Compliance Managers, as subject matter experts, are responsible for contributing to the periodic assessment of the tiered general legislation at schedule 2.

5.2.8. The Office of Health Statutory Agencies, Office of the Director-General, is responsible for reviewing the schedule on a quarterly basis to maintain currency of the Monitored Agency legislation.

5.2.9. Legal Branch, CSD is responsible for confirming the accuracy of the legislation schedule.

5.3. Monitoring agency legislation compliance

5.3.1. The Department's responsibilities in relation to Monitored Agency Legislation are to:

- manage appointments to health statutory agencies
- support good board governance and legislative compliance including providing advice on annual reporting requirements
- support the Minister by maintaining and amending Acts and subordinate legislation as required to manage compliance risk and deliver optimal outcomes.

5.3.2. The Office of Health Statutory Agencies, Office of the Director-General must prepare an annual compliance statement summarising the Department's performance in managing appointments to health statutory agencies, and any legislative compliance breaches, resulting action, and supporting good board governance activity.

6. Aboriginal and Torres Strait Islander considerations

In accordance with the principles of fairness and equity, the systems and processes for the administration of portfolio legislation impacting Aboriginal and/or Torres Strait Islander people, will be established and implemented in a culturally respectful, safe and appropriate manner.

Custodians and Compliance Managers should outline in annual compliance statements how they have, or plan to, incorporate Aboriginal and Torres Strait Islander considerations into compliance and/or regulatory activities and any associated impact of compliance/regulatory activities disaggregated by Aboriginal and Torres Strait Islander status.

7. Legislation

The below is a list of the primary legislation outlining the Department's role and authority in relation to good governance and organisational management.

- *Constitution of Queensland 2001*
- *Financial Accountability Act 2009*
- *Financial and Performance Management Standard 2019*
- *Human Rights Act 2019*
- *Public Sector Ethics Act 1994*
Public Sector Ethics Regulation 2010
- *Public Service Act 2008*
Public Service Regulation 2018

8. Supporting documents

Administering portfolio legislation standard – detailed requirements for Custodians and regulatory staff in relation to administering portfolio legislation, including internal compliance with portfolio legislation

Managing general legislation compliance standard – detailed requirements for Compliance Managers and staff in relation to monitoring, managing and reporting on legislative compliance

Portfolio and general legislation schedule – single schedule that identifies the nominated Custodians (for Portfolio Legislation) and Compliance Managers (for General Legislation)

Legislative compliance internal breach reporting guideline – guidance on processes for reporting, risk assessing and managing actual and potential breaches of legislation

Legislative compliance internal breach notification form – captures internal breaches of legislation (actual and potential) including related policy or breaches of the LCMF.

9. Definitions

Term	Definition
Agency	A department of government or independent body that reports to a Minister, for example, Queensland Health to the Minister for Health and Ambulance Services
Breach of compliance with legislation	A breach can occur as a result of an act or failing to do an act, and includes a failure to comply with a legislative or other requirement, under this policy: <ul style="list-style-type: none">- actual breach: evidence suggests a breach has occurred, i.e. obligation was not met- potential breach: evidence suggests breach is likely to occur without intervention (risk of breach), i.e. a deficiency or weakness in key control/s that could result in an actual breach
Compliance	Awareness of and upholding of relevant laws and regulations
Compliance Manager	Nominated senior officer responsible for monitoring and reporting compliance across the Department for a particular Act or part of an Act of general legislation
Compliance Plan	Documented approach to monitoring compliance with legislative obligations
Enterprise compliance risk	Distinguishes the activity at whole of Department level, as opposed to specific areas of risk management such as work health and safety procedures and processes
General legislation	Legislation that applies across Government
Legislation	An Act of Parliament or subordinate legislation which includes (without limitation) general legislation and portfolio legislation

Term	Definition
Legislation Custodian	Nominated senior officer responsible for administration of a particular Act or part of an Act of portfolio legislation
Legislative compliance management framework	The policy suite to support the effective administration of portfolio legislation and the management, monitoring and reporting of compliance with internal legislative obligations under general and portfolio legislation in the Department of Health
Monitored Agency legislation	Portfolio legislation, including subordinate legislation, which is administered and reported on by entities other than the Department
Portfolio legislation	Legislation that is the responsibility of the Minister for Health and Ambulance Services which is administered by the Department, and for which the Director-General is accountable for
Significant breach of compliance with legislation	Failure to meet responsibilities under portfolio or general legislation, and the failure could result in disciplinary or other proceedings against an individual and/or the Department

Version Control

Version	Date	Comments
V 1.0	1 July 2021	<i>Endorsed first version to support the new overarching legislative compliance management framework. Replaces General Legislation compliance policy QH-POL-035:2015 and Administering Portfolio Legislation – Prevention Division Policy QH-POL-428:2016</i>