

Legislation compliance internal breach reporting

Department of Health Guideline

QH-GDL-482-3 :2021

1. Statement

Queensland Health (the Department) proactively identifies and responds to actual and potential breaches of legislation, both portfolio and general. As part of a positive compliance culture, staff are encouraged to respond and report non-compliance with legislation and other non-compliance concerns without fear of retaliation.

2. Scope

This guideline applies to all employees, contractors and consultants within the Department's divisions, including Queensland Ambulance Service (QAS). QAS compliance with the Principles of this Policy framework is achieved through the *QAS Legislative compliance procedure*.

This guideline applies to internal breach reporting of both portfolio and general legislation for compliance breaches.

Compliance with this guideline is not mandatory, but sound reasoning must exist for departing from the requirements within the guideline (e.g. specific functions such as work health and safety procedures or regulatory reporting guidelines).

3. Requirements

The principles outlined in the Legislative compliance management framework underpin the actions outlined in this guideline. The SBAR Model (Situation, Background, Assessment, Recommendation) has been chosen to help organise, prioritise and facilitate the effective transfer of information. It is already extensively used throughout the health system in Queensland and internationally and is easily adapted for non-clinical activities. This model is further defined in the Legislative compliance internal breach notification report form.

3.1. Process (refer also to process map – Attachment 1)

An actual or potential breach in legislation is identified. Note, there are various channels through which actual or potential breaches may be identified such as employees, volunteers, complaints, external service providers, internal or external audit, and regulators.

3.1.1. Staff member shall:

- a) refer to relevant policy or procedure and take immediate action

(For example, adhere to the Department's [Privacy Breach Management](#) procedures if there is either a suspected or confirmed privacy breach such as a data breach involving personal information; the [Health, safety and wellbeing management system](#) if related to Work Health and Safety enforcement notices and/or sanctions)



- b) inform manager/supervisor of the situation as soon as possible.

3.1.2. Manager/Supervisor shall:

Determine if actual or potential breach has occurred, then:

Actual breaches

- a) develop and implement a management action plan which:
 - i. describes the breach and implications (actual and potential), whilst adhering to the Department's [Privacy plan](#) (policy)
 - ii. re-establishes/implements actions to regain compliance and reduce risk of recurrence to an acceptable level
 - iii. addresses requirements prescribed by legislation and departmental policy or related expectations, including notifying any regulatory authority
 - iv. includes measures to monitor progress (e.g. compliance regained and determine success of other management strategies)
 - v. completes Form – [Legislative compliance internal breach notification report](#)
- b) Forward the *Legislative compliance internal breach notification report* (breach notification report) to the responsible Legislation Custodian (Custodian) / Compliance Manager within **two working days** (for significant breaches) and **five working days** (for all others) of being informed.
- c) If a risk for recurrence is identified:
 - i. undertake [risk assessment](#) in accordance with the Department's Enterprise Risk Management Standard or review any existing assessment, and work with the relevant Divisional risk function to ensure the assessment is captured (e.g. in a risk register)
 - ii. if it is determined to be a [risk](#) requiring input to RiskMan (risk module), consult with the responsible Compliance Manager / Custodian when drafting entry and forward the final entry to them within 30 days.
- d) Where a breach of legislative obligations within the Department constitutes suspected corrupt or fraudulent activity, this must also be reported in accordance with [HR Policy E9](#) (Reporting suspected corrupt conduct) and the Employee complaints [HR Policy E12](#) (Grievance resolution) and related procedures.

Potential breaches

- a) complete Form – [Legislative compliance breach notification report](#) and select 'Potential Breach' tickbox
- b) undertake risk assessment and risk treatment planning in consultation with Divisional risk function (if relevant) and forward a copy to the Compliance Manager / Custodian (if required)
- c) forward a copy of the breach notification report of any high, very-high compliance risks, to the Compliance Manager / Custodian within **five working days**
- d) if required, document in RiskMan (risk module) any new/emerging risk or updates to existing risk controls and treatments, in consultation with the responsible Compliance Manager / Custodian.

3.1.3. Custodian / Compliance Manager shall:

- a) review the breach notification report and RiskMan entry (if relevant) to ensure appropriate action taken and within required timelines
- b) identify if risks identified have implications for other areas or the health system as a whole
- c) ensure the breach notification report, and any risks assessed as high, very-high or significant have been communicated to DDG level (or Director-General and Minister, depending on potential impact) and discuss any actions/communication requirements
- d) provide RAIM Branch with a copy of the breach notification report on resolution of the potential breach
- e) maintain a record of breaches, investigations, actions and resolution.

3.1.4. Risk, Assurance and Information Management Branch shall:

- a) provide support and guidance to staff, line managers, Compliance Managers and Custodians, as needed
- b) ensure reports are finalised and closed out
- c) maintain a register of all reported actual and potential breaches.

4. 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*
- *Crime and Corruption Act 2001 (Qld)*
- *Financial Accountability Act 2009 (Qld)*
- *Financial and Performance Management Standard 2019*
- *Hospital and Health Boards Act 2011 (Qld)*

- *Human Rights Act 2019*
- *Information Privacy Act 2009 (Qld)*
- *Public Interest Disclosure Act 2010 (Qld)*
- *Public Sector Ethics Act 1994 (Qld)*
Public Sector Ethics Regulation 2010
- *Public Service Act 2008 (Qld)*
Public Service Regulation 2018
- *Work Health and Safety Act 2011*

5. Supporting documents

- Portfolio and general legislation compliance management policy
- Administering portfolio legislation standard
- Managing general legislation compliance standard
- Portfolio and general legislation schedule
- Legislative compliance internal breach notification report form
- Records management policy
- Requirements for reporting suspected corrupt conduct (HR Policy E9)
- Employee complaints (HR policy E12)
- Public Interest Disclosure (HR Policy I5)
- Risk management standard

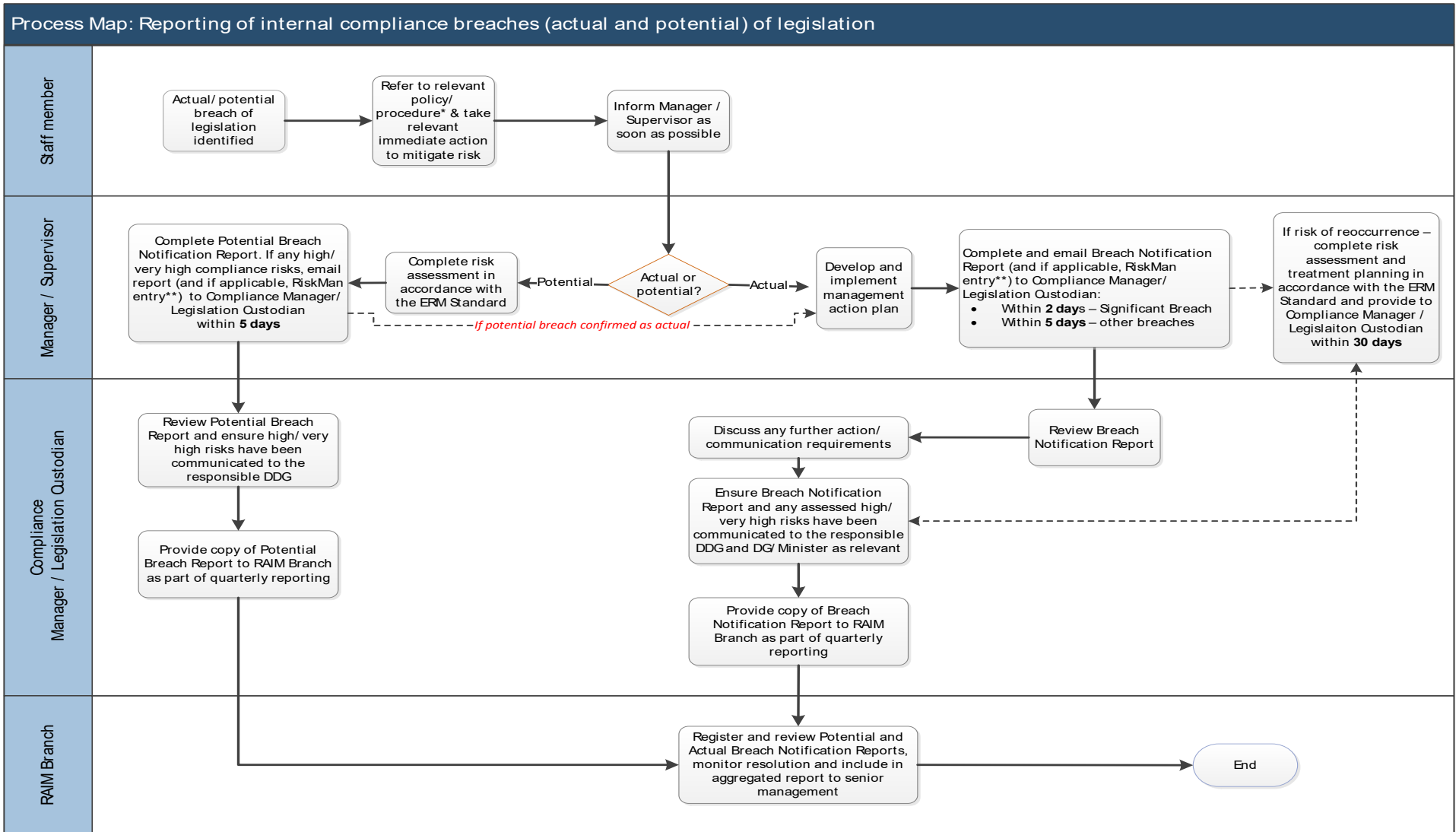
6. Definitions

Term	Definition
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 the Legislative compliance 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 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
General legislation	Legislation that applies across government

Term	Definition
Legislation	An Act of Parliament or subordinate legislation which includes (without limitation) Portfolio Legislation and General Legislation
Legislation Custodian	Nominated senior officer responsible for administration of a particular Act or part of an Act (Health 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 portfolio and general legislation in the Department of Health
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
Privacy breach	A privacy breach occurs when there is a failure to comply with one or more of the privacy principles set out in the <i>Information Privacy Act 2009 (Qld)</i> . All privacy breaches should be reported to the Privacy and Right to Information Unit as soon as possible
RiskMan	The integrated information system to collect, integrate, manage and report risk (Risk Module) and workplace incidents (Case Management and Incident Modules)
SBAR model	<p>A structured Communication Tool which improves the quality of information and interaction (Situation, Background, Assessment, Recommendation). Source: OSSIE Guide to Clinical Handover Improvement, Australian Commission on Safety and Quality in Health Care: 2010.</p> <p>Situation: describe the breach including severity and likely impact</p> <p>Background: describe what led to the breach occurring, including root cause</p> <p>Assessment: describe what action has been taken to regain compliance and prevent recurrence</p> <p>Recommendation: describe other actions needed to ensure compliance will be maintained</p>
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
Significant breach of compliance with Work Health and Safety (WHS) legislation	<p>Proceedings have been commenced or a penalty for non-compliance with WHS obligations has been issued by an Inspector or the regulator by way of:</p> <ul style="list-style-type: none"> • <i>Infringement notice</i> that is issued to an individual, the Department or Divisions for contravening WHS and/or Electrical Safety Legislation • <i>Enforceable Undertaking</i> that has been entered by the Department with the regulator for an alleged contravention of WHS or ES legislation • <i>Prosecution by the WHS prosecutor</i>

Version Control

Version	Date	Comments
1.0	1 July 2021	Reviewed as part of development of a new overarching Legislative compliance management framework. Replaces Reporting actual and potential breaches of general legislation guideline QH-GDL-035-1:2015



Notes:
 ERM: Enterprise Risk Management
 * Privacy Breach Management procedures, Health, Safety & Wellbeing Management System (for example)
 ** RiskMan (risk module) existing risk entry or new entry drafted in consultation with Divisional risk function and relevant Compliance Manager / Legislation Custodian