

# Administering portfolio legislation

## Department of Health Standard

QH-IMP-482-1:2021

## 1. Statement

Queensland Health (the Department) effectively administers health portfolio legislation (portfolio legislation) for which the Minister for Health and Ambulance Services is responsible, and the Director-General is accountable<sup>1</sup>, as set out in the Administrative Arrangements Orders.

This standard sets out the minimum requirements for ensuring the Department, as a regulator, has systems and processes in place for promoting, monitoring, reporting on, and where relevant, enforcing, compliance with portfolio legislation by businesses, organisations, and individuals (regulated entities). The minimum requirements for ensuring the Department complies with its internal obligations under portfolio legislation are also outlined.

## 2. Scope

This standard 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 Legislative compliance management framework is achieved through the *QAS Legislative compliance procedure*.

Where regulatory responsibility is devolved to another agency or statutory body to administer, the Department must ensure the requirements set out in this standard are met through relevant accountability mechanisms, for example through Service Agreements.

This standard does not apply to Monitored Agency legislation, nor other entities named in legislation to undertake specific roles (such as local government authorities).

## 3. Requirements

Legislation Custodians (Custodians) are responsible for administering portfolio legislation, including both internal and external compliance obligations. Unless specified otherwise, Custodians are responsible for ensuring all requirements in this standard are met.

### 3.1 Regulatory approach for external compliance

- 3.1.1 Articulate and document the approach to administering portfolio legislation, including how the Department will:
- use statutory powers

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<sup>1</sup> Note under the *Private Health Facilities Act 1999* the Chief Health Officer has functions however is not the Chief Executive for the purposes of this Act

- gather and use intelligence
  - consult and engage meaningfully with stakeholders including community, industry, and other regulators to enhance decision making and improve efficiency and effectiveness
  - promote, monitor, and where relevant, enforce compliance.
- 3.1.2 Maintain Acts and subordinate legislation appropriately to manage risks and deliver optimal outcomes, including protecting and promoting public health outcomes, while minimising unnecessary regulatory burden.
- 3.1.3 Systems are in place to identify regulated entities and to document and risk assess compliance obligations of regulated entities under the legislation.

## 3.2 Approach for internal compliance

- 3.2.1 The Department also has internal compliance obligations in administering portfolio legislation. Custodians are responsible for ensuring controls are in place to manage compliance with these obligations, including:
- identify, document and risk assess compliance obligations of the Department under the legislation
  - communicate internal obligations to all relevant stakeholders, including all areas involved in the administration of portfolio legislation
  - monitor and report how the Department is complying with its obligations under the legislation
  - Custodians are to ensure the process for reporting potential, actual and significant breaches of legislation is followed. If no existing reporting process is in place to capture internal breach data, refer to the Department's *Legislative compliance internal breach reporting guideline* and *Legislative compliance internal breach notification report form*
  - review legislation as a result of amendments to legislation or identified actual or potential compliance breaches and update the compliance plan.

## 3.3 Compliance promotion and monitoring

- 3.3.1 Tailored guidance material and information is to be readily available to support and encourage regulated entities to understand and comply with regulatory requirements and their legislative compliance obligations.
- 3.3.2 An intelligence driven, risk-based compliance plan is prepared for each portfolio Act, which is reviewed regularly, to proactively monitor regulated entities (and internal) compliance with regulatory requirements and obligations under the legislation.
- 3.3.3 Systems are in place to monitor the compliance promotion, monitoring and enforcement activities of agencies with devolved regulatory responsibilities, to

ensure the objectives of the legislation are achieved and reporting obligations are met.

### 3.4 Enforcement and other decision making

- 3.4.1 Where relevant, an enforcement decision tool, for example a decision matrix, is available to promote proportionate, risk-based and standardised enforcement of compliance. The decision tool may include referrals for enforcement or other, relevant regulatory agency.
- 3.4.2 Decisions are provided in a transparent and timely manner, clearly articulating expectations and the underlying reasons for decisions.
- 3.4.3 Use of statutory powers and decision making which may limit human rights is fair, proportionate and transparent and complies with the requirements set out in the *Human Rights Act 2019*.

### 3.5 Compliance and regulatory performance reporting

- 3.5.1 Systems are in place for the collection of relevant data to measure and report on compliance and regulatory performance.
- 3.5.2 Processes are in place to immediately report new or emerging significant issues or risks, including actual or potential (internal/external) breaches of portfolio legislation, to the Custodian (and DDG/equivalent and/or Director-General as appropriate).
- 3.5.3 Processes are in place to provide annual reports, including for the Department of Health Annual Report and to RAIM Branch that include:
  - significant issues and risks, including number and nature of actual or potential (internal/external) breaches of portfolio legislation and number and nature of corrective and/or enforcement actions undertaken
  - number, nature and purpose of disclosure(s) of confidential information in the public interest
  - actions undertaken to further the objects of the *Human Rights Act 2019*, including relevant details (e.g. number and outcome) of any human rights complaints received and details of any review of policies, programs, procedures, practices or services undertaken in relation to their compatibility with human rights
  - how Aboriginal and Torres Strait Islander considerations have been incorporated into compliance and/or regulatory activities and any associated impacts, and provide any data (where applicable/available)
  - alignment with best practice models (such as performance against the Queensland Government regulatory model practices) and striving for continuous improvement to minimise the administrative and regulatory burden in line with risk.

- 3.5.4 Additionally, quarterly by exception reports to RAIM Branch that include (if relevant):
- number and nature of actual or potential internal compliance breaches, including breaches of key related policies and action taken or controls introduced to address compliance breaches to prevent recurrence
  - number and nature of external breaches and key corrective and/or enforcement activities undertaken.

### 3.6 Regulatory workforce (employees and Authorised Officers) capabilities

- 3.6.1 Systems and mechanisms are in place to ensure all regulatory employees, including Authorised Officers, are suitably qualified and competent and have the necessary training and support to undertake their roles and responsibilities and adhere to expected standards of behaviour.
- 3.6.2 Centralised and coordinated systems are in place to manage Authorised Officer appointments.
- 3.6.3 Systems are in place to prevent and manage fraud and corruption in regulatory practice and to declare and manage conflicts of interests.
- 3.6.4 Systems are in place for lodging and managing complaints about regulatory services, including regulatory employee and Authorised Officer behaviour.

### 3.7 Delegations

- 3.7.1 A centralised and coordinated system is in place for managing and recording delegations to delegate authorities, functions or powers under the legislation.
- 3.7.2 Contemporary, fit for purpose instruments of delegation and delegation schedules are in place for the efficient and effective administration of the legislation.
- 3.7.3 Relevant delegation documentation is published in a central, accessible location to promote transparency and authorised decision making.

### 3.8 Document and records management

- 3.8.1 Current documents to support legislative compliance, monitoring, enforcement and reporting (e.g. regulatory guidelines, procedures and resources) are reviewed and maintained.
- 3.8.2 Key regulatory documents are made available to employees on a central repository.
- 3.8.3 Key regulatory frameworks and timeframes for making regulatory decisions are published on the Department's internet to provide certainty to regulated entities and stakeholders.
- 3.8.4 Appropriate corporate information management and record keeping systems are established, maintained and used for recording key regulatory, including compliance monitoring and enforcement activities.

### 3.9 Quality assurance and continuous improvement (reviewing regulatory performance)

- 3.9.1 Documented, risk-based, quality assurance and review mechanisms (e.g. reviews of regulatory decisions and operations) are in place and adequately resourced.
- 3.9.2 Outcomes from quality assurance, review and complaints mechanism are used to assess effectiveness of regulatory regime and to inform operational regulatory continuous improvement initiatives.

## 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*
- *Human Rights Act 2019*
- *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

## 5. Supporting documents

- Portfolio and general legislation compliance management policy
- Managing general legislation compliance standard
- Portfolio and general legislation schedule
- Legislative compliance internal breach reporting guideline
- Legislative compliance internal breach notification report form
- Customer complaints management policy
- Public Interest Disclosure (HR Policy I5)
- Corporate records management policy
- Risk Management standard
- The Queensland Government Guide to Better Regulation

## 6. Definitions

Term	Definition
Administrative Arrangements Order	The responsibilities of Ministers and their portfolios are set out in Administrative Arrangements Orders. For each Minister, they

Term	Definition
	detail the principal responsibilities, the Acts they administer, and the departments, agencies and office holders responsible for them
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	<p>A breach can occur as a result of an act or failing to do an act and includes a failure to comply with a legislation or other requirement under this Standard</p> <ul style="list-style-type: none"> <li>- actual breach: evidence suggests a breach has occurred, i.e. obligation was not met</li> <li>- potential breach: evidence suggests breach is likely to occur without intervention, i.e. a deficiency or weakness in key control/s that could result in an actual breach</li> </ul>
Compliance	<p>Awareness of and upholding of relevant laws and regulation:</p> <ul style="list-style-type: none"> <li>- internal: legislative obligations (general and portfolio) required of all employees, contractors and consultants within the Department's divisions, including QAS</li> <li>- external: portfolio legislative obligations required by entities other than the Department administering and reporting on compliance (i.e. where regulatory responsibility is devolved)</li> </ul>
Compliance Plan (Portfolio Legislation)	<p>Documented approach to monitoring compliance with legislative obligations.</p> <ul style="list-style-type: none"> <li>- There is no prescribed template, however minimum requirements are to identify and risk assess legislative obligations and articulate how compliance with these obligations is achieved, then identify responsible / lead officer or business area for each obligation and (if relevant) key stakeholders or regulatory partners that support key obligations</li> <li>- identify key policies and procedures or compliance promotion, monitoring and enforcement activities which support compliance and integrate obligations</li> <li>- where relevant (e.g. based on intelligence about compliance), outline any planned improvement initiatives to support compliance</li> <li>- include processes for capturing and reporting breaches</li> <li>- identify when the plan will be periodically reviewed</li> </ul>
General legislation	Legislation that applies across Government
Legislation	An Act of Parliament or subordinate 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

Term	Definition
Legislation Custodian	Nominated senior officer responsible for administration of a particular Act or part of an Act of portfolio legislation
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
Queensland Government Regulator model practices	<ol style="list-style-type: none"> <li>1. Ensure Regulatory Activity is Proportionate to Risk and Minimises Unnecessary Burden</li> <li>2. Consult and Engage Meaningfully with Stakeholders</li> <li>3. Provide Appropriate Information and Support to Assist Compliance</li> <li>4. Commit to Continuous Improvement</li> <li>5. Be Transparent and Accountable in Actions</li> </ol>
Regulated entity	Any person, business or organisation that is required to comply with prescribed regulatory requirements, includes duty holders
Regulation	The administration of any rule put in place with government authority where there is a reasonable expectation of compliance. Regulation is intended to influence or compel specific behaviour by business and the community. Includes legislation, regulations and quasi-regulations (standards and codes of practice)
Regulator	A government agency or department empowered by legislation to administer and where relevant, enforce regulation. Can be an agency specifically established for this purpose or a function within a department
Regulatory functions	Actions/activities of a regulator including licensing, monitoring and enforcing compliance with laws
Regulatory responsibility	<p>Devolved: another agency or statutory body administers, on behalf of the Department, portfolio legislative obligations and is required to comply with, and report on, achievement of obligations</p> <p>Delegated: the conferring of powers or authority under portfolio legislation through a written instrument by the Chief Executive (Director-General)</p>
Significant breach of compliance with legislation	Failure to meet responsibilities under portfolio 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 Administering and managing legislative compliance policy. Replaces Administering portfolio legislation standard (Prevention Division) QH-IMP-428-1:2016</i>