Administering portfolio legislation
– Prevention Division

1. Statement
The Minister for Health and Minister for Ambulance Services is responsible for meeting the objectives of public health legislation in Queensland.

The Director-General of Queensland Health (as Chief Executive) is the accountable person for administration of public health (portfolio) legislation on behalf of the Minister, except under the Private Health Facilities Act 1999 whereby the Chief Health Officer is the accountable person.

The Prevention Division is committed to the appropriate and effective administration of public health legislation. It takes a coordinated approach to identifying and monitoring public health legislation obligations and to proactively identify and respond to potential breaches of legislation.

2. Scope
The scope of this standard is public health (portfolio) legislation administered by the Prevention Division. Public health legislation accounts for eleven out of seventeen portfolio Acts administered by Queensland Health.

The standard applies to all employees, contractors and consultants within the Prevention Division involved in the administration of public health legislation.

3. Requirements
Public health legislation may be administered and implemented by specialised program areas within the Prevention Division and/or devolved wholly or in part to local governments. To assist in effective administration of public health legislation locally and throughout the state, where administratively practicable and appropriate, the Director-General may delegate select powers across the 16 Hospital and Health Services (HHSs) and appoint authorised persons within these HHSs.

The administration of public health legislation is ordinarily managed through one of these four primary arrangements:

- administered solely by the department
- administered by the department, with some regulatory activities undertaken through delegation to, and/or appointment of, HHS employees
- administered by the department and local government
- administered by the department and local government, with some regulatory activities undertaken through delegation to, and/or appointment of, HHS employees.

In all instances, Queensland Health maintains overall responsibility and accountability as the legislative custodian, including where administration of legislation is devolved to local government e.g. Public Health (Infection Control for Personal Appearance Services) Act 2003.

This standard outlines the administrative arrangements and obligations of the Prevention Division in ensuring:

- the department is complying with its obligations under the legislation
• systems are in place to monitor other agencies undertaking regulatory activities (including delegated or devolved activities) compliance with the legislation (where relevant)
• regulated entities are complying with the legislation.

The general and regulatory principles outlined in the Administering portfolio legislation – Prevention Division policy underpin the actions outlined in this standard.

3.1 Governance

Supporting the department’s commitment to efficient and effective administration and maintenance of portfolio legislation are a number of key governance groups including, but not limited to:

• Prevention Division, Executive Leadership Team (ELT) which:
  • Progresses recommendations regarding the strategic direction, priorities and objectives of the Prevention Division and endorses plans and actions to achieve these objectives.
  • Reviews the divisional budget.
  • Facilitates communication across the Prevention Division.

• Public Health Legislation Sub-Committee (Prevention Division), which advises and makes recommendations to ELT on efficient and effective management systems underpinning the development, administration of, and compliance with, applicable portfolio legislation.

• Compliance working groups which comprise relevant stakeholders and play an advisory role in the planning and coordination of regulatory compliance activities based on evidence, emerging public health risks and state-wide and local priorities. Use of compliance working groups is encouraged, and HHSs should be actively engaged as a key stakeholder where they undertake regulatory functions on behalf of the department under public health legislation.

3.2 Managing compliance with Department of Health’s legislative obligations

The department has no appetite for breaching our legislative obligations. Further information on the department’s risk appetite can be found in the Risk appetite statement for Department of Health risks. Legislative custodians ensure that they are identifying, documenting, risk assessing and managing all legislative obligations in accordance with the Portfolio legislation obligations identification and risk management – Prevention Division guideline.

3.3 Ensuring agencies undertaking regulatory activities are managing their legislative obligations

Where an Act is not solely administered by the department, it is important that there is clarity about how the roles of all agencies undertaking regulatory activities on behalf of the department fit together to collectively achieve the objectives of public health legislation, and ensure that each of these agencies are complying with their obligations under the legislation.

3.3.1 Authorised officers

The Chief Executive (or delegate) may appoint public service officers or employees and health service employees as authorised officers (authorised persons and inspectors) to exercise powers under the relevant Acts. Authorised officers play a key role in the administration of public health legislation, by monitoring and enforcing provisions of the Acts.

Authorised officers are appointed in accordance with the relevant public health legislation and the Appointment Protocol. This protocol outlines qualifications, training, expertise and/or experience necessary for relevant appointments. Responsibilities of authorised persons are outlined in section 3.6.
3.3.2 Local government
Legislative custodians have appropriate systems and processes in place to assist local government in meeting and reporting on their legislative obligations, where local governments have devolved responsibilities. This may include sharing of information, coordinating advisory groups and the provision of relevant training and support as required, particularly when legislation changes.

3.4 Ensuring regulated entities are complying with their legislative obligations

3.4.1 Compliance planning
Legislative custodians develop and implement compliance plans in accordance with Compliance planning public health portfolio legislation guideline. Development of these two year (financial year) rolling compliance plans is to be undertaken in a coordinated manner across the division, with plans endorsed by the Chief Health Officer and Deputy Director-General Prevention Division (CHO-DDG) prior to 1 July each year.

Where relevant, legislative custodians should ensure compliance plans are developed in collaboration with HHS Public Health Units and issued to HHS Chief Executives prior to 1 July each year.

3.4.2 Enforcement approach
The Prevention Division acknowledges three broad levels of enforcement intervention (encompassing prevention, detection and deterrence) and recognises that there are a range of enforcement tools and remedies available under relevant public health legislation in order to achieve public health compliance.

Authorised officers, delegates and legislative custodians ensure that all enforcement intervention is undertaken in accordance with the Public health enforcement decision guideline (including the Enforcement matrix).

3.4.3 Records
Appropriate record keeping systems will be maintained for all key compliance monitoring and enforcement activities, including breaches and prosecutions, which will be recorded in relevant electronic information systems e.g. Management of Application, Permits and Licensing Events (MAPLE).

3.5 Reporting
Legislative custodians undertake reporting in accordance with the Portfolio legislation reporting – Prevention Division guideline. This includes reporting of:

- new or emerging significant issues or risks
- quarterly compliance
- annual compliance
- submission to Queensland Health’s annual public report

All staff ensure that they notify their manager and/or the legislative custodian immediately upon determination of a new or emerging significant issue or risk, including, but not limited to, an actual or potential breach of the department’s legislative obligations.

3.6 Roles and responsibilities

<table>
<thead>
<tr>
<th>Position</th>
<th>Responsibilities</th>
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<td>Administering portfolio legislation – Prevention Division</td>
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<tr>
<td>Prevention Division</td>
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<td>Chief Health Officer and Deputy Director-General</td>
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<td>16 May 2016</td>
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<td>Role</td>
<td>Responsibilities</td>
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<tr>
<td>Minister</td>
<td>• Approve instruments of delegation and authorisation relating to the powers conferred upon the Minister under legislation relevant to the department.</td>
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| Director-General | • Promote and monitor the department’s commitment to effective legislative compliance and administration.  
• Appropriately delegate powers conferred upon the Chief Executive under legislation relevant to the department. |
| Chief Health Officer and Deputy Director-General (CHO-DDG) | • Develop and maintain relevant policies, standards, guidelines, procedures and other resources to support compliance with portfolio legislation. |
| Legislative custodians | • Monitor that the objectives of public health legislation, for which they are custodian, are being satisfied and implement relevant measures to facilitate compliance.  
• Ensure legislative obligations are identified, documented and risk assessed (i.e. appropriate register is developed and maintained).  
• Ensure relevant employees are aware of legislative compliance obligations.  
• Manage legislative risks and (actual or potential) legislative breaches in a timely and appropriate manner.  
• Monitor and assist appropriate training being undertaken by delegates and persons authorised under legislation.  
• Undertake reporting in accordance with *Portfolio legislation reporting – Prevention Division guideline*.  
• Monitor staff reporting of new or emerging significant risks or issues, including but not limited to actual or potential breaches of legislative obligations.  
• Develop and maintain documents to support legislative compliance, monitoring, enforcement and reporting (including compliance plans, enforcement decision matrix, regulatory procedures/resources and annual report).  
• Perform self-assessment against the policy and standard. |
| Delegates | • Exercise their powers in accordance with:  
• legislative provisions that describe or specify the particular power being exercised  
• any conditions to which the delegation is subject  
• legislative provisions regulating the delegation of functions or powers  
• any other applicable law  
• relevant policies and procedures. |
| Authorised officers | • Undertake regulatory functions in accordance with the legislation, their instruments of appointment and policies, standards, guidelines and other supporting documentation provided by the department.  
• Report all actual or potential breaches of legislation to their manager, director and/or legislative custodian. |
| Relevant employees, contractors and consultants | • Comply with legislation.  
• Report all actual or potential breaches of legislation to their manager, director and/or legislative custodian. |
3.7 Staff education and training

Legislative custodians and program area directors/managers ensure that relevant employees have the appropriate skills and knowledge to effectively undertake their roles and responsibilities. This includes ensuring relevant employees are aware of their legislative responsibilities, current legislative compliance activities and key documents for legislative compliance, and have undertaken all mandatory training outlined in relevant human resources policies.

3.8 Portfolio legislation documentation

Legislative custodians and program area directors/managers ensure that there is a process for maintaining currency of all key portfolio legislation documents (i.e. policies, standards, guidelines, factsheets and forms). All key documents are stored in the approved central repository, in accordance with Prevention portfolio legislation document management and publishing procedure.

3.9 Fraud and corruption control

Legislative custodians are responsible for managing the risks of fraudulent and corrupt conduct associated with administration of public health legislation. Consideration should be given to the Fraud and corruption control in regulatory practice supplementary guideline (which supports the department’s Fraud control policy (QH-POL-295:2015)) when planning and undertaking any regulatory activities.

4. Legislation

- Food Act 2006
- Health Act 1937
- Pest Management Act 2001
- Pharmacy Business Ownership Act 2001
- Private Health Facilities Act 1999
- Public Health Act 2005
- Public Health (Infection Control for Personal Appearances Services) Act 2003
- Radiation Safety Act 1999
- Tobacco and Other Smoking Products Act 1998
- Transplantation and Anatomy Act 1979
- Water Fluoridation Act 2008

5. Supporting documents

- Administering portfolio legislation – Prevention Division policy
- Appointment – Authorised person, Inspector Protocol
- Executive risk decision map and communication guide
- Fraud and corruption control in regulatory practice supplementary guideline
- Fraud control policy (QH-POL-295:2015)
- Portfolio legislation compliance planning – Prevention Division guideline
6. Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Authorised Officer</td>
<td>Person appointed by the Chief Executive Queensland Health, or delegate, responsible for monitoring compliance and investigating non-compliance with a particular public health Act. May be employed by the Department of Health or Hospital and Health Service. Includes appointments under the following public health acts:</td>
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<td></td>
<td>- Emergency Officer (general) – s333 <em>Public Health Act 2005</em>.</td>
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<td>- Emergency Officer (medical) – s335 <em>Public Health Act 2005</em>.</td>
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<td>- Contact Tracing Officer – s90 <em>Public Health Act 2005</em>.</td>
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<td>Breach</td>
<td>The breaking of a condition. 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.</td>
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<td>Compliance</td>
<td>Awareness of and upholding of relevant laws and regulations.</td>
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<td>Department</td>
<td>Department of Health</td>
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<td>Enforcement action</td>
<td>The implementation of investigative processes and legal activities to address non-compliance of legislation and policy.</td>
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<td>Legislative custodian</td>
<td>Nominated senior officer responsible for administration of a particular Act or part of an Act (Portfolio Legislation). See General Legislation:</td>
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<td><a href="mailto:schedule1a">Schedule 1A: Portfolio Legislation Guideline for details of legislative custodians</a></td>
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<td>Non-compliance</td>
<td>A failure to act in accordance with, or uphold relevant laws or regulation.</td>
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<td>Portfolio Legislation</td>
<td>Legislation that is the responsibility of the Minister via an agency</td>
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<td>Public health Acts</td>
<td>Refer to legislation listed in section 4</td>
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<td>Regulated entities</td>
<td>Any individual, person, organization, or corporation that is subject to the regulatory jurisdiction under public health legislation.</td>
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<td>Relevant employee</td>
<td>For the purpose of this standard, relevant employee includes all Prevention Division employees, contractors and consultants involved in the administration of public health legislation.</td>
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**Version Control**

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