

11.2 Legislative Compliance Policy

REPORT BY THE GOVERNANCE CO-ORDINATOR
TO 15 MARCH 2023 ORDINARY MEETING
GOV400103, GOV400047

RECOMMENDATION

That Council:

1. **receive the report by the Governance Co-ordinator on the Legislative Compliance Policy; and**
2. **adopt the revised Legislative Compliance Policy.**

Executive summary

At the Audit, Risk and Improvement Committee meeting held in October 2022, it was recommended and agreed upon that the Legislative Compliance Policy would be reviewed and presented to the February 2023 ARIC meeting. At this meeting, ARIC endorsed the draft policy and recommended the policy be presented to Council.

Disclosure of Interest

Nil

Detailed report

In the past Council's Auditors identified Legislative Compliance as a risk for Council to manage. Council must comply with the vast amount of law applicable to NSW Councils and also demonstrate such compliance.

The revised policy outlines the use of the Legislative Compliance Database as a tool for keeping up to date with legislative compliance as well as guiding staff on the responsibilities their role has in maintaining legislative compliance. The policy has also been updated to reflect the need for staff to report any legislative breaches to ARIC. ARIC will advise whether Council is managing the risk effectively as well as providing advice on the policies and procedures Council have in place.

A form has been created for the reporting of non-compliance incidents by any staff member. The form will be reviewed by the relevant manager and executive staff member who will forward to the Governance team in the event of a legislative breach. Governance will keep a register and report any breaches received to ARIC.

Community Plan implications

Theme	Good Government
Goal	An effective and efficient organisation
Strategy	Prudently manage risks association with all Council activities

Strategic implications

Council Strategies

Enterprise Risk Management Framework

Council Policies

Not Applicable

Legislation

All legislative requirements of Local Government in NSW.

Financial implications

Non-compliance of legislation can result in large financial penalties.

Associated Risks

Councils Auditors have previously identified Legislative Compliance as a risk for Council to manage. Council must not only comply with the vast amount of law applicable to Local Government but also demonstrate such compliance.

An Implementation Roadmap – Legislative Compliance Policy and Database was created and is being reported on to ARIC to address Council's risk when complying with legislative requirements.

Council will continue to report and address any identified breaches of legislation as well as ensuring policies and procedures are regularly reviewed to capture changes in legislation.

ASHLEIGH MARSHALL
GOVERNANCE CO-ORDINATOR

SIMON JONES
DIRECTOR COMMUNITY

1 March 2023

Attachments: 1. Legislative Compliance Policy - Draft.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



POLICY Legislative Compliance

*A prosperous
and progressive
community.*

ADOPTED		VERSION NO	1.2
COUNCIL MEETING MIN	201/20	REVIEW DATE	MAY 2021
DATE:	17 JUNE 2020	FILE NUMBER	GOV100047

Objective

Council, in its role as a Local Government Authority in NSW, is committed to compliance with all statutory and common law requirements relating to its operations and governance. Council must maintain the highest standards of diligence in all areas of public accountability through its policies; in meeting its legal obligations; and in the maintenance of a compliance management system.

It is the objective of Mid-Western Regional Council and its staff to not only comply with legislative requirements but also clearly and routinely demonstrate such compliance.

If **legislative** breaches are committed by Council, or **people staff** at Council, **as a result of legislation not being complied with**, legal action could be taken against Council, staff and Councillors. The reputational damage to Council could also be considerable.

Legislative requirements

- NSW Legislation: <https://www.legislation.nsw.gov.au/#/>
- Local Government Act 1993
- Local Government General Regulation 2005
- Office of Local Government: <https://www.olg.nsw.gov.au/>
- Audit Office NSW: <https://www.audit.nsw.gov.au/our-stakeholders/local-government>

Related policies and plans

- **Many of** Council's policies and plans are publicly consulted and **are** available on its website. A policy register is maintained and routinely reported to the Executive to monitor the currency of its policies.
<http://www.midwestern.nsw.gov.au/council/council-documents/Policies--Strategies-2/>
- A primary function of Council is to give lawful effect **of-to** both NSW government legislation and local policies. Public officials (council staff) are employed to assist the Council to do so. Council staff **must should** therefore give effect to a lawful policy of the Council whether or not they personally agree with or approve of it.

Policy

Council is committed to the principles of effective compliance programs. These principles are outlined in the NZS/AS 3806:2006. It is noted that the International Standard ISO 19600:2015 supersedes the Australian Standard. At this time Council's Audit Risk **&and** Improvement Committee has resolved to initially work toward achievement of the Australian standard before the adoption of the International standard.

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Council will apply appropriate resources and procedures to ensure that the following principles are integrated into Council's legislative compliance.

Principles

COMMITMENT

1. Commitment by the Council and the Executive to achieve effective compliance across all areas of the organisation
2. The compliance policy is aligned to the organisation's strategy and business objectives, and is endorsed by Council
3. Appropriate resources are allocated to develop, implement, maintain and improve the compliance program
4. The Council and the Audit Risk ~~and~~ Improvement Committee will endorse the objectives and strategy of the compliance program
5. The Executive will routinely assess Council's compliance obligations
6. Managers will ensure that they keep up to date with changes in the Legislative Compliance Database, with the assistance of the Governance ~~department~~team.

IMPLEMENTATION

- ~~7.~~7. Responsibility for compliance is clearly articulated and assigned
- ~~8.~~7. Behaviours that create and support compliance programs are encouraged, and behaviours that compromise compliance are not tolerated
- ~~9.~~8. Controls are in place to manage the identified compliance obligations and achieve ~~desired behaviours~~desired behaviours

PERFORMANCE

- ~~10.~~9. Performance of the compliance program is monitored, measured and reported on
- ~~11.~~10. The organisation is able to demonstrate its compliance program through both documentation and practice

CONTINUOUS IMPROVEMENT

11. The compliance program is regularly reviewed and continually improved
12. Competence and training needs are identified in order to meet compliance obligations
12.

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Responsibilities

Councils **Audit Risk and Improvement Committee** (ARIC) will review and provide advice and recommendations on Council's Legislative Compliance Framework and internal audit processes and report to Council as required.

The **General Manager** shall have overall responsibility for Council's legislative compliance framework.

The **Executive** should ensure that adequate training and instruction is given to staff to ensure that legal obligations for their responsibilities are identified and met. The Executive will receive reports of significant non-compliance that must be promptly addressed and the necessary steps taken to comply. Significant nonNon-compliance will be reported to ARIC.

Managers must ensure that procedures and systems are established to support compliance with Council's Legislative Compliance Policy. Procedures will cover all necessary council activities and will be regularly updated as required.

Managers, through using Local Government Legal Legislative Compliance Database, have a responsibility to ensure that they remain abreast of legislation changes which affect their area of work to ensure that they and their staff are aware of their legislative obligations with the goal that compliance is achieved at all times.

All employees must immediately report through their Supervisors and Managers any areas of non-compliance identified.

Maintenance

Council will ensure adequate processes are in place to ensure that timely advice is received regarding changes to compliance obligations and good governance practices by:

- Maintaining the Local Government Legal Legislative Compliance Database
- continuingContinuing memberships with professional bodies (areas such as engineering, accountancy, planning, health and building and Local Government)-.
- sSubscribing to relevant information services
- Attending industry forums, conferences, workshops and seminars

Implementation and Review

~~Legislative compliance is primarily a management responsibility and therefore commitment must~~Commitment to legislative compliance must be demonstrated by all levels of management leadership to ensure Council's legal obligations within their area of responsibility are met at all levels.-

To achieve Council's compliance objective, Council has engaged with Local Government Legal for access to their Legislative Compliance Database (LCD). Access to the database will assist Managers to monitoring and review council's legislative obligations and responsibilities. Managers will access the database and acknowledge their understanding of the legislative obligations of their role with Council.

Where necessary expert advice will be sought following Executive approval to guide management actions.

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To support the achievement of the Legislative Compliance Policy objectives Managers will:

- Promote a culture of compliance and good governance;
- Uphold a culture of open disclosure of non-compliance without fear of reprisal;
- Document and review Council processes to ensure they comply with applicable laws and regulations;
- Attend training and be established as users of the LCD to enable understanding of compliance obligations and required management actions;
- Continue to monitor and report on compliance to identify breaches or system failures;
- Promptly address identified breaches or other non-compliances to mitigate council's exposure to legal risk.
- Advise staff of the LCD and their ability to access the system in order to be familiar with and easily refer to legislation that is relevant to their role.
- Immediately report all major non-compliance events to the Executive.

Council's staff are required to report any legislative breaches of compliance to their manager and director who will then advise the Governance Team and any external authorities that require mandatory reporting. The Governance Team will report to the Executive and to the Audit Risk and Improvement Committee The level of compliance will be assessed by the Audit Risk & and Improvement and Improvement Committee and reported to the General Manager and Council. The Committee will advise the effectiveness of Council's Risk Management Framework in terms of identifying and managing Council's financial and business risks, the effectiveness of key controls including policy, procedure and governance processes

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