



Legislative Compliance Policy

DOCUMENT AUTHORISATION

RESPONSIBLE OFFICER:		MANAGER GOVERNANCE, RISK AND CORPORATE PLANNING (MGRCP)			
REVIEWED BY:		Management Executive Team (Manex) and the Audit, Risk and Improvement Committee (ARIC).			
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 General Manager

31/3/23

 Date

ACKNOWLEDGEMENT OF COUNTRY

Glen Innes Severn Council acknowledges and pays respect to the Ngorabul people as the traditional custodians of this land, their elders past, present and emerging and to Torres Strait Islander people and all First Nations people.

PURPOSE

This Legislative Compliance Policy has been developed to provide assurance to Council, the **Management Executive (Manex)** and the **Audit Risk and Improvement Committee (ARIC)** that Council is compliant with the statutory and legislative requirements contained in Commonwealth and State legislation that impact on Council operations.

APPLICABILITY

This policy applies to:

- All Council Staff.

OUTCOMES

The framework aims to achieve the following:

- Understand the issues related to Council's compliance risks that are relevant to the outcomes and objectives of Council as defined in the **Community Strategic Plan (CSP)**, Delivery Program (DP), **Operational Plan (OP)**, and other supporting plans and strategies;
 - Establish internal controls and processes to manage compliance risks and prevent breaches;
 - Identify accountable officer(s) for ensuring compliance with key legislation;
 - Determine how compliance is to be monitored;
 - Assign responsibilities for identifying, reporting and recording instances of noncompliance;
 - Determine remedial action(s) to be taken when noncompliance is identified;
 - Develop a reporting structure to notify those charged with governance of instances of noncompliance and associated remedial actions; and
 - Provide registers and mechanisms to assess and continuously improve compliance performance.
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ROLES AND RESPONSIBILITIES

Councillors

Councillors have a responsibility to be aware of the legislation applicable to the strategic decisions they are making. The Councillors and ARIC have direct access to the compliance function.

The ARIC

The ARIC provides independent advice to the Council on management of compliance risks within council. The ARIC monitors:

- Compliance risk identification, assessment and treatment;
- Compliance incidents and remediation; and
- Risk reviews, audit findings and progress implementing the recommendations arising from such reviews.

General Manager and Manex

The General Manager is responsible for leading and driving the implementation of Council's values across Council and the promotion and support of the Legislative Compliance Framework is an important component in this regard.

Manex is ultimately responsible for approving the Legislative Compliance Framework, and the ARIC shall oversee the adherence, monitoring and review of the Council's Compliance Framework.

Manex is responsible for ensuring that appropriate resources, systems and processes are in place to implement the Legislative Compliance Framework across the organisation, comply with legislative and regulatory requirements within their specific areas of operational responsibility, and ensure that any potential or actual legislative noncompliance has been identified and is being managed appropriately; Specifically, by:

- Remaining aware of the compliance obligations (including monitoring for changes in legislation and regulation) within their areas of control;
 - Identifying individual staff members requiring training and ensuring their participation as required to ensure ongoing compliance;
 - Maintaining oversight of corrective actions to compliance breaches to ensure completion in a timely manner;
 - Certifying compliance for their area of control; and
 - Encouraging behaviours that create and support compliance and a compliance culture.
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Manager Governance, Risk and Corporate Planning (MGRCP)

The MGRCP has overall responsibility for the control and coordination of the Legislative Compliance Framework and for coordinating the implementation of the compliance process in all areas of Council with compliance responsibilities. Specifically, the MGRCP will:

- Develop, implement and ensure continuous improvement of the Legislative Compliance Framework;
- Identify, in conjunction with Responsible Officers, compliance requirements and training needs and promoting awareness of compliance obligations;
- In conjunction with legal advisors, provide advice on serious suspected breaches / non-compliances to determine if the relevant legislation has not been complied with and the potential consequences of noncompliance;
- Determine if matters require further investigation and refer matters to the relevant Divisional Manager or Directors;
- Undertake risk assessments to identify high risk pieces of legislation;
- Allocate Council officers to be legislation owners;
- Report on Legislative Compliance and compliance breaches to Manex and the ARIC and ensure that appropriate and timely corrective actions are undertaken; and
- Assist Responsible Officers in identifying changes to legislation that aren't captured in Reliansys' library.

If necessary, the MGRCP on receipt of advice of legislative amendments is also responsible for submitting a report to Council advising circumstances any legislative changes would have a significant impact on Council operations.

Governance and Risk Management Unit

The Governance and Risk Management Unit is responsible for maintaining Council's Legislation and Statutory Reporting Registers.

Legislation Owners

Divisional Managers and other staff who are identified as owners of items in the Legislation or Statutory Reporting Registers are responsible for making themselves fully aware of Council's legislative obligations within their area of accountability or span of control.

All legislation owners are responsible for adherence to:

- The compliance obligations relevant to their position;
 - Performing their duties in a lawful and safe manner;
 - Undertaking training as required on compliance activities and initiatives;
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- Undertaking risk / impact assessment of proposed, new or amended legislation to identify potential impacts on revenue and resources;
- Reporting and escalating compliance concerns, issues, complaints and failures;
- Undertaking investigations of compliance concerns where appropriate; and
- Undertaking corrective actions to compliance breaches in a timely manner.

All Staff

All staff employed by council are responsible for:

- Complying with relevant obligations within the scope of their roles;
- Reporting to their manager or supervisor instances where they consider obligations are not being complied with;
- Actively identify and seek additional support in understanding their compliance obligations; and
- Develop the compliance performance and culture within their teams by promoting opportunities for staff to increase their understanding, apply and continuously improve on compliance obligations relating to their role.

Council Committee Members, Delegates of Council and Council Advisers

Council Committee Members, Delegates of Council and Council Advisers all have an obligation to comply with the Code of Conduct and all relevant legislation applicable to their roles.

Regulatory

The following regulatory bodies (not limited to) have oversight on legislative compliance covering various functions at Council:

- The [Office of Local Government \(OLG\)](#) – The OLG is the NSW Government agency responsible for strengthening the sustainability, performance, integrity, transparency and accountability of the local government sector. The OLG has a policy, legislative, investigative and program focus in regulating the State's 128 local councils. The agency also works collaboratively with the local government sector to support local councils to deliver for their local communities. The principal legislation the OLG have functions and responsibilities under is the:
 - [Local Government Act 1993](#)
 - [Local Government \(General\) Regulation 2021](#)

Further the OLG creates various guidelines and model codes that councils are to abide by.

- The [Ombudsman \(NSW\)](#) undertakes a range of activities beyond the traditional ombudsman role of complaint handling and complaint investigations. The principal legislation the Ombudsman operates under is the:
 - [Ombudsman Act 1974](#)
 - [Community Services \(Complaints, Reviews and Monitoring\) Act 1993](#)
 - [Public Interests Disclosures Act 1994](#)
 - [Children \(Detention Centres\) Act 1987](#)

 - The **Information and Privacy Commissioner (IPC)** – The IPC is an independent statutory authority that administers legislation dealing with privacy and access to government held information in New South Wales. The IPC have functions and responsibilities under the:
 - [Government Information \(Public Access\) Act 2009](#)
 - [Government Information \(Public Access\) Regulation 2018](#)
 - [Privacy and Personal Information Protection Act 1998](#)

 - The **NSW Environment Protection Authority (EPA)** – The EPA is the primary environmental regulator for New South Wales and partners with business, government and the community to reduce pollution and waste, protect human health, and prevent degradation of the environment. The EPA have responsibilities and functions under the following NSW environmental legislation:
 - [Contaminated Land Management Act 1997](#)
 - [Dangerous Goods \(Road and Rail Transport\) Act 2008](#)
 - [Environmentally Hazardous Chemicals Act 1985](#)
 - [Forestry Act 2012](#)
 - [Local Land Services Act 2013](#)
 - [National Environment Protection Council \(New South Wales\) Act 1995](#)
 - [Ozone Protection Act 1989](#)
 - [Pesticides Act 1999](#)
 - [Plastics Reduction and Circular Economy Act 2021](#)
 - [Protection of the Environment Administration Act 1991](#)
 - [Protection of the Environment Operations Act 1997](#)
 - [Radiation Control Act 1990](#)
 - [Recreation Vehicles Act 1983](#)
 - [Waste Avoidance and Resource Recovery Act 2001](#)

 - [Safework NSW](#) – Safework NSW is within the Department of Customer Service and has regulatory functions and responsibilities under the [Work Health and Safety Act](#).

 - **[Independent Commission Against Corruption NSW \(ICAC\)](#)** - The three main areas of the ICAC's work are:
 - investigating and exposing corrupt conduct in the NSW public sector;
 - preventing corruption through advice and assistance; and
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- educating the NSW community and public sector about corruption and its effects.

The *Independent Commission Against Corruption Act 1988* gives the ICAC broad jurisdiction to investigate any allegation or circumstance which, in its opinion, implies that corrupt conduct has occurred. The ICAC can also investigate conduct likely to allow, encourage or cause corrupt conduct.

Council is also engaged in various non-traditional Council businesses, such as Glen Innes Aggregates and Life Choices - Support Services, that are regulated by other statutory bodies

POLICY STATEMENT

Glen Innes Severn Council, like other Councils in NSW, is established as an entity under the **Local Government Act 1993 (the Act)**.

The purposes of the Act, defined in section 7 are:

- (a) to provide the legal framework for the system of local government for New South Wales,*
- (b) to set out the responsibilities and powers of councils, councillors and other persons and bodies that constitute the system of local government,*
- (c) to provide for governing bodies of councils that are democratically elected,*
- (d) to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government,*
- (e) to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.*

Chapter 3 of the Act provides the guiding principles for councils at s8A. These guiding principles will apply to Council's approach to legislative compliance ensuring best outcomes for the **Local Government Area (LGA)**.

Other NSW and Commonwealth Legislation may apply to functions carried out by Council and Council is committed to being aware of its legislative requirements and taking measures to assist in ensuring compliance.

In determining the issues related to compliance risk, Council will consider a broad range of aspects, such as the regulatory, social and cultural contexts, the economic and environmental situation, and Council's policies, procedures, processes and resources. Council will take a risk-based approach to the implementation of the legislative compliance framework.

In analysing legislation where there may be competing provisions. Council will follow the higher principle as determined in Chapter 3 of the Act.

Legislative Compliance Framework

The Framework has three pillars:

- **Inform** - Assisting staff to be aware of their obligations and the legislative changes that may impact their business unit's activities;
- **Comply** - Tracking high risk legislation and monitoring compliance; and
- **Assure** - Internal and external audit and review activity providing a formal approach to continuous improvement.

The framework enables a robust and structured approach to compliance that is appropriate to Council's activities and operating environment and consists of:

- Development and maintenance of a Legislative Compliance Register;
- Risk assessments to identify high risk legislation;
- Establishment and maintenance of a Statutory Reporting Register;
- Implementing a process for monitoring and responding to legislation changes based on risk;
- Establishing ways to identify and remediate areas of noncompliance;
- Implementing a process to identify changes required to delegations and Council policies arising from legislative changes; and
- Implementing processes for continuous improvement.

This approach provides a robust and risk-based mechanism for assisting Council in meeting its statutory obligations and demonstrating its commitment to compliance with relevant legislative requirements.

INFORM

Legislative Compliance Register

If Council has not identified and catalogued legislation and regulations it operates under it cannot give assurance that legislative requirements are being met.

Council relies on Directors, Managers, Coordinators, Supervisors and Officers (collectively **Officers**) to be aware of legislation applicable to their responsible functions. The Management Executive and Governance Unit provide oversight.

Changes to legislation notified through various groups and newsletters, webinars, conferences etc. on implementing changes, guidelines based on legislation, regulatory websites, and the OLG Circulars and Calendar of Compliance are all means that Officers use to stay up to date on relevant industry information guiding legislative compliance and statutory reporting obligations at Council.

Further, Council have purchased an annual subscription to Reliansys' (Compliance Register, Audit, Delegations+ and Monitor) software system. These four modules, when implemented, will help improve, monitor, and report on the framework.

The Compliance and Delegations Modules provide subscriptions that update common pieces of legislation applicable to Council. They do not cover all relevant legislation and these additions to the register must be added separately and monitored by Governance.

These modules come at a significant cost to Council and continuing the use of one or more of these modules will be reassessed annually during the budgeting process.

The Compliance Module allows for each piece of legislation in the register to have an Officer identified as the "owner" of that piece of legislation. That Officer will be responsible for ensuring compliance with the requirements of that legislation and identifying any relevant risk management issues and appropriate delegation and policy changes required when legislation is first implemented or subsequently changed.

The legislative Compliance Module includes a dashboard and register with the following information:

- Name of Legislation;
- Key Obligations and Requirements of the legislation;
- Legislation Owner;
- Obligation Status Timeline with due soon, due today, overdue and missed indicators;
- A Compliance Profile with allocated, complies, partially complies, does not comply and not yet assessed indicators;
- A Tasks Status Summary with current tasks, next 30 days tasks, due today tasks, late tasks and due date needed tasks indicators;
- Other indicators and tracking tools; and
- Review Required for changed or deleted obligations.

Note: The Legislative Compliance register is confidential and may consist of or include legal advice to which attracts legal professional privilege. Staff should not disclose the contents of the Legislative Compliance register to any person outside Council without prior approval of the Governance, Risk and Corporate Planning Manager.

Each of the modules allows for workflows to be established, automated reminders of policy review due dates and other obligation requirements, along with escalation to supervisors if deadlines are not met.

Risk assessment to identify high risk legislation

The number of identified pieces of legislation will vary over time, however it is expected that the legislation register may have upwards of 150 separate pieces of legislation under

which Council may operate. As it would be administratively burdensome to centrally monitor every piece of legislation, a risk assessment will be undertaken to identify the legislative requirements that pose the highest risk to Council in terms of attraction of penalties or significant reputational damage from noncompliance. These pieces of legislation will be monitored closely and in a proactive manner.

A risk assessment shall be undertaken on establishment of the framework and then subsequently as required due to changes in legislation or due to instances of noncompliance. The assessment will be undertaken by the Governance and Risk Management Unit with input by relevant legislation owners.

The risk-based approach to compliance management does not mean that for low compliance risk situations that noncompliance is accepted by Council. It assists Council in focusing primary attention and resources on higher risks as a priority. All identified compliance risks are subject to monitoring and corrective action by legislation owners.

Identifying and responding to legislative changes

All legislation identified as high risk will be proactively managed by the Governance and Risk Unit along with the Director/s – Manager/s of the applicable functional area. The Unit will monitor legislative changes through a combination of the following mechanisms:

- Reliansys Compliance and Delegations+ Modules primarily;
- Legislative alert services for State and Commonwealth legislation and monitoring of the NSW Government Gazette;
- Monitoring websites of regulators and oversight agencies and subscribing to their alerts (ICAC, IPC, NSW Ombudsman’s Office, Office of Local Government);
- Membership of professional industry groups;
- Attending forums and seminars; and
- Arrangements with legal advisors.

A log of relevant legislative changes for legislation is automated in the Reliansys system and tracks actions, if any, are taken in response to each change.

When a high-risk piece of legislation is amended, automatic notification is given to the “owner” of that piece of legislation advising of the change and the following will be considered:

- Policies required to change or be drafted in response to change;
- Delegations required to change or be created in response to change; and
- Briefing report for Manex / Council for significant changes or heightened risks or potential noncompliance due to the changes.

Significant legislative changes may require training and a multi-disciplinary action team to implement systems change in line with the legislative change. Legislation owners are

required to provide the above details within 10 business days of being advised of the changes.

Statutory Reporting Register

Council will develop a register to document and track its statutory reporting requirements to ensure that all the specified positive actions the General Manager is required to take under various legislation is completed. This register will incorporate all items in the OLG Calendar of Compliance in addition to any reporting requirements identified in the high-risk legislation.

Responsibility of each item will be allocated to a particular Divisional Manager who will be required to provide attestation that the requirements specified in the register are complete for the preceding year.

COMPLY (Management of Compliance)

Council takes noncompliance with laws and regulations seriously. Failures in compliance can have profound impact at both an organisational and an individual level. Consequences of noncompliance may include:

- Reputational damage to Council;
- Financial loss to Council;
- Increased WHS risks in the workplace;
- Regulatory sanctions or fines for noncompliance; and/or
- Potential litigation.

Noncompliance with key legislation and regulations that is due to negligence or is intentional, may be subject to disciplinary or legal action.

Annual Reporting

The General Manager, Directors, Divisional Managers and any other officers identified as responsible for legislation or statutory reporting requirements will be required to monitor and complete required tasks within the Compliance Register. Reports regarding Compliance will be provided to Manex, ARIC and Council at least annually.

Incidents of Noncompliance

Responsible Officers are required to identify and maintain records of all noncompliance incidents or potential breaches within their designated areas.

Where a compliance breach is suspected it is the relevant Divisional Manager's responsibility to notify the MGRCP who will determine if an actual breach has occurred and if an investigation is required. The principal objective of reporting a breach is to implement appropriate corrective actions and prevent reoccurrence and liability to Council.

Formal reporting on confirmed noncompliance incidents and their management is to be made by the MGRCP as and when such incidents occur. The MGRCP will escalate to Manex, and the Chair of Audit Risk and Improvement Committee incidents of significance or notifiable issues. Compliance breaches may be identified through audit activity, self-disclosure, third party complaints, compliance certifications, public interest disclosures, and review or notification by regulatory agencies and other authorities.

Corrective Actions

Where noncompliance is confirmed, a Corrective Action Plan is required to be undertaken by the relevant Division with rectification timeframes and a risk assessment with mitigation strategies (where appropriate). This provides understanding of the noncompliance risk exposure for specific activities rather than having a broad high risk around legislative compliance in general.

When an actual compliance breach is identified it is the relevant Divisional Manager's responsibility to:

- Ensure that timely and adequate corrective actions are taken to reinstate compliance;
- If required, investigate the circumstances relating to the compliance breach; and
- Advise of interim measures and controls put in place to mitigate the risk of the breach.

Where a significant compliance breach occurs, and based on a risk assessment, a corrective action plan should be developed by the relevant Divisional Manager in consultation with the MGRCP. The MGRCP or appropriate divisional manager will report to the ARIC on the implementation of the corrective action plan to ensure that compliance is reinstated.

ASSURE (Audit, Monitoring and Review)

Council is subject to legislative oversight by the Office of Local Government and subject to external audit by the NSW Audit Office.

The Internal Audit Work Plan will also include a focus on legislative compliance audit, using a risk-based approach, to assure the General Manager and the ARIC that the Council is maintaining or working towards compliance, or to assess whether any business improvement implemented to meet legislative change is fit for purpose and meets requirements.

The legislative compliance register will be updated on an ongoing basis as required due to changing legislation or identification of breaches. In addition to this, an annual review of compliance processes will be undertaken. This will include:

- Formal review of the legislative compliance and risk registers as a whole; and
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- Notification of any previously un-reported compliance breaches, issues or complaints.

The risk of legislative compliance failure will also be reassessed whenever there are:

- New or changed activities or services;
- Changes to the structure or strategy of the Council;
- Significant external changes; or
- Changes to compliance obligations.

Legislative Compliance Performance Reporting

Formal reporting mechanisms on compliance activities include:

- Annual Compliance Reports from the Compliance Module;
- Regular reporting, by the MGRCP to Manex and the ARIC on major developments, issues and compliance incidents including the status of implementation of corrective action plans;
- Provision of information regarding compliance activities undertaken during each year to the ARIC for review and approval; and
- Reviews of the Legislative Compliance Framework (to align with reviews of the Risk Management Framework and Policy), including an assessment of their effectiveness and recommendations for improvement.

LEGISLATION AND SUPPORTING DOCUMENTS

Relevant Legislation, Regulations and Industry Standards include:

- S 8A of the Act - **Guiding principles for councils**
 - (1) **Exercise of functions generally**

The following general principles apply to the exercise of functions by councils—

 - (a) *Councils should provide strong and effective representation, leadership, planning and decision-making.*
 - (b) *Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.*
 - (c) *Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.*
 - (d) *Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.*
 - (e) *Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.*

- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.*
- (g) Councils should work with others to secure appropriate services for local community needs.*
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.*
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.*

(2) Decision-making *The following principles apply to decision-making by councils (subject to any other applicable law)—*

- (a) Councils should recognise diverse local community needs and interests.*
- (b) Councils should consider social justice principles.*
- (c) Councils should consider the long term and cumulative effects of actions on future generations.*
- (d) Councils should consider the principles of ecologically sustainable development.*
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.*

(3) Community participation *Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.*

- AS ISO 19600:2015 – Compliance Management Systems – Guidelines
- AS ISO 3100:2018 – Risk Management - Guidelines

Relevant Council Policies and Procedures include:

- Risk Management Policy and Framework; and
- Corporate Governance Policy Framework.

VARIATION AND REVIEW

The Legislative Compliance Framework will be reviewed every three years, or earlier if deemed necessary, to ensure that it meets the requirements of legislation and the needs of Council. The term of the Policy does not expire on the review date, but will continue in force until superseded, rescinded or varied either by legislation or a new resolution of Manex.
