

# REGULATORY LEGISLATIVE COMPLIANCE CHECKLIST

## Implementation document for Legislative Compliance policy

This document contains the compliance checklist and guidance for responsible officers managing legislative compliance where the department is specified as a regulator.

Responsible officers must report on legislative compliance.

Controls that build an understanding of the department's legislative obligations form the foundation for legislative compliance arrangements. They also inform the development and implementation of controls. Responsible officers need to have a thorough understanding of:

- all relevant legislative instruments that apply under the legislation
- the department's legislative obligations under the legislation and any related instruments (internal legislative obligations)
- legislative obligations of external parties to the department where the department has a role in regulating compliance (external legislative obligations, where the department monitors and/or enforces external parties' compliance with the legislation)
- the risks associated with legislative non-compliance of both the department and the regulated community.

This checklist (Table 1) sets out a range of questions to assist responsible officers to identify controls they could use to understand their legislative compliance obligations.

This checklist is to be completed annually and provided to Legal Services by directorates that have regulatory responsibilities.

**Table 1 Regulatory legislative compliance checklist**

No.	Self-assessment question	Guidance/ explanatory text
1	Do you maintain an up-to-date list of legislative instruments?	<Insert your answer here>
1	<b>Guidance</b>	You could list key legislation and associated legislative materials, and ensure there is a process where new instruments and revised instruments are identified and included as part of the list in a timely manner.  This is particularly relevant where determinations are regularly issued under legislation.
2	Have you mapped key legislative obligations for the department's officers contained within legislative instruments?	<Insert your answer here>

No.	Self-assessment question	Guidance/ explanatory text
2	<b>Guidance</b>	<p>This is particularly relevant for new legislation. Thoroughly review legislative instruments and map obligations for relevant external parties to identify legislative obligations imposed on the regulated community. This would generally form the basis of framework, policy and guidance material.</p> <p>Legal, Audit and Assurance branch can provide advice and assistance where required.</p>
3	Have you conducted a risk assessment covering legislative compliance?	<Insert your answer here>
3	<b>Guidance</b>	<p>You may consider the following points when conducting a legislative compliance risk assessment:</p> <ul style="list-style-type: none"> <li>• penalties that apply under the legislation for breach of legislative obligations for regulated community</li> <li>• reputational impact if the department does not facilitate compliance of the regulated community</li> <li>• significance of the public and media's interest in the area</li> <li>• consequence for the community if the department fails to facilitate compliance of the regulated community</li> <li>• other impacts (such as safety of employees or the community)</li> <li>• likelihood that the regulated community will not comply based on the nature of the obligations and past experience.</li> </ul> <p>A formally documented risk assessment will assist responsible officers in allocating scarce resources across a range of compliance and enforcement activities within an appropriate compliance strategy or plan.</p> <p>Ideally, review and update risk assessments periodically to reflect any non-compliance identified and the impact of non-compliance.</p> <p>Risk assessments are undertaken in accordance with the department's Risk Management Framework. Where existing risk assessments reflect the legislative compliance risk with respect to legislation for which you are responsible, these can be referenced in the self-assessment checklist.</p>
4	Overall assessment of level of assurance	<Insert your answer here>
4	<b>Guidance</b>	<p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• Low – maintain a list of instruments but have not formally mapped the regulated community's compliance obligations. Reliant on staff knowledge of legislative obligations.</li> <li>• Medium – maintain a list of instruments but have not formally mapped to the regulated community's obligations. Legislation is used as a reference for understanding obligations of the regulated community. Conducted a branch risk assessment that considered regulatory legislative compliance risks.</li> <li>• High – thoroughly reviewed legislative instruments and identified all of the regulated community's obligations and responsibilities. Conducted a thorough regulatory legislative compliance risk assessment which is regularly reviewed.</li> </ul>

## Legislative compliance approach

Responsible officers will approach legislative compliance in different ways depending on the nature of the legislation and the obligations under that legislation (Table 2). Consider the following factors when deciding on your approach to compliance:

- whether the legislation is key or high-risk general or portfolio legislation
- the level of risk associated with non-compliance
- the complexity of the legislation
- whether the department is the regulator for any external parties' compliance (such as industry or the community).

**Table 2 Legislative compliance approach**

No.	Self-assessment question	Guidance/ explanatory text
5	Have you documented your approach to legislative compliance? How?	<Insert your answer here>
5	<b>Guidance</b>	<p>A documented approach to legislative compliance sets the foundation for the approach to managing the department's compliance with legislative obligations, and may include setting out the strategies for:</p> <ul style="list-style-type: none"> <li>• a risk-based approach to managing compliance</li> <li>• making the regulated community aware of legislative obligations</li> <li>• monitoring and assessing compliance</li> <li>• enforcing compliance</li> <li>• reporting on compliance.</li> </ul>
5	<b>Business planning</b>	<p>Depending on the nature of the legislation and the regulated community's obligations, business planning may serve as the primary mechanism that documents the overall compliance approach. Use business planning to consider and define:</p> <ul style="list-style-type: none"> <li>• the risk-based approach to how the department will manage compliance of the regulated community (making external parties aware of their obligations, monitoring, assessing and enforcing compliance and reporting on breaches)</li> <li>• allocation of resources for the above activities</li> <li>• timeframes for implementing controls.</li> </ul>
5	<b>Regulatory compliance policy</b>	<p>In the context of regulatory compliance, a compliance policy outlines the principles adopted by the department to maximise the regulated community's compliance with legislative obligations. It would normally be communicated to the regulated community and published externally.</p> <p>A regulatory compliance policy may include:</p> <ul style="list-style-type: none"> <li>• an overview of legislative obligations of the regulated community</li> <li>• the role of the department in regulating legislative compliance and the department's key obligations in this respect</li> <li>• the department's broad compliance approach and the objective of the approach</li> <li>• an overview of the department's compliance framework. This may include education and communication, monitoring and assessing compliance, enforcing compliance (including where relevant, the compliance model utilised), and reporting non-compliance</li> <li>• an overview of the basis for assessing compliance risk and allocating resources to undertaking compliance activities.</li> </ul>

No.	Self-assessment question	Guidance/ explanatory text
5	<b>Regulatory compliance framework</b>	<p>Compliance frameworks are used to outline how the department manages a specific compliance function under relevant legislation. This may include:</p> <ul style="list-style-type: none"> <li>• education of and communication with the regulated community</li> <li>• mechanisms for monitoring and assessing compliance</li> <li>• mechanisms for enforcing compliance including the response criteria</li> <li>• mechanisms and channels for reporting non-compliance.</li> </ul>
5	<b>Regulatory compliance plan or program</b>	<p>A compliance plan or program sets out compliance activities to be undertaken throughout a given period. These could include audits, surveillance, testing and reporting.</p>
5	<b>Other document/s</b>	<p>List relevant documents as appropriate.</p> <p>Where the above documents/frameworks are not formally in place consideration should be given to whether the substance of the controls described above is addressed across the other informal documentation.</p>
6	If no to the above, do you have an informal approach to managing internal legislative compliance? How?	<Insert your answer here>
6	<b>Guidance</b>	<p>Where the department is a regulator and is undertaking regulatory activities, but has not documented its approach.</p> <p>Consider whether those informal arrangements address the substance of the controls identified above.</p>
7	Overall assessment of level of assurance	<Insert your answer here>
7	<b>Guidance</b>	<p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• low – informal approach</li> <li>• medium – through business planning or immature/high level policy/framework documents</li> <li>• high – comprehensive compliance policy, framework and program/plan that have been developed based on engagement with the regulated community.</li> </ul>

## Raise awareness of compliance obligations

Responsible officers need to ensure staff, and where relevant, the regulated community, understand what is required of them to comply with legislative obligations. Where stakeholders are not aware of their responsibilities and obligations there is a higher risk of non-compliance.

Table 3 sets out a range of questions to assist to identify controls for raising awareness of compliance obligations.

**Table 3 Raising awareness of compliance obligations**

No.	Self-assessment question	Guidance/ explanatory text
8	Have you evaluated the extent to which regulated community has the required knowledge and resources to meet their legislative compliance obligations?	<Insert your answer here>
8	<b>Guidance</b>	Assess the regulatory community's knowledge about their legislative obligations and whether they have the resources to voluntarily comply with the obligations.  Consult with the regulated community and use observations based on previous interaction and adherence to compliance obligations.
9	Do you have a strategy or plan that sets out your approach to educating and/or communicating with the regulated community about their legislative compliance obligations?	<Insert your answer here>
9	<b>Guidance</b>	This is a strategy or plan that identifies the approach for educating and/or communicating with the regulated community. It may be considered and documented through business planning or the compliance policy/framework.
10	Do you have resources available to the regulated community to inform them of their legislative obligations and give them the tools to comply?	<Insert your answer here>
10	<b>Guidance</b>	Resources may include websites, fact sheets, manuals and other publications that notify the regulated community of their obligations and assist the regulated community to comply with their legislative obligations.
11	Have you engaged with the regulated community through consultation/training or other forums to raise awareness of compliance obligations?	<Insert your answer here>

No.	Self-assessment question	Guidance/ explanatory text
11	<b>Guidance</b>	<p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• Low – no or limited resources and awareness activities provided to the regulated community in respect of their legislative compliance obligations.</li> <li>• Medium – informal analysis of the regulated community’s knowledge and some ad-hoc communication and engagement. Some support material and tools provided to the regulated community.</li> <li>• High – consultation undertaken with the regulated community to determine their knowledge in respect of legislative obligations and gauge how the department can support voluntary compliance. Education and communications strategy in place to assist the regulated community understand legislative obligations and a range of support materials provided to support voluntary compliance.</li> </ul>

## Regulatory – monitoring and assessing compliance

Establishing arrangements for monitoring and assessing compliance enables the responsible officer to understand whether stakeholders are complying with legislative obligations. Robust monitoring and assessment arrangements also enable officers to evaluate the overall compliance approach and will inform continuous improvement.

Table 4 sets out a range of questions to help responsible officers identify useful compliance monitoring documents and controls.

**Table 4 Regulatory legislative compliance checklist**

No.	Self-assessment question	Guidance/ explanatory text
13	Do you have a compliance monitoring framework (or similar) outlining the arrangements for monitoring whether the regulated community is complying with legislative obligations?	<Insert your answer here>
13	<b>Guidance</b>	<p>A compliance monitoring framework sets out the approach to monitoring the regulated community’s compliance. This may also be addressed through the overall compliance policy and/or framework.</p> <p>A compliance monitoring framework would generally articulate the department’s active and reactive approaches to monitoring legislative compliance of the regulated community.</p>
14	Do you have active mechanisms in place to monitor the regulated community’s compliance with the legislative compliance obligations?	<Insert your answer here>

No.	Self-assessment question	Guidance/ explanatory text
14	<b>Guidance</b>	Active compliance monitoring activities may include: <ul style="list-style-type: none"> <li>• review of information and data</li> <li>• inspections</li> <li>• audits</li> <li>• surveillance</li> <li>• internet monitoring.</li> </ul>
15	Do you have reactive mechanisms monitor the regulated community's compliance with the legislative compliance obligations?	<Insert your answer here>
15	<b>Guidance</b>	Reactive compliance monitoring activities includes having a facility for members of the public to make tip-offs or complaints to the department about the regulated community's legislative compliance.  Such arrangements can assist in more effective and efficient targeting of compliance and enforcement activities.
16	Do you have mechanisms to assess identified instances of non-compliance with the legislative compliance obligations?	<Insert your answer here>
16	<b>Guidance</b>	This could include management, committee or other review of identified instances of non-compliance to assess the seriousness of the non-compliance and/or identify what caused the non-compliance.  Such forums could include analysis of compliance reports and compliance data to inform the allocation of resources across compliance and enforcement activities, and the continuous improvement of the compliance approach.
17	Do you have a system/database for capturing the regulated community's non-compliance data?	<Insert your answer here>
17	<b>Guidance</b>	As a regulator it is important that the department has in place appropriate mechanisms to record non-compliance to enable accurate reporting and analysis of non-compliance data.  This would generally be a case management system, database or spreadsheet that records non-compliance to enable reporting and analysis of compliance information.
18	Overall assessment of level of assurance	<Insert your answer here>

No.	Self-assessment question	Guidance/ explanatory text
18	<b>Guidance</b>	<p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• Low – no approach or reactive approach to monitoring the regulated community’s legislative compliance (for example, based on complaints or tip-offs).</li> <li>• Medium – approach to monitoring the regulated community’s compliance documented at a high level through the compliance policy, with some review activities that are not routinely carried out (such as ad-hoc audits or irregular exceptions reports). Non-compliance data captured in an excel spreadsheet.</li> <li>• High – formal compliance monitoring framework in place that sets out proactive and reactive mechanisms for monitoring the regulated community’s compliance. Multiple proactive strategies in place for monitoring the regulated community’s compliance which are carried out on a routine basis. A case management system is in place for managing compliance monitoring activities that captures non-compliance information and facilitates timely and accurate reporting.</li> </ul>

## Enforcing compliance

Responsible officers need to make arrangements for enforcing compliance where instances of non-compliance are identified.

Table 5 sets out a range of questions to assist responsible officers to identify controls for enforcing compliance.

**Table 5 Enforcing compliance**

No.	Self-assessment question	Guidance/ explanatory text
19	Do you have a compliance enforcement policy or framework (or similar) that addresses compliance enforcement of the regulated community?	<Insert your answer here>
19	<b>Guidance</b>	<p>A compliance enforcement policy or framework sets out the approach to enforcing the regulated community’s compliance. It may include various types of enforcement action that are proportionate to the circumstances of the non-compliance. These will usually graduate from informal and administrative enforcement action, such as warning letters and licence conditions or suspension, to more serious enforcement action, such as civil penalties or criminal court proceedings.</p> <p>In some cases, responsible officers may enforce compliance through the overall compliance policy and/or framework.</p>
20	Do you have internal policies, procedures and tools in place supporting compliance enforcement?	<Insert your answer here>

No.	Self-assessment question	Guidance/ explanatory text
20	<b>Guidance</b>	These will form part of the standard operating procedures or other internal guidelines. Given the significance of enforcement action as part of a regulatory compliance approach, it is important for there to be sufficient detail underpinning internal procedures supporting enforcement action.
21	Do you have a governance body that oversees decisions in respect of enforcement action?	<Insert your answer here>
21	<b>Guidance</b>	In some cases, you may have internal or external committees to review all enforcement action to ensure fairness and consistency of enforcement decisions.
22	Do you evaluate whether the department's enforcement response is successful in enforcing compliance and leads to improved compliance outcomes?	<Insert your answer here>
22	<b>Guidance</b>	Evaluating whether the department's enforcement response is effective is important in improving the compliance approach.
23	If relevant, do you monitor the rate of successful prosecutions, and use this information to inform your compliance approach?	<Insert your answer here>
23	<b>Guidance</b>	<p>The outcome of criminal court proceedings (successful versus unsuccessful prosecutions) can provide useful insights into the effectiveness of the overall regulatory compliance approach. It can also help monitor the department's performance as a regulator (for example, whether the department is maintaining adequate evidence, and adequately informing the regulated community of their compliance obligations).</p> <p>Liaison with and feedback from law enforcement agencies (such as the Australian Federal Police and the Commonwealth Director of Public Prosecutions) may also provide useful information to assist the department to refine its regulatory compliance approach.</p>
24	Overall assessment of level of assurance	<Insert your answer here>

No.	Self-assessment question	Guidance/ explanatory text
24	<b>Guidance</b>	<p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• Low – no documented approach to enforcing the regulated community’s legislative compliance.</li> <li>• Medium – approach to enforcing the regulated community’s compliance documented at a high level through the compliance policy.</li> <li>• High – formal compliance enforcement policy in place and communicated to the regulated community that includes a graduated and proportionate response to non-compliance. Outcomes of enforcement action regularly reviewed and feedback from law enforcement agencies is regularly sought, and this is fed back into the overall regulatory compliance approach.</li> </ul>

## Reporting on compliance

Reporting can be used to provide both internal and external audiences with information on both the department and/or the regulated community’s legislative compliance. It also enables responsible officers to evaluate the effectiveness of compliance activities and inform future compliance activities.

Table 6 sets out a range of questions to assist responsible officers to identify controls that could be used to report on legislative compliance.

**Table 6 Reporting on compliance**

No.	Self-assessment question	Guidance/ explanatory text
25	Do you have management reporting arrangements to report internally to relevant staff and managers on the regulated community’s legislative compliance?	<Insert your answer here>
25	<b>Guidance</b>	<p>Management reporting on regulatory compliance can encompass serious non-compliance as well as minor legislative and procedural non-compliance.</p> <p>It can encompass a wide range of information and may directly or indirectly report on legislative compliance and non-compliance. Examples of management reporting include reporting on:</p> <ul style="list-style-type: none"> <li>• whether submission deadlines have been met</li> <li>• the outcomes of inspections</li> <li>• tip-offs received from the public</li> <li>• compliance statistics over time.</li> </ul> <p>Management reporting can be provided to staff, various levels of management and to governance bodies who oversight legislative compliance.</p>

No.	Self-assessment question	Guidance/ explanatory text
26	Do you escalate serious non-compliance or analysis of compliance trends to the division head or Deputy Secretary as appropriate?	<Insert your answer here>
26	<b>Guidance</b>	In some cases, responsible officers may need to agree with the division head and Deputy Secretary appropriate escalation procedures to deal with serious non-compliance, compliance trends or high-risk/high-profile compliance matters.
27	Where the department has legislative obligations to report publicly on legislative compliance, is this reporting completed in line with legislative obligations?	<Insert your answer here>
27	<b>Guidance</b>	Public reporting may include reporting in the annual report, reporting to Parliament or other public reporting specified in relevant legislation.  Alternatively public reports of the analysis and results of the compliance approach and enforcement activity may be considered a useful tool in raising stakeholder awareness of their compliance obligations.
28	Are there arrangements to feed compliance information back into the overall compliance strategy and approach?	<Insert your answer here>
28	<b>Guidance</b>	Compliance information can provide useful insights into the effectiveness of the approach to regulatory compliance, for example, it can point towards areas where: <ul style="list-style-type: none"> <li>• the regulatory community may not have appropriate skills, competency or instructions to comply</li> <li>• there is a high compliance risk and as such could be a focus of future compliance activity</li> </ul> Using this information to refine the compliance approach helps to improve regulatory outcomes.
29	Overall assessment of level of assurance	<Insert your answer here>

No.	Self-assessment question	Guidance/ explanatory text
29	<b>Guidance</b>	<p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• Low – no management reporting for regulatory non-compliance.</li> <li>• Medium – identified non-compliance is informally reported to staff and managers on an ad-hoc basis. Serious or systemic non-compliance is escalated on an ad-hoc basis.</li> <li>• High – regular management reports that address both serious and minor instances of non-compliance are provided to staff and managers and are used to refine the regulatory compliance approach. Formal escalation procedures are in place, with clear procedures for what compliance information will be reported and the appropriate escalation channels.</li> </ul>