

# LEGISLATIVE COMPLIANCE PROCEDURES

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Implementation document for the Legislative Compliance policy

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# Contents

1	What is legislative compliance?.....	4
2	Who is responsible for legislative compliance?.....	4
2.1	Responsible officers .....	4
2.1.1	Joint responsibility for legislation.....	5
2.2	Legal Services.....	5
3	Assuring legislative compliance.....	5
3.1	Assurance framework.....	6
4	Determining the level of assurance .....	6
5	Using the Legislative compliance self-evaluation tool.....	7
6	Actions to implement legislative compliance.....	7
7	Reporting on compliance.....	8
7.1	Responsibility and timing.....	8
7.2	Records.....	8
	Appendix 1 – Allocation of the administration of Acts (NSW).....	9
	Appendix 2 – Allocation of responsibility for legislation .....	10
	Appendix 3 – Assurance framework overview .....	13
	Appendix 4 – Legislative compliance tool guidance .....	16
	About you .....	16
	Understand your legislative obligations.....	16
	Developing a compliance approach .....	18
	Raising awareness of compliance obligations.....	19
	Monitoring and assessing compliance .....	21
	Enforcing compliance/performance management.....	22
	Reporting on compliance .....	23
	Overall assessment and risk.....	24

## 1 What is legislative compliance?

Legislative compliance involves understanding the laws, legislation and regulations that apply to the department, and using a framework to make sure the department is complying with these laws.

If the department is non-compliant with legislation, there is risk of facing penalties, liability, financial damage and reputational damage. [Appendix 1](#) lists the Acts under which the department has responsibilities.

Given the department's wide-ranging legislative responsibility, it is important that appropriate systems are in place to assure that:

- the department is aware of its legislative responsibilities
- staff are aware of, and comply with, legislative responsibilities
- there are appropriate arrangements for monitoring, enforcing (where appropriate) and reporting on compliance with legislative obligations.

The process and framework set out in these procedures provides an overview of the department's legislative compliance and identify areas of concern.

## 2 Who is responsible for legislative compliance?

There are three levels of responsibility for legislative compliance in the department.

- Responsible officers – directors/executive directors who are responsible for filling out a self-assessment checklist for their business unit, reporting and managing compliance for legislation allocated to their business units.
- Legal Services – provides advice, maintains this policy and communicates changes.
- Secretary and Executive – have overview and overarching responsibility for the department's legislative compliance.

Primary responsibility for legislation is allocated to business units as listed in [Appendix 2](#).

Responsibilities for particular actions may be delegated to officers at the director or manager level. Delegates cannot sub-delegate.

### 2.1 Responsible officers

A responsible officer is the senior responsible officer for a business area identified in [Appendix 2](#) as having responsibility for a particular piece of legislation. Responsible officers are at the director/executive director level.

These procedures and associated self-assessment checklists will help responsible officers assess and strengthen their legislative compliance and governance arrangements, which comprise the department's first line of defence for legislative compliance.

Responsible officers:

- establish and maintain appropriate and defensible legislative compliance and governance arrangements for legislation for which they are responsible
- determine the appropriate assurance level
- report annually on legislative compliance through either
  - the [Legislative compliance: self-evaluation tool](#)
  - the [Regulatory legislative compliance checklist](#).

### **2.1.1 Joint responsibility for legislation**

Where responsibility for a particular piece of legislation is jointly held across more than one business unit, responsible officers assess whether:

- the self-assessment should be completed jointly with other relevant responsible officers from other business areas
- the responsible officer completes the self-assessment only for aspects of the legislation for which they are responsible. In this case
  - responsible officers share the outcomes of the self-assessment with other responsible officers for their reference
  - clarify that the assessment completed only relates to the areas of the legislation for which they are responsible, and do not relate to the extent to which arrangements are in place for other aspects of the legislation.

## **2.2 Legal Services**

Legal Services will support and monitor legislative compliance by:

- documenting the department's legislative compliance framework
- maintaining a list of the legislation the department administers or needs to comply with
- providing legal advice to business areas as requested
- developing documents to assist responsible officers in meeting their responsibilities.

## **3 Assuring legislative compliance**

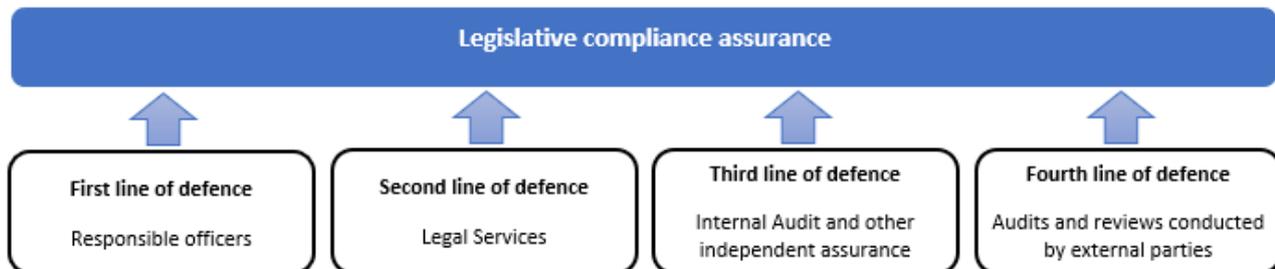
Responsible officers need to determine their level of assurance – the appropriate compliance arrangements to balance the level of compliance risk associated with a particular piece of legislation. This will help determine appropriate courses of action for ensuring legislative compliance.

[Appendix 3](#) contains general information on how an assurance framework functions.

### 3.1 Assurance framework

An assurance framework will help the department manage its legislative responsibilities. This will provide a system to ensure staff comply with their responsibilities and follow appropriate arrangements for monitoring, enforcing and reporting on compliance. The department relies on the four lines of defence assurance model for managing legislative compliance as shown in Figure 1.

**Figure 1 Legislative compliance assurance model**



In the context of legislative compliance:

- the first line of defence reflects the actions responsible officers take to manage risks, including developing policies, frameworks and reporting arrangements
- the second line of defence reflects the support and oversight Legal Services provide
- the third line of defence reflects independent assurance provided through completing internal audits and other independent reviews in respect of legislative compliance, which assess whether the first and second line of defence are operating effectively
- the fourth line of defence reflects external assurance mechanisms, which would normally be external audits conducted by the Audit Office of New South Wales that cover elements of legislative compliance.

## 4 Determining the level of assurance

The overall level of assurance is a measure of how much confidence is gained from the controls, that the responsible officer is appropriately managing their directorate's compliance.

There are varying levels of compliance risk associated with different legislation and therefore the ideal level of assurance differs among legislation. A high level of assurance may not be appropriate for all legislation.

The relevant responsible officer needs to determine the optimum legislative compliance approach for individual legislation. The approach will need to balance the risk associated with non-compliance against the costs associated with greater assurance from controls. The responsible officer must judge the appropriate level of assurance for any given piece of legislation, taking into account its particular legislative context.

[Appendix 4](#) provides the [Legislative compliance: self-evaluation](#) tool, which guides responsible officers through reviewing their legislative compliance arrangements. Section 5 provides more information on using the tool.

Responsible officers managing regulatory compliance will need to complete the [Regulatory legislative compliance checklist](#).

The level of assurance needed will dictate what actions are required to ensure legislative compliance.

## 5 Using the Legislative compliance self-evaluation tool

Responsible officers need to use the [Legislative compliance: self-evaluation](#) tool to consider whether the level of assurance they gain from their legislative compliance arrangements will be appropriate. The tool is also the department's reporting mechanism for legislative compliance.

The tool provides guidance ([Appendix 4](#)) for responsible officers to ask and answer the following question, and to develop fit-for-purpose arrangements to meet their responsibilities:

**Based on the arrangements that I have established to manage compliance with XYZ legislation, what level of comfort do I have that the legislation I am responsible for will be complied with?**

There is no definitive level of assurance across each business unit. In considering this, responsible officers need to balance the risk of non-compliance with legislative obligations.

For example, to compensate for a low level of assurance regarding stakeholders' awareness of obligations, the responsible officer will consider more rigorous compliance enforcement activities. This will provide a high level of assurance so that non-compliance is corrected.

Alternatively, a more comprehensive approach to compliance monitoring and compliance enforcement activities would not likely compensate if there is a low level of assurance. Without a sound understanding of its legislation and compliance obligations, there is a risk that the department's established monitoring and enforcement activities will not be appropriate.

## 6 Actions to implement legislative compliance

Responsible officers, as the first line of defence in ensuring legislative compliance, need to:

- understand legislative obligations
- develop a compliance approach to
  - raise awareness of compliance obligations
  - monitor and assess compliance
  - enforce compliance
  - report on compliance.

The [Legislative compliance: self-evaluation](#) tool provides information on how to address these obligations. Guidance is provided in [Appendix 4](#).

If you identify gaps when using the self-assessment checklist, you will need to address these and enhance your legislative compliance arrangements.

Each responsible owner must use their own discretion to reduce gaps in their legislative compliance. Legal Services may be able to provide advice and guidance.

Responsible officers do not need to report their actions until the next yearly reporting cycle.

## 7 Reporting on compliance

Responsible officers must report on legislative compliance through the [Legislative compliance: self-evaluation](#) tool or the [Regulatory legislative compliance checklist](#).

### 7.1 Responsibility and timing

Reporting on legislative compliance is to be done annually.

The responsible officer for each business unit listed in [Appendix 2](#) will:

- assess their required level of assurance
- consider and enact (where required) the guidance provided in [Appendix 3](#) and [Appendix 4](#)
- report their results using the [Legislative compliance: self-evaluation](#) tool or the [Regulatory legislative compliance checklist](#).

### 7.2 Records

Legal Services will keep records obtained through the tool on TRIM. Legal Services will export the reports and place on TRIM. Each submitter will be able to access their own records.

Responsible officers will need to keep records and evidence of their compliance with other reports from the tool in their TRIM folders.

## **Appendix 1 – Allocation of the administration of Acts (NSW)**

According to the Administrative Arrangements (Administrative Changes—Public Service Agencies) Order 2019, the Department of Education is responsible to the following Ministers:

- Minister for Education and Early Childhood Learning
- Minister for Skills and Tertiary Education

The Minister for Education and Early Childhood Learning administers the following:

- Children (Education and Care Services National Law Application) Act 2010 No 104
- Children (Education and Care Services) National Law (NSW)
- Children (Education and Care Services) Supplementary Provisions Act 2011 No 70
- Education Act 1990 No 8
- Education (School Administrative and Support Staff) Act 1987 No 240
- Education Standards Authority Act 2013 No 89
- Parents and Citizens Associations Incorporation Act 1976 No 50
- Teacher Accreditation Act 2004 No 65
- Teaching Service Act 1980 No 23

The Minister for Skills and Tertiary Education administers the following:

- Apprenticeship and Traineeship Act 2001 No 80
- Australian Catholic University Act 1990 No 110
- Charles Sturt University Act 1989 No 76
- Higher Education Act 2001 No 102
- Higher Education (Amalgamation) Act 1989 No 65
- Macquarie University Act 1989 No 126
- Saint Andrew's College Act 1998 No 15
- Saint John's College Act 2018 No 6
- Saint Paul's College Act 2018 No 71
- Sancta Sophia College Incorporation Act 1929 No 45
- Skills Board Act 2013 No 99
- Southern Cross University Act 1993 No 69
- Technical and Further Education Commission Act 1990 No 118
- Technical Education Trust Funds Act 1967 No 95
- Universities Governing Bodies Act 2011 No 51
- University of New England Act 1993 No 68
- University of New South Wales Act 1989 No 125
- University of Newcastle Act 1989 No 68
- University of Sydney Act 1989 No 124
- University of Technology Sydney Act 1989 No 69
- University of Wollongong Act 1989 No 127
- Vocational Education and Training (Commonwealth Powers) Act 2010 No 131
- Western Sydney University Act 1997 No 116
- Women's College Act 1902 No 71

## **Appendix 2 – Allocation of responsibility for legislation**

This policy does not apply to the following areas:

- Reform and External Relations
- School Performance – North and South

The responsible officer is the senior officer (director/executive director) of business units managing legislation identified below.

### **EDConnect**

- Heavy Vehicles National Law (NSW)
- Modern Slavery Act 2018 (NSW) (Act has not formally commenced)
- Superannuation Acts (NSW and Cth)
- State Records Act 1998 (NSW)
- A New Tax System (Goods and Services Tax) Act 1999 (Cth)
- Fringe Benefits Tax Assessment Act 1986 (Cth)
- Taxation Administration Act 1996 (NSW)
- Government Sector Finance Act 2018 (NSW)

### **Educational Standards**

- Education Act 1990 (NSW)
- Education Standards Authority Act 2013 (NSW)
- Multicultural NSW Act 2000
- Prevention of Cruelty to Animals Act 1979 (NSW)

### **Finance**

- Government Sector Finance Act 2018 (NSW)
- Public Finance and Audit Act 1983 (NSW)

### **Inclusion and Wellbeing**

- Education Act 1990 (NSW)
- Children and Young Persons (Care and Protection) Act 1998 (NSW)
- Disability Discrimination Act 1992 (Cth)
- Disability Standards for Education 2005
- Disability Inclusion Act 2014 (NSW)
- Public Health Act 2010 (NSW)

## **Legal Services**

- Education Act 1990 (NSW)
- Civil Liability Act 2002 (NSW)
- Copyright Act 1968 (Cth)
- Family Law Act 1975 (Cth)
- Freedom of Information Act 1982 (Cth)
- Government Information (Public Access) Act 2009 (NSW)
- Health Records and Information Privacy Act 2002 (NSW)
- Inclosed Lands Act 1901 (NSW)
- Privacy Act 1988 (Cth) and Notifiable Data Breaches provisions
- Privacy and Personal Information Protection Act 1998 (NSW)
- Workplace Surveillance Act 2005 (NSW)

## **People and Culture**

- Age Discrimination Act 2004 (Cth)
- Anti-Discrimination Act 1977 (NSW)
- Child Protection (Working with Children) Act 2012 (NSW)
- Disability Discrimination Act 1992 (Cth)
- Disability Inclusion Act 2014 (NSW)
- Education (School Administrative and Support Staff) Act 1987 (NSW)
- Government Sector Employment Act 2013 (NSW)
- Multicultural NSW Act 2000 (NSW)
- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Superannuation Acts (NSW & Cth)
- Teacher Accreditation Act 2004 (NSW)
- Teaching Service Act 1980 (NSW)

## **Professional Ethics and Standards (PES)**

- Crimes Act 1900 (NSW)
- Child Protection (Working with Children) Act 2012 (NSW)
- Children and Young Persons (Care and Protection) Act 1998 (NSW)
- Children's Guardian Act 2020 (NSW)
- Education (School Administrative and Support Staff) Act 1987 (NSW)
- Government Sector Employment Act 2013 (NSW)
- Ombudsman Act 1974 (NSW)
- Public Interest Disclosures Act 1994 (NSW)
- Teacher Accreditation Act 2004 (NSW)
- Teaching Service Act 1980 (NSW)
- Independent Commission Against Corruption Act 1988 (NSW)

## **Quality Assurance and Regulatory Services, Early Childhood**

- Children (Education and Care Services National Law Application) Act 2010 (NSW)
- Children (Education and Care Services) Supplementary Provisions Act 2011 (NSW)
- Freedom of Information Act 1982 (Cth)
- Privacy Act 1986 (Cth)
- Children and Young Persons (Care and Protection) Act 1988 (NSW)
- Children's Guardian Act 2020 (NSW)
- Disability Standards for Education 2005

## **School Infrastructure NSW**

- Education Act 1990 (NSW)
- Disability Discrimination Act 1992 (Cth), Disability Standards for Premises, and Disability Standards for Education (2005)
- Environmental Planning and Assessment Act 1979 (NSW)
- Food Act 2003 (NSW)
- Independent Commission Against Corruption Act 1998 (NSW)
- Modern Slavery Act 2018 (NSW) (Act has not formally commenced)
- Public Finance and Audit Act 1983 (NSW)
- Public Works and Procurement Act 1912 (NSW)
- Rural Fires Act 1997 (NSW)
- Workplace Surveillance Act 2005 (NSW)

## **School Workforce**

- Education Act 1990 (NSW)
- Education (School Administrative and Support Staff) Act 1987 (NSW)
- Government Sector Employment Act 2013 (NSW)
- Industrial Relations Act 1996 (NSW)
- Teaching Service Act 1980 (NSW)
- Teacher Accreditation Act 2004 (NSW)

## **Skills and Higher Education**

- Disability Standards for Education 2005
- Higher Education Act 2001 (NSW)
- University Acts (see Appendix 1)

## **Training Services NSW**

- Apprenticeship and Traineeships Act 2001 (NSW)

## **Work Health and Safety**

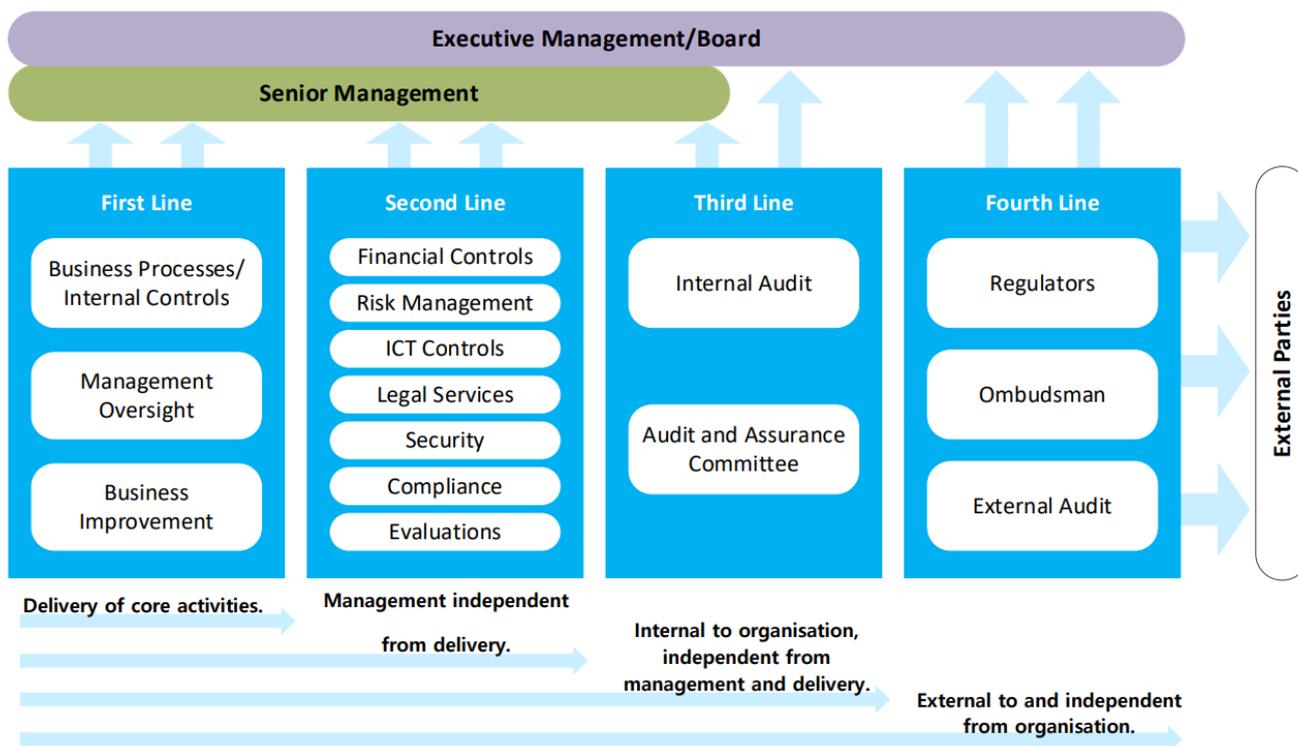
- Education Act 1990 (NSW)
- Public Health Act 2010 (NSW)
- Work Health and Safety Act 2011 (NSW)
- Workers Compensation Act 1987 (NSW)
- Workplace Injury Management and Workers Compensation Act 1998 (NSW)
- Rural Fires Act 1997 (NSW)

## Appendix 3 – Assurance framework overview

The department's assurance framework is a documented model that sets out the ways the Executive gains assurance that the department is operating efficiently, effectively and achieving its outcomes.

There are several areas that contribute towards the department's governance and control framework, with assurance articulated across the four lines of defence (Figure 2).

**Figure 2 Assurance framework overview based on the four lines of defence**



**Source:** Adapted from the IIA Position Paper: The Three Lines of Defense in Effective Risk Management, January 2013

Each of the lines of defence plays a distinct role within the department's governance and control framework:

- **first line of defence** – management implements controls to ensure delivery of the department's core activities (for example, standard operating procedures for a business area)
- **second line of defence** – management establish various risk control and compliance oversight functions (for example, the financial management framework including delegations) that ensure the first line of defence assurance mechanisms are operating effectively
- **third line of defence** – independent assurance that the first and second line of defence assurance mechanisms are operating effectively (for example, internal audit and other independent assurance)
- **fourth line of defence** – external assurance mechanisms (for example, external audit).

## First line of defence

### First line – Business processes/internal controls, management oversight, business improvement

Line managers (responsible officers) implement risk and control procedures and drive business improvement activities.

Responsible officers are responsible for identifying, assessing, controlling, and mitigating risks; guiding the development and implementing policies and procedures; and ensuring that activities are consistent with the department's goals and objectives.

This means responsible officers need to ensure there are robust assurance mechanisms to monitor compliance with internal policies and procedures, and that performance management action is taken if policies and procedures are not followed.

There should be adequate managerial and supervisory controls to ensure compliance with business processes and to highlight control breakdown, inadequate processes and unexpected events.

Examples of first line assurance mechanisms include:

- standard operating procedures
- monitoring and reporting
- drawing from lessons learned from an evaluation to improve business processes and developing education strategies to inform staff of better practice.

## Second line of defence

### Second line – Financial controls, risk management, ICT controls, Legal Services, planning, security, compliance, evaluations

Review by management ensures the first line of defence is operating effectively.

Management review functions, including key corporate and central coordination branches and divisions, provide assurance that the first line of defence is designed properly, in place, and operating as intended.

The second line of defence includes Legal Services branch within the Operations Group:

- establishing the department's [Legislative Compliance](#) policy
- providing guidance materials and tools for responsible officers to develop and assess appropriate first line of defence legislative compliance assurance mechanisms
- providing assistance and advice to other areas across the department as needed.

Branch and division managers responsible for second line of defence functions must ensure these are adequate to monitor compliance with applicable policies and procedures, and that appropriate performance management action is taken if these policies and procedures are not followed.

## Third line of defence

### Third line – Internal Audit, Risk and Audit Committee

Independent assurance is provided by Internal Audit.

The third line of defence is the department's internal auditors, who provide the department's executive and committees with independent assurance. Internal audit provides assurance on the effectiveness of governance, risk management and internal controls, including how the first and second lines of defence achieve risk management and control objectives.

An example is independent management consultants within a program area, who provide independent assurance on a program's governance and operations throughout the program's development and management.

## **Fourth line of defence**

### **Fourth line – Regulators, Ombudsman, external audit**

External review should be used effectively to improve governance.

External assurance providers independently and objectively assess lines of defence. When coordinated effectively, external auditors, regulators and other groups outside the department can add to the lines of defence, providing assurance to the organisation's key stakeholders including senior management, the executive and relevant committees.

An example is an external performance audit of a department program or activity. Program managers could use findings from the audit to strengthen existing governance and control.

## Appendix 4 – Legislative compliance tool guidance

This appendix guides you through the questions in the online self-assessment tool. When using the tool, at the end of each table, you will need to rate your assurance level for each section: HIGH, MEDIUM or LOW. At the end, you will be asked to rate your **overall** level of assurance.

### About you

**Table 1 About you, questions 1 to 2**

No.	Question	Guidance/explanatory text
1	Which area are you self-assessing for?	Identify the area listed.
2	Which area are you answering about?	Not sure? Check the <a href="#">Allocation of responsibility list</a> .

### Understand your legislative obligations

Responsible officers need to understand:

- all relevant legislation
- the risks associated with the department being legislatively non-compliant.

**Table 2 Understanding legislative obligations, questions 3 to 9**

No.	Question	Guidance/explanatory text
3	Do you maintain an up-to-date list of legislative instruments your team has responsibility for?	This could include listing key legislation and associated legislative materials. It also includes a process for new or revised legislation to be identified in a timely manner.
4	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.
5	Have you mapped key legislative obligations for your staff?	You could use the mapping of key legislative obligations to form the basis of internal framework, policy and guidance material.
6	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.
7	Have you conducted a risk assessment covering legislative compliance?	<p>Have you considered what will happen if you do not comply with this legislation? Consequences may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• penalties for breach of legislative obligations, including for the department and officers</li> <li>• reputational impact if the department does not comply</li> <li>• significant (negative) increase in the public and media's interest in the area</li> <li>• possible negative impact on the community if the department does not comply</li> <li>• other impacts (such as safety of employees or the community).</li> </ul> <p>A formally documented risk assessment will assist responsible officers in balancing the need for legislative compliance against the costs of implementing controls.</p>
8	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.

No.	Question	Guidance/explanatory text
9	Understanding obligations – overall, what level of assurance do you gain from the above mechanisms that the department fully understands its legislative obligations and the associated risks?	<p>On a piece of paper, <b>WRITE</b> down the level of assurance you choose below for this first area. You will need it later.</p> <p>Use your answers to the questions above to help form the appropriate assessment.</p> <p>Example assurance ratings include:</p> <ul style="list-style-type: none"> <li>• Low – you maintain a list of instruments but have not formally mapped obligations. You are reliant on staff knowledge of legislative obligations.</li> <li>• Medium – you maintain a list of instruments but have not formally mapped obligations. You have used legislation as a reference to develop internal processes. You have conducted a branch risk assessment that considered the department’s legislative compliance risks.</li> <li>• High – you have thoroughly reviewed legislative instruments and identified and mapped all the department’s obligations and responsibilities. You have used legislation to build internal processes. You have conducted a thorough legislative compliance risk assessment, which is regularly reviewed.</li> </ul>

## Developing a compliance approach

Responsible officers will approach legislative compliance in different ways depending on the nature of the legislation and the department's obligations. You will need to consider the following factors when deciding on your compliance approach:

- 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.

It can be useful for responsible officers to embed legislative obligations within key program and performance management documents, and may include setting out strategies for:

- making staff aware of legislative obligations
- monitoring and assessing compliance
- managing staff performance in the context of legislative compliance
- reporting on compliance.

Responsible officers need to identify compliance policy and framework documents they can use to define the compliance approach (Table 3).

**Table 3 Developing a compliance approach, questions 10 to 12**

No.	Self-assessment question	Guidance/explanatory text
10	Have you documented your approach to legislative compliance?	<p>Check all that apply. If 'other' is one of your answers, please list the relevant documents.</p> <p>Business planning can be used to consider:</p> <ul style="list-style-type: none"> <li>• how the department will facilitate internal compliance, for example making staff aware of obligations, monitoring and assessing compliance and reporting on breaches</li> <li>• allocation of resources</li> <li>• timeframes</li> <li>• policies for internal compliance.</li> </ul> <p>An internal compliance policy may include information relating to background and overview of the obligations and compliance approach. The policy may not always include 'compliance' in the title or be solely focused on legislative compliance. For example, many of the department's Human Resources policies are focused on facilitating the department's compliance with legislative obligations.</p>
11	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.
12	Compliance approach – overall, what level of assurance do you gain from the above approach to legislative compliance?	<p>On a piece of paper, <b>WRITE</b> down the level of assurance you choose below for this second area. You will need it later.</p> <p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• low – informal approach</li> <li>• medium – through business planning or indirectly through other internal policy documents</li> <li>• high – comprehensive internal compliance policy.</li> </ul>

## Raising awareness of compliance obligations

Responsible officers need to help staff, and where relevant, the regulated community understand what is required of them to comply with legislative obligations (Table 4). Where stakeholders are not aware of their responsibilities and obligations there is a higher risk of non-compliance.

**Table 4 Awareness of compliance obligations, questions 13 to 19**

No.	Self-assessment question	Guidance/explanatory text
13	Have you identified and evaluated the skills needed by staff to enable them to meet legislative obligations?	This involves undertaking an assessment of the skills and competencies (and in some cases qualifications) that staff require to be able to meet legislative obligations. This will depend on the subject matter of the legislation and complexity of the department's compliance obligations.
14	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.
15	Do you have a strategy to educate or communicate with staff about their legislative compliance obligations?	This can include regular staff training or awareness activities. A strategy identifies the approach for educating and/or communicating with staff, and in some cases may be considered and documented through business planning and/or regular training.
16	Comment or tell us briefly what evidence you have to say that.?	Describe the evidence you have for your answer to the question above.
17	Do you have standard operating procedures, instructions, delegations and/or other documents in place that set out staff roles and responsibilities in relation to legislative obligations?	Standard operating procedures set out how to perform roles in accordance with legislative obligations and may also be referred to as guidelines. Staff obligations may be set out in individual performance plans and/or through other specific documents such as standard operating procedures. Delegation instruments are used to delegate powers under legislation and should be in place where relevant.
18	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.

No.	Self-assessment question	Guidance/explanatory text
19	Awareness: overall, what level of assurance do you gain from the above education, communication and support provided to staff that they are aware of and understand their legislative compliance obligations?	<p>On a piece of paper, <b>WRITE</b> down the level of assurance you choose below for this first area. You will need it later.</p> <p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• Low – no or limited training and awareness activities or tools and guidance on legislative compliance obligations. No integration of legislative responsibilities or obligations into performance planning and review agreements.</li> <li>• Medium – informal analysis of staff skills and competency and some ad-hoc training delivered. Roles and responsibilities defined in performance planning and review agreements. High level procedures manual to support staff perform their role in line with legislative obligations.</li> <li>• High – formal assessment of required skills and competency, evaluation of staff skills and competency and training and awareness program informed from that assessment. Comprehensive standard operating procedures provided that are reviewed annually and references to legislation supported by checklists and systems. Roles and responsibilities clearly defined in standard operating procedures and through performance planning and review agreements.</li> </ul>

## Monitoring and assessing compliance

Responsible officers need to establish ways to monitor and assess compliance so they can understand the level of compliance. This will also help responsible officers evaluate the overall compliance approach and inform continuous improvement.

Responsible officers need to identify compliance monitoring documents and controls that may assist depending on the nature of the relevant legislation (Table 5).

**Table 5 Monitoring and assessing compliance, questions 20 to 24**

No.	Self-assessment question	Guidance/explanatory text
20	Do you have a formal or informal strategy or plan that sets out the arrangements for monitoring internal legislative compliance?	A formal approach may include a policy or framework document that sets out the overall approach to monitoring staff compliance. An informal approach may reflect that your business plan sets out some compliance activities but there is no overarching framework document.
21	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.
22	Do you have mechanisms in place to identify and assess instances of non-compliance with legislative obligations? This can also include a database for capturing non-compliance data.	Some examples of mechanisms to identify internal non-compliance may include: <ul style="list-style-type: none"> <li>• self-assessment</li> <li>• peer review of work</li> <li>• internal committee reviews/investigations to assess compliance</li> <li>• audits</li> <li>• exceptions reporting</li> <li>• quality management systems.</li> </ul> You could record non-compliance information in an excel spreadsheet, database or, where volumes are low, a simple list.
23	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.
24	Overall assessment of level of assurance	On a piece of paper, <b>WRITE</b> down the level of assurance you choose below for this fourth area. You will need it later. Example assurance ratings: <ul style="list-style-type: none"> <li>• Low – no approach or reactive approach to monitoring staff compliance (for example, based on complaints or tip-offs).</li> <li>• Medium – informal approach to monitoring staff compliance, with some review activities that are not routinely carried out (such as ad-hoc audits or irregular exceptions reports).</li> <li>• High – documented approach to monitoring staff compliance that includes multiple review channels that are carried out routinely.</li> </ul>

## Enforcing compliance/performance management

Responsible officers need to establish arrangements for enforcing compliance, particularly where instances of non-compliance are identified (Table 6).

**Table 6 Enforcing compliance, questions 25 to 27**

No.	Self-assessment question	Guidance/explanatory text
25	Do you have measures to address identified instances of internal non-compliance (such as through the performance planning and review process)?	This may include managing non-compliance through the department's documented processes for managing performance or could include arrangements for staff accountability specific to individual legislation.
26	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.
27	Overall assessment of level of assurance	<p>On a piece of paper, <b>WRITE</b> down the level of assurance you choose below for this fifth area. You will need it soon.</p> <p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• Low – no consideration of compliance and performance in line with legislative obligations as part of the performance planning and review process.</li> <li>• Medium – compliance and performance obligations documented in performance planning and review agreements but not regularly monitored and addressed through ongoing discussions.</li> <li>• High – performance planning and review agreements set out compliance and performance obligations. Compliance information is regularly reviewed and considered as part of ongoing performance discussions.</li> </ul>

## Reporting on compliance

Responsible officers can use reporting to inform both internal and external audiences about the department's legislative compliance. It also enables them to evaluate the effectiveness of compliance activities and inform future compliance activities.

Responsible officers will need to identify controls they could use to report on legislative compliance (Table 7).

**Table 7 Reporting on compliance, questions 28 to 34**

No.	Self-assessment question	Guidance/explanatory text
28	Do you have reporting arrangements to provide relevant staff and managers with reports on the department's legislative compliance? If you have this information, are there arrangements to feed the information back into the overall compliance approach?	<p>Management reporting on legislative compliance can encompass both reportable non-compliance (a breach of any statutory responsibility or obligation that cannot be considered minor or technical in nature) and non-reportable non-compliance (breaches that are minor or technical in nature).</p> <p>Compliance information can provide useful insights into the effectiveness of the approach to internal compliance. For example, it can point towards:</p> <ul style="list-style-type: none"> <li>• areas where staff competency may be inadequate</li> <li>• pressure points that are causing corners to be cut or an inability to meet legislative requirements</li> <li>• inadequate training or supervision.</li> </ul> <p>Using this information to refine the compliance approach helps responsible officers to improve internal compliance and performance outcomes.</p>
29	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.
30	Do you have reporting channels to inform the appropriate division head or Deputy Secretary of reportable non-compliance?	Reportable non-compliance is a breach of any statutory responsibility or obligation that cannot be considered minor or technical in nature. Under the <a href="#">Legislative Compliance Policy</a> , responsible officers must escalate non-compliance to the division head or Deputy Secretary as appropriate.
31	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.
32	Where the department has legislative obligations to report publicly on its legislative compliance, is this reporting completed in line with legislative obligations?	<p>In some cases, the department may have an obligation to report externally on identified instances of non-compliance (such as Public Governance, Performance and Accountability Act 2013).</p> <p>In these cases, responsible officers need to have systems to ensure consistent and timely reporting in accordance with legislative obligations.</p>
33	Comment or tell us briefly what evidence you have to say that.	Describe the evidence you have for your answer to the question above.

No.	Self-assessment question	Guidance/explanatory text
34	Overall assessment of level of assurance	<p>On a piece of paper, <b>WRITE</b> down the level of assurance you choose below for this final area. You will need it almost immediately, along with the others.</p> <p>Example assurance ratings:</p> <ul style="list-style-type: none"> <li>• Low – no management reporting channels for internal non-compliance.</li> <li>• Medium – identified non-compliance is informally reported to staff and managers on an ad-hoc basis. Reportable non-compliance is escalated on an ad-hoc basis.</li> <li>• High – regular management reports that address both serious and minor instances of statutory non-compliance and are used to refine the assurance approach. There are formal escalation procedures for reportable non-compliance, with clear definitions of reportable non-compliance and the appropriate escalation channels.</li> </ul>

## Overall assessment and risk

The overall level of assurance is a measure of how much confidence you gain from all your controls that you are appropriately managing legislative compliance. Take the level of assurance you entered in each of the assessment of risk questions above (9, 12, 19, 24, 27 and 34).

There is no correct level of assurance across each control area (Table 8). Responsible officers need to balance the level of assurance provided by each:

- with the risk of non-compliance
- across each of the areas.

Ensure that higher levels of assurance are not undermined by lower assurance in other areas. For example, a more comprehensive approach to compliance monitoring and enforcement activities is unlikely to compensate where there is a low level of understanding of the department's obligations.

**Table 8 Overall assessment and risk, questions 35 to 36**

No.	Self-assessment question	Guidance/explanatory text
35	Based on your assessment for the six assurance areas above, rate your overall level of assurance in respect of the department's arrangements to comply with its legislative compliance obligations?	
36	Based on the level of risk associated with non-compliance, is this level of assurance adequate?	