



## Policy

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### **24. Legislative Compliance Policy**

File Reference No: 27.121.2

Strategic Outcome: Good government

Date of Adoption: 19/02/2014

Date for Review: 20/02/2018

Responsible Officer: Enterprise and Risk Manager

#### **1. POLICY STATEMENT**

The activities of Local Government are affected by more than 100 state acts, the main two being the Local Government Act (NSW) 1993 – administered by the Department of Local Government, and the Environmental Planning and Assessment Act (NSW) 1979 – overseen by the Department of Planning and Infrastructure, and subsequent amendments thereto. In an environment of continuous legislative change, creating a risk of non-compliance, it is important for the Council to develop strategies to ensure conformity with applicable laws.

#### **2. PURPOSE**

This policy demonstrates a clear commitment by the Council to ensuring compliance with all applicable legislation. To facilitate this, the policy provides guidance on:

- The obligations of staff members in ensuring legislative compliance,
- The consequences of non-compliance,
- The application of legal requirements,
- Moral and ethical objections, and
- Strategies for ensuring compliance.

#### **3. SCOPE**

This policy applies to all staff of the Berrigan Shire Council including volunteers and contractors.

#### **4. OBJECTIVE**

This policy is designed to assist the Council to meet the following Delivery Plan objective:

*2.2.1 Meet legislative requirements for Council elections, local government and integrated planning and reporting.*



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### 5. DEFINITIONS

**Legislation** – Laws that are made by Parliament, or under the authority of Parliament are called legislation, or statutes. “Acts” are primary legislation. Acts may authorize the making of Regulations, Orders and Notices and these are referred to as subordinate legislation.

*Legislation compels or directs the action of individuals, industry and other groups in specified circumstances and also outlines actions that are not to be taken, in order to achieve certain policy objectives.*

**Delegation Register** – Councils have certain duties which they must perform, and certain powers which they must exercise, pursuant to the Local Government Act, as well as a number of other Acts. Under the Local Government Act, Council is able to delegate those duties to staff and Committees of Council.

*The Delegation Register is a listing of those functions which Council has delegated to appropriate staff and Committees of Council.*

### 6. POLICY IMPLEMENTATION

#### 6.1 Obligations of Staff Members

All Council staff members have a responsibility to help ensure legislative compliance within the organisation is achieved. These responsibilities however differ across the organisation, based on the position requirements of the individual and their direct involvement in statutory functions.

##### General Responsibilities

While the Council does not expect staff to be fully conversant with every State and Federal law, all staff members are expected to be aware of the common areas of legislation that affect their day to day work.

In addition, staff members are expected to be aware of a range of employment related laws (for example legislation relating to work, health and safety, equal opportunity, bullying and harassment), and are expected to be aware that certain actions may be subject to the criminal code (such as theft, assault etc.).

Staff members should also be aware of any Council policies, codes, Australian Standards or statements that are relevant to their areas of responsibility.

##### Additional Responsibilities

Staff members with delegated authority for carrying out statutory requirements (in accordance with the Delegation Register) are expected to develop a clear understanding of the relevant provisions as they relate to their responsibilities, and



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make themselves aware of changes to the legislation and its impact on Council activities.

### Senior Staff

Senior staff members are those staff who have workers under their responsibility. They are responsible for ensuring that risk due to non-compliance is minimized, and staff members under their responsibility are kept fully informed, briefed and/or trained about the key legal requirements relevant to their work.

They are also required to ensure that information relating to legislative changes is disseminated to appropriate staff members, and that recordkeeping systems and practices that capture evidence of compliance are in place.

### **6.2 Consequences of non-compliance**

Staff should be aware that any failure to comply with the law could be a criminal act, or result in a breach of the law or a breach of discipline.

Failure to comply with legal requirements could result in such things as:

- Disciplinary proceedings;
- A hearing by the Pecuniary Interest Tribunal into complaints concerning alleged failures by Councillors, staff, delegates and advisors to disclose pecuniary interests;
- Dismissal of the Mayor and Councillors and the appointment of an Administrator;
- Removal of a Council's planning powers and the appointment of an Administrator;
- The appointment of an Environmental Administrator (under relevant environmental legislation);

Legal proceedings against the Council for orders to remedy or restrain breaches of certain Acts, or for other legal challenges relating to such things as acting beyond the scope of authority or power, or failing to provide natural justice, possibly resulting in costly litigation and awards of damages;

- Complaints about the conduct of the Council or staff members being referred to the Ombudsman, ICAC, Audit Office, Division of Local Government, Administrative Decisions Tribunal or other relevant bodies;
- Criminal proceedings;



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- Disruption to management, staff morale problems and bad publicity resulting from any of the above.

### 6.3 Application of legal requirements

The obligation to comply with legal requirements does not relieve the Council or individual staff members of the moral or ethical obligation to mitigate the effects of rigid adherence to the letter of the law where that results in, or would result in, unintended or manifestly inequitable or unreasonable treatment of an individual or organisation. For example:

- If the law gives the Council discretion, it should be exercised in a fair and reasonable way;
- If the law does not give the Council discretion, fairness may involve adopting a broad interpretation in certain circumstances, rather than a rigid adherence to legality;
- Other options may be available to the Council to mitigate any unreasonable or inequitable effects of compliance with the law. These could include, for example, waiving debts, refunding fees or charges, offering an expression of regret or an apology, deferring regulatory action to allow for an authorization to be obtained, fast tracking an assessment and determination of an application, and the like.

In a similar manner, policies, codes, standards, etc. should not be applied inflexibly, but on the basis of merit, with proper consideration being given to the particular circumstances of each individual case.

Staff members should have regard to circulars, practice notes, codes, guidelines, etc. issued by government or relevant central agencies. They should comply with their terms unless there are justifiable grounds for taking another course of action within the scope of the discretion available to the decision-maker.

### 6.4 Dealing with moral or ethical objections

There can be limited occasions where a staff member believes, on moral or ethical grounds, that he or she cannot give effect to a lawful policy.

Where such objection is based on a *bona fide* moral belief that is honestly and strongly held (as opposed to a mere personal or political preference), the staff member concerned should be relieved of responsibility for the implementation or enforcement of that policy. As well as recognising moral objections, such an approach helps to ensure the actual and perceived impartiality and fairness of the Council.



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### 6.5 Strategies for ensuring compliance

Due to the number of Acts affecting council's operations, it is not possible to be fully aware of every State and Federal law and the changes that are being made. There is however a range of methods that the Council will employ to ensure compliance with key legislative changes. These include:

- Subscription and distribution of the NSW Parliamentary Counsel's Office weekly email service notifying of the making of statutory instruments, NSW Government Gazette and Bill information;
- Regard to circulars, practice notes, codes, guidelines, etc. issued by government or relevant central agencies;
- Subscription to Standards Australia receiving alert updates to amendments of the Standards Council has purchased;
- Attendance, where possible, at seminars, conferences and training sessions that relate to legislative changes.

In addition, staff members will implement recordkeeping systems and practices that capture evidence of compliance and non-compliance. These systems could include:

- Reference to relevant legislation, codes and policies in written reports;
- Appropriate filing of circulars and notices advising of legislative changes;
- Notes to file on changes that have been made and their impact, or otherwise, on Council activities.

Compliance to this policy will be assessed through an internal audit function, where periodic examinations are conducted into key operational areas.

### 6.6 Legislative functions under the Local Government Act 1993

The Local Government Act 1993 confers or imposes a number of different functions on a council including, but not limited to:

- a) *Service Functions:*
- *Providing community health, recreation, education and information services;*
  - *Water supply, sewerage and stormwater drainage*



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- *Environmental protection;*
- *Waste removal and disposal;*
- *Land and property, industry and tourism development and assistance.*
  
- b) *Regulatory Functions:*
  - *Approvals;*
  - *Orders;*
  - *Building Certificates.*
  
- c) *Ancillary Functions:*
  - *Resumption of land;*
  - *Powers of entry and inspection.*
  
- d) *Revenue Functions:*
  - *Rates;*
  - *Charges;*
  - *Fees;*
  - *Borrowings;*
  - *Investments.*
  
- e) *Administrative Functions:*
  - *Employment of staff;*
  - *Management Plans;*
  - *Financial Reporting;*
  - *Annual Reports.*
  
- f) *Enforcement Functions:*
  - *Proceedings for beaches of the Act;*
  - *Prosecution of offences;*
  - *Recovery of rates and charges.*

Whilst the main functions of councils are provided for under the Local Government Act 1993, councils also have functions under other Acts. Whilst the following list is not exhaustive, it does include some major legislation (including amendments) that Council must abide by:

- *A New Tax System (Goods and Services Tax) Act 1999* GST
- *Carer's (Recognition) Act 2010* Carer's Charter recognizing the role and contribution of carers to our community
- *Community Land Development Act 1989* Planning functions as consent authority
- *Companion Animals Act 1998* Companion animal registration and control
- *Conveyancing Act 1919* Placing covenants on council land
- *Disability Services Act 1993* Disability provision for HACC and Early Intervention services
- *Environmental Planning and Assessment Act* Environmental planning



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- *Fair Work Act 2009* Workplace responsibilities
- *Fire Brigades Act 1989* Payment of contributions to fire brigade costs and furnishing of returns.
- *Fluoridation of Public Water Supplies Act 1957* Fluoridation of water supply by council
- *Food Act 2003* Inspection of food and food premises
- *Fringe Benefit Assessment Act 1986* Fringe benefits
- *Government Information (Public Access) Act 2009* Public access to Council records
- *Impounding Act 1993* Impounding of animals and articles
- *Interpretation Act 1987 (part. Section 50)* Statutory corporations
- *Library Act 1939* Library services
- *Local Planning Amendment (Planning & Reporting) Act 2009*
- *Protection of the Environment Operations Act 1997* Pollution control
- *Public Health Act 2010* Inspection of systems for purposes of microbial control
- *Recreation Vehicles Act 1983* Restricting use of recreation vehicles
- *Roads Act 1993* Roads
- *Rural Fires Act 1997* Issue of permits to light fires during bush fire danger periods.  
Requiring the furnishing of information to the Rural Fire Service Advisory Council and its Coordinating Committee.
- *State Emergency Service Act 1989* Recommending appointment of local controller.
- *Strata Schemes (Freehold Development) Act 1973* Approval of strata plans
- *Strata Schemes (Leasehold Development) Act 1986* Approval of leasehold strata plans
- *Swimming Pools Act 1992* Ensuring restriction of access to swimming pools.
- *Water Act 1912*
- *Work Health and Safety Act 2011* Workplace health and safety

The exercise by a council of its functions under the Local Government Act may also be modified by the provisions of another Act. Some of those Acts and some of the modifications they affect include:

- *Heritage Act 1977* Rating based on heritage valuation
- *State Emergency and Rescue Management Act 1989* Council required to prepare for emergencies
- *Unclaimed Money Act 1995* Unclaimed money to be paid to the Chief Commissioner of Unclaimed Money

### 7. RELATED POLICIES OR STRATEGIES

Additional publications to be read in conjunction with this policy include:

- Berrigan 2023 (Community Strategic Plan)
- Berrigan Shire Council Local Environmental Plan 2013
- Berrigan Shire Council Agency Information Guide
- Delegation Register
- All Council policies and plans developed in accordance with legislation



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