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LEGISLATIVE COMPLIANCE POLICY

Strategic	Good government
Policy type	Administrative
Date of Adoption:	15 February 2023 Minute Number:
Date for Review:	17 February 2027
Responsible	Enterprise and Risk Manager
Document	Replaces Legislative Compliance Policy adopted 19 July, 2017
Delivery Program Link:	2.1.3 Council operations and financial management support ethical, transparent, and accountable corporate governance.

1. POLICY STATEMENT

Legislative compliance ensures the Berrigan Shire Council meets all obligations under applicable laws, regulations, and relevant guidance material. In an environment of continuous legislative change, creating a risk of non-compliance, it is vital for accurate decision-making, Council develops strategies to ensure conformity with applicable legislation.

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:

1. the obligations of staff members in ensuring legislative compliance,
2. the consequences of non-compliance,
3. the application of legal requirements,
4. moral and ethical objections, and
5. strategies for ensuring compliance.

3. SCOPE

This policy applies to all staff of the Berrigan Shire Council including councillors, section 355 Committee members, volunteers and contractors.



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4. OBJECTIVE

This policy is developed to assist the Council with the Delivery Program Objective:

2.1.3 Council operations and financial management support ethical, transparent and accountable corporate governance.

5. DEFINITIONS

Delegation Register Councils have certain duties which they must perform, and certain powers which they must exercise, pursuant to the *Local Government Act 1993*, as well as numerous other Acts. Under the *Local Government Act 1993*, Council may delegate most of those duties to the CEO and Section 355 Committees of Council.

The Delegation Register is a listing of functions for which Council has exercised its right to delegate its authority to allow for the day to day operations of Council. Only the CEO may sub-delegate these functions to relevant and authorised officers of Council. Committees of Council may not sub-delegate any delegations provided to them..

Legislation Laws made by Parliament, or under the authority of Parliament are called legislation, or statutes. “Acts” are primary legislation. Acts may authorise 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 outlines actions that are not to be taken, in order to achieve certain policy objectives.

Legislative Compliance Register

A register of all legislation which Council may refer to in the course of doing business.

6. POLICY IMPLEMENTATION

6.1 Staff Obligations



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All Council staff are responsible for ensuring the Council complies with all relevant legislation. These responsibilities however differ across the organisation based on the position requirements of the individual and their direct involvement in statutory functions.

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, and the limitations of the sub-delegations made to them by the CEO.

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, fraud, etc.).

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

6.2 Delegated responsibilities

Staff members with delegated authority for carrying out statutory requirements (in accordance with the Delegations Register) are expected to develop a clear understanding of the relevant provisions as they relate to their responsibilities and make themselves aware of changes to legislation and its impact on Council activities.

6.3 Management responsibilities

Any staff member responsible for the management or supervision of staff must ensure appropriate information is disseminated to all workers under their responsibility. They are responsible for ensuring the risk due to non-compliance is minimised and workers 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 information relating to legislative changes is disseminated to appropriate staff members, and recordkeeping systems and practices that capture evidence of compliance are in place.

6.4 Consequences of non-compliance

Staff should be aware 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 may result in:

- disciplinary proceedings,



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- 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 or councillors and the appointment of an Administrator,
- removal of 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 order to remedy or restrain breaches of certain Acts, or for other legal challenges relating to such things as acting beyond the scope of authority of 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, Independent Commission Against Corruption (ICAC), Audit Office, Office of Local Government, or other relevant bodies,
- criminal proceedings, and/or
- disruption to management, staff morale problems and bad publicity resulting from any of the above.

6.5 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:

1. If the law gives the Council discretion, it should be exercised in a fair and reasonable way.
2. 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.
3. 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 authorisation to be obtained, fast tracking an assessment and determination of an application, etc.

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



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justifiable grounds for taking another course of action within the scope of the discretion available to the decision maker.

6.6 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” 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, and referred to ELT or Council for further consideration.

As well as recognising moral objections, such an approach helps to ensure the actual and perceived impartiality and fairness of the Council.

6.7 Strategies for ensuring compliance

The Chief Executive Officer will ensure a range of methods are adopted for use by Council staff to ensure compliance with key legislative changes including but not limited to subscriptions to notification services, notification of changes to managers, dissemination of information, and training.

7. RELATED LEGISLATION, POLICIES AND STRATEGIES

7.1 Legislation

- *Local Government Act 1993*
- *Environmental Planning and Assessment Act (NSW) 1979*

7.2 Council policies and guidelines

- Legislative Compliance Register
- Delegations Register
- Berrigan Shire Council Local Environmental Plan

8. RECORDS MANAGEMENT

Recording of all information relating to this policy including inspection and maintenance programs will be maintained in accordance with Australian Standard playground requirements.

All Records must be kept in accordance with Council’s Records Management Policy (currently under development) and destroyed as per the General Retention and Disposal Authority: Local Government Records (GA39).



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9. REVIEW AND EVALUATION

This policy (procedure) will be evaluated and reviewed at least once every four (4) years as per Council's Governance Policy (currently under development) or as required.

10. DOCUMENT AVAILABILITY

A number of legislative instruments require Councils to have the policy available for inspection at Council's principal office (i.e. Policies made under Part 3, of the Local Government Act 1993). Each document should therefore state the ways in which the policy is available including any relevant fees and charges for access to such policy. An example of the required statement is provided below:

This policy will be available for inspection at Council's principal office during ordinary business hours as per the requirements of section 18 (c) of the *Government Information (Public Access) Act 2009* and section 167 of the *Local Government Act 1993*.

Access to the policy in digital format is free and is available on Council's website <https://www.berriganshire.nsw.gov.au/>

Printed copies of the document are available at Council's principal office (address noted below) and are subject to Council's Fees and Charges.

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11. VERSION CONTROL

Version Number	Date	Summary	Responsible Officer
1.0		New Policy document	Michelle Koopman
1.1		Minor review (detail)	Matt Hansen
2.0		Major revision (detail)	Karina Ewer

APPENDICES