

Legislative and Administrative Compliance Program (LACP) Policy and Procedure

Table of contents

| | | |
|-----|--|---|
| 1 | Purpose | 2 |
| 2 | Definitions | 2 |
| 3 | Scope..... | 3 |
| 4 | Policy statement | 3 |
| 4.1 | Core principles of the LACP | 3 |
| 4.2 | Annual program | 4 |
| 4.3 | Failure to comply | 5 |
| 5 | Procedure | 5 |
| 5.1 | Identify compliance obligations and evaluate compliance risks | 5 |
| 5.2 | Addressing compliance risks | 6 |
| 5.3 | Operational controls for compliance risks | 6 |
| 5.4 | Monitor, report, measure, analyse and evaluate compliance levels | 7 |
| 6 | Responsibilities | 8 |
| 6.1 | The Secretary | 8 |
| 6.2 | Divisional heads | 8 |
| 6.3 | Compliance leads and policy owners | 8 |
| 6.4 | Employees..... | 8 |
| 6.5 | Business Ethics and Compliance Unit (BECU)..... | 8 |
| 6.6 | Internal Audit | 9 |
| 7 | Related legislation and documents | 9 |
| 8 | Document information..... | 9 |
| 9 | Support and advice | 9 |

1 Purpose

The Legislative and Administrative Compliance Program (LACP) assists DCJ to operate in accordance with all applicable legislative and administrative instruments to meet its compliance obligations.

The LACP supports the Secretary's compliance with Section 3.6 of the Government Sector Finance Act 2018 (GSF Act) and the attestation under Treasury Policy Paper 20-08 Internal Audit and Risk Management Policy for the General Government Sector.

2 Definitions

| Term | Definition |
|-------------------------------|---|
| business area | The unit/branch/directorate of the DCJ Division. |
| compliance | Adhering to relevant laws, regulations, rules, policies, procedures, organisational objectives, standards, industry codes and best practice, governance, ethics, community expectations and service delivery obligations applicable to DCJ. |
| compliance controls | Aided materials, controlled mechanism or systems designed to reduce or eliminate non-compliance and ensure obligations are met. |
| compliance lead | The principle representative that creates and develops policies or procedures in enforcing DCJ's compliance. |
| compliance reporting register | The register that contains all the obligations with which DCJ must comply. The register is used for business areas to report compliance levels for a given financial year period. |
| divisional head | The lead representative who is responsible for oversight of a division, usually a Deputy Secretary; or someone of Band 3 grade; or equivalent. |
| employees | DCJ staff and others who perform work in any capacity for DCJ including: <ul style="list-style-type: none"> • senior executives • employees (ongoing, temporary or casual) • members of councils or committees managed by DCJ • interns and graduates • contractors/contingent labour (agency staff) • persons on work experience • students over 18 years of age • volunteers. |
| division | The collection of business areas that report to the relevant Deputy Secretary |
| government direction | Any directions issued by government with which DCJ must comply. These include, but not limited to: <ul style="list-style-type: none"> • Better Regulation Documents (BRD...) • Department of Premier and Cabinet (C...) |

| Term | Definition |
|-------------------------|---|
| | <ul style="list-style-type: none"> • Memoranda (M..) • Procurement Board Directions (PBD...) • Public Service Commission Circulars (PSCC...) • Treasury Circulars (TC...) • Treasury Policy Papers (TPP...) |
| non-compliance / breach | A violation of, or failure to comply with, the relevant laws, regulations, rules, policies, procedures, organisational objectives, standards, industry codes and best practice, governance, ethics, community expectations and service delivery obligations applicable to DCJ |
| obligation | A requirement under legislation, government directions or regulatory directives with which DCJ must comply. |
| policy owner | The author or principle business unit that creates the policy or procedure document. |
| regulatory directives | Any directive that DCJ may be given to report or provide information to regulatory bodies such as: <ul style="list-style-type: none"> • NSW Audit Office • NSW Ombudsman • Office of the Children’s Guardian • Independent Commission Against Corruption (ICAC) |
| senior executive | All DCJ Public Service Senior Executives (PSSE) includes any non-senior executive acting in a senior executive position. |
| supervisor | Line manager or manager to whom staff report. |

3 Scope

This policy and procedure applies to all DCJ divisions that have obligations assigned to them.

4 Policy statement

The LACP is not designed to name and shame divisional heads, policy owners or business areas. It is a tool to assist the department to ensure that appropriate obligations are being met, to mitigate the risk of non-compliance and to strengthen DCJ’s reputation and community confidence. It further provides senior management insights as to where to invest in more education, resources, systems or processes to improve internal controls.

4.1 Core principles of the LACP

The Department has identified four interrelated principles which guide our practice in the context of compliance management:

- Commitment
- Communication
- Assurance
- Continuous Improvement



4.2 Annual program

The LACP is rolled out annually for reporting on the previous financial year. It assists business areas to identify any instances of non-compliance and ensures improved compliance through a structured program that includes:

- Developing and promoting a culture that is consistent with the NSW Public Sector values of Service, Trust, Integrity, Service and Accountability, and stakeholder expectation of DCJ.
- Assessing and improving compliance performance by identifying, monitoring and reporting DCJ's compliance obligations with relevant legislative and administrative instruments.
- Developing, implementing and monitoring internal controls to mitigate risks.
- Establishing processes for identifying, tracking and recording compliance with DCJ's compliance obligations.
- Identifying management roles and responsibilities for compliance monitoring.

- Providing remediation if non-compliance or weaknesses in existing systems and controls are identified.
- Annual reporting to the Secretary, DCJ senior executives, and the Audit and Risk Committee/s (ARC) on compliance levels.

4.3 Failure to comply

Reporting compliance breaches is critical to managing risk within DCJ. It allows senior management to have oversight of where there are gaps in controls, or where resources or training is required. Intentional failure to disclose a breach of an obligation being complicit in supporting others to avoid disclosing a breach may constitute misconduct and may result in disciplinary action.

In some cases, failure to comply with this policy and procedure may constitute corrupt conduct. Some examples may include, but are not limited to the following:

- Intentionally concealing or failing to disclose a breach of an obligation
- making a false or understated declaration
- knowingly supporting others to avoid disclosure

5 Procedure

5.1 Identify compliance obligations and evaluate compliance risks

The BECU reviews legislation, government directions and regulatory directives that contain obligations relevant to DCJ. Obligations identified as relevant to DCJ are recorded into a consultation register which is provided to each DCJ division to review and confirm that instruments and obligations for their business area/s are relevant and correctly assigned. This also provides an opportunity for business areas to assign additional instruments and obligations to their business areas.

The consultation registers are provided to divisional heads to disseminate to their business areas. Each division is required to 'accept' and risk rate; or 'reject' the obligations assigned to them. Business areas are also asked to provide comments/ suggestions as to where a particular obligation should belong (where this is known), or whether it is still current and relevant etc.

The compliance risk assessment should be completed (or confirmed) by the compliance lead. Compliance risk assessments should be done using the likelihood/ consequence risk matrix which is found in the registers. Risk is assessed on the likelihood (i.e. probability of non-compliance) and consequences (i.e. effect of non-compliance on DCJ) with that particular obligation.

While the BECU assist business areas identifying obligations they must comply with, the input and assignment of obligations for legislative and administrative instruments is ultimately the responsibility of the compliance leads and policy owners.

Once consultation with business areas is complete, consultation registers are then consolidated and updated for business areas to report compliance levels.

5.2 Addressing compliance risks

The reporting and breach registers are rolled-out to each division to complete their annual self-assessment for the previous financial period against each assigned obligation. Divisional heads are responsible to disseminate to their business areas.

Each division is required to self-assess and report on compliance levels against each obligation assigned to them using the reporting register. This includes any breaches identified even if these have already been remediated.

Each division that has identified non-compliance/breaches must complete the Breach Register and provide the following information:

- date of the breach
- details of the business area
- name of the Act or Administrative Instrument
- description of the breach
- risk rating of the breach
- corrective action/s (strategies) to be implemented
- completion date for the corrective action/s.

Divisional heads are provided with a certification form to complete once all their divisional reporting registers have been reported against. This certification provides oversight of potential compliance risks for senior management. It also provides assurance that:

- compliance reported in their divisional reporting registers is true and accurate
- appropriate systems are in place to ensure compliance (including monitoring) with their divisional obligations.

5.3 Operational controls for compliance risks

The primary purpose of the compliance reporting register is to enable identification and risk management of all compliance obligations. It constitutes the basis for compliance planning and clarifies each obligation.

Working to achieve compliance with obligations should be a priority for every business area in DCJ, and where necessary, written into divisional business plans, polices, procedures or senior executive performance agreements.

The compliance lead or policy owner is the division head with lead responsibility within DCJ for managing overall compliance risk, developing effective compliance controls, responding to compliance breaches, and escalating compliance issues to the ARC and/or the senior executive.

The compliance lead or policy owner must ensure there are compliance controls in place to reduce compliance risks. This may include systems, codes, policies, standards, procedures, guidelines, fact sheets and/or training designed to support the business area to perform its functions and ensure compliance.

The divisional head and/or relevant senior executive is accountable for compliance within their respective business areas. This includes being accountable for adequate controls to be in place to ensure compliance.

5.4 Monitor, report, measure, analyse and evaluate compliance levels

Compliance reporting

DCJ strongly promotes business areas to be transparent when reporting non-compliance or breaches as this provides DCJ with the avenue to strengthen and improve any identified weaknesses.

Each employee should inform their immediate supervisor if they become aware of any instances of a compliance breach with an obligation (actual, suspected or potential). It is important to report breaches even where a breach involves that employee or the actions of someone else.

Intentional breaches of compliance will be managed under DCJ's Code of Ethics and Conduct, and in accordance with the Government Sector Employment Act 2013 (NSW) provisions in relation to managing misconduct.

Reporting on compliance supports DCJ senior executives to have oversight and identify compliance risks and make appropriate decisions to address those risks. The compliance reporting register enables summary reporting to management on the effectiveness and appropriateness of compliance management activities.

The results of the compliance reporting register should inform decisions around monitoring and assurance activities as well as resource allocation depending on the risk appetite of each DCJ division.

Compliance assurance and monitoring

Compliance assurance and monitoring tools assess the effectiveness of the program and to identify any areas of non-compliance.

Any overdue or non-compliant responses are escalated, investigated and reported to appropriate stakeholders (e.g. senior executive and the ARC) depending on severity.

Targeted compliance reviews may be performed based on compliance risk assessments and emerging trends of non-compliance.

Analysis and evaluation

An annual compliance report is prepared by the BECU and provided to the DCJ Executive and the Audit and Risk Committee for the Secretary to support completion of the Secretary's attestation statement.

Feedback and information provided by business areas during the reporting phase are utilised to develop the following year's consultation with business areas. The BECU monitors changes to legislation via sources like the NSW Legislation Gazette to ensure all key compliance obligations are identified and are still current.

6 Responsibilities

6.1 The Secretary

- Exercise leadership, promote a culture of probity and model DCJ values in relation to the reporting of and compliance with DCJ's obligations under legislation, government directions and regulatory directives.

6.2 Divisional heads

- Exercise leadership, promote a culture of probity and model DCJ values in relation to the reporting of and compliance with DCJ's obligations under legislation, government directions and regulatory directives.
- Ensure compliance assurance by means of certification that the information reported is true and accurate. It is the responsibility of the divisional head to have oversight of their division's compliance.
- Ensure oversight for implementation of remediation strategies for instances of non-compliance.

6.3 Compliance leads and policy owners

- Encourage staff in business areas to be aware of and diligent in complying with obligations assigned to them.
- Promote accurate and timely reporting of compliance levels including where non-compliance or breaches have occurred.
- Support business areas in remediating compliance breaches.
- Regularly review compliance management systems to determine their adequacy, suitability and effectiveness.
- Advise the BECU of any new, amended or rescinded instruments

6.4 Employees

- Be aware of compliance obligations within their respective business areas.
- Report compliance breaches and/or identified weaknesses in compliance controls.

6.5 Business Ethics and Compliance Unit (BECU)

Manage and administer the LACP by:

- Performing reviews of obligations to assist business areas.
- Consult with business areas to confirm obligations and understand legislative and administrative requirements.
- Maintaining and updating the consultation and reporting registers.
- Providing support and advice to business areas on remediation strategies for instances of non-compliance.
- Providing the DCJ Executive and the ARC with reports on DCJ compliance levels for the preceding financial year.

- Providing external agencies such as the NSW Audit Office with information on the DCJ compliance management system.

6.6 Internal Audit

- Conduct an audit on the DCJ compliance management system on a three yearly cycle from the date of approval of this policy and procedure to help identify gaps in the program and areas that may require refinement.

7 Related legislation and documents

- Australian Standard (AS) ISO 19600:2015 Compliance management systems Guidelines
- DCJ Enterprise Risk Management Framework
- Internal Audit and Risk Management Policy for the NSW Public Sector TPP20-08
- The Government Sector Finance Act 2018 (NSW)

8 Document information

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| Document name | Legislative and Administrative Compliance Program (LACP) Policy and Procedure |
| Applies to | All divisions |
| Replaces | Department of Justice Legislative Compliance Policy |
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| Commenced | 22 July 2021 |
| Due for review | 21 July 2024 |
| Policy owner | Business Ethics and Compliance Unit (BECU) |

9 Support and advice

You can get advice and support about this policy and procedure from the BECU who has carriage of this document.

| | |
|---------------|--|
| Business unit | Business Ethics and Compliance Unit (BECU) Audit, Risk & Compliance Corporate Services |
| Email | LACP@facns.nsw.gov.au |

This policy and procedure is subject to change. The latest published version of the policy and procedure is available on the DCJ intranet.