



Legislative Compliance Report

Survey period: 1 July 2021 – 30 June 2022

30 September 2022

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1. Executive Summary

A legislative compliance survey has been run for the Ministry of Health (the Ministry) for the period 1 July 2021 – 30 June 2022. The survey focussed on the core government and specific legislative requirements of the Ministry. Managers with key oversight roles and tier 4 managers and above were required to complete legislative compliance questions applicable to their roles. 76 out of 80 people requested completed the survey (95%).

Non-compliance of note has been declared in the following areas:

- Official Information Act 1982
- Public Records Act 2005

All non-compliances have been reviewed, but no others are considered to be of significance.

Many of the non-compliances are the same as those reported in the last survey period (1 July 2020 – 30 June 2021) but with a reduced risk due to the mitigating actions being taken. None of these non-compliances have been assessed as representing major or extreme risks to the Ministry and actions are being taken to address the non-compliances, as set out in **Appendix 1**.

The next survey will be run in July 2023 for the period 1 July 2022 – 30 June 2023.

2. Legislative Compliance Programme

The Ministry has an obligation to ensure that all legislative and regulatory requirements are complied with. The public, the government, the Minister of Health, and Ministry employees are expected to take all appropriate measures to ensure that this expectation is adequately met. The monitoring of compliance through the ComplyWith survey tool is just one aspect of the legislative compliance programme, through which the Director-General is provided assurance that the Ministry is meeting its legislative responsibilities. Audit New Zealand is required to review the Ministry's legislative compliance framework as part of their Annual Audit.

Legislative compliance is a continual process and is a critical part of the Ministry's overall Risk Management Framework. This includes the analysis and measurement of risks, including legislative risks, to ensure the Ministry is managing these risks appropriately.

3. Legislative Compliance Survey

The legislative compliance survey asked managers legislative compliance questions specific to their role and responsibilities in the Ministry. This was determined by mapping core government and Ministry specific legislative responsibilities applicable to the Ministry and identifying accountabilities for these.

Organisational compliance questions

Organisational Ministry compliance questions were asked of managers whose roles include or enable oversight of Ministry compliance with particular legislation. Examples of these include:

- The Chief Financial Officer with aspects of the Public Finance Act.
- The Group Manager of People and Capability with aspects of the Employment Relations Act.

'All managers' questions

A group of questions was developed for 'all managers' and assesses compliance in relation to themselves and their direct reports. These questions have been developed specifically for the Ministry to link in with HR and financial delegations. These questions were asked of tier 4 managers and above.

These questions were also designed to educate and reinforce Ministry policy.

Catch all question

A catch all question was included to provide managers the opportunity to report any other instances of non-compliance that are not captured under the survey questions assigned to them.

Survey completion rate

76 out of 80 people requested completed the survey (95%). The completion rate for this survey is higher than the last four annual surveys, which was 85% for (2017/18), 88% (for 2018/19), 87% (for 2019/2020) and 79.9% (for 2020/2021).

Reported non-compliance

A small number of instances of legislative non-compliance have been reported. All of the declared non-compliances were assessed as representing a moderate risk to the Ministry and action is being taken to remedy non-compliance, as set out in **Appendix 1**.

Appendix 1: Reported Legislative Non-Compliances

Managing Information

Official Information Act 1982 (OIA) Oversight: Sarah Turner, Deputy Director-General, Government and Executive Services Responsibility: Managers and all staff			
<p>When a request for official information is made, the Ministry is required to issue a decision in respect of that request as soon as reasonably practicable and no later than 20 working days of receiving the request (section 15, OIA).</p> <p>The Ministry may request an extension of the 20-day time limit if it anticipates that responding to the information request will involve processing a large quantity of information; or if undertaking consultations necessary to making a decision on the request are going to prevent the Ministry from meeting the statutory time limit (section 15A, OIA)</p> <p>If the Ministry does not hold the information requested, it is required to transfer the request to the appropriate agency no later than 10 working days after receiving the request (section 14, OIA).</p>	<p>Overall, most managers (86.96%) indicated <i>full compliance</i> in meeting the requirements of the OIA. However, a few managers have noted a small number of occasions where the Ministry has exceeded the OIA's timeframes. All reasonable endeavours are made to respond to requests for information within legislative timeframes. Information about our obligations is made available to all staff and training is provided to promote the OIA.</p> <p>Common reasons for non-compliance in this area are:</p> <ul style="list-style-type: none"> • a large volume of requests; • resourcing pressures; • competing priorities; • lack of comprehensive document management system; • late internal consultation; and • the lengthy sign-off process required in some cases. 	<p>Moderate risk</p> <p>In the event that an OIA response from the Ministry is late, a request is declined, or the Ministry requests an extension of the mandatory timeframe, the requester can lodge a complaint with the Office of the Ombudsman.</p> <p>An investigation by the Ombudsman could result in an adverse finding against the Ministry.</p> <p>Any negative publicity surrounding a failure on the part of the Ministry to comply with the OIA might result in a loss of public confidence or reputational risk.</p>	<p>Managers who have noted occasional delays in responding to OIA requests have adopted procedures to mitigate the risk of unforeseen delays, for example, to request advice from Health Legal where OIA requests will potentially impact privacy and ensuring there is enough time for the sign-out process.</p> <p>The Group Manager of the Ministry's Government Services team has an implementation plan for improvements in place, which addresses issues of timeliness and quality of replies to requests.</p>

Public Records Act 2005 (PR Act)

Oversight: Celia Wellington – Deputy Director-General, Corporate Services

Responsibility: Managers and all staff

The Ministry is required to create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice, including the records of any matter that is contracted out to an independent contractor. Records must be in an accessible form, so as to be able to be used for subsequent reference, until their disposal is authorised under the PR Act (section 17, PR Act).

Overall, most managers (74.32%) indicated *full compliance* in meeting the Ministry's requirements under the PR Act.

Managers have noted that there are different filing standards throughout the Ministry and that staff filed using several different document management systems.

Managers have also noted that work pressures, the frustrations with Lotus Notes and recent changes to the Ministry's Electronic Document Management System have meant that they are not up to date with filing, but that they are making all reasonable endeavours to catch up.

Moderate risk

It is an offence under section 61 of the PR Act to contravene or fail to comply with any provision of this Act or any regulations made under it. The penalties under section 62 of the PR Act for committing an offence under the Act are:

- in the case of an individual, to a fine not exceeding \$5,000.
- in every other case, to a fine not exceeding \$10,000.

Further to this the operational implications for the Ministry are as follows:

- Documents cannot be located when required;
- Incorrect versions of documents are used;
- Information is reworked because the original document cannot be located; and
- Multiple repositories are used but are not actively managed.

Work towards ensuring increased compliance with the PR Act is an ongoing process. It is necessary for there to be ongoing encouragement and support for staff to file in accordance with the PR Act.

The Ministry has recently upgraded to a new Electronic Document Management System – 'SharePoint'. This new system hopes to alleviate the problem of staff filing in a number different places and the frustrations associated with the previous document management system.

Progress is being made as work is underway to ensure that document management practices improve, including consistent SharePoint training for all Ministry staff.

Appendix 2: Core Government and Ministry Specific Legislation Surveyed

GOVERNANCE & ACCOUNTABILITY

Ombudsmen Act 1975

Public Audit Act 2001

Public Finance Act 1989

Public Service Act 2020

INFORMATION MANAGEMENT

Privacy Act 2020

Official Information Act 1982

Public Records Act 2005

Statistics Act 1975

Copyright Act 1994

National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003

National Zealand Geographic Board (Nga Pou Taunaha o Aotearoa) Act 2008

Criminal Disclosure Act 2008

EMPLOYMENT RELATIONS

KiwiSaver Act 2006

Human Rights Act 1993

Employment Relations Act 2000

Protected Disclosures Act 2000

Holidays Act 2003

Parental Leave and Employment Protection Act 1987

Wages Protection Act 1983

Minimum Wage Act 1983

Minimum Wage Order 2010

Minimum Wage Order 2011

Equal Pay Act 1972

Criminal Records (Clean Slate) Act 2004

Accident Compensation Act 2001

Child Support Act 1991

Student Loan Scheme Act 2011

Social Security Act 2018 and Social Security Regulations 2018

HEALTH AND SAFETY

Health and Safety at Work Act 2015

General Risk Regulations 2016

Worker Engagement Regulations 2016

ENVIRONMENT

Civil Defence Emergency Management Act 2002

FINANCE

Fair Trading Act 1986

Commerce Act 1986

MISCELLANEOUS

Commerce Act 1986

Crimes Act 1961

Secret Commissions Act 1910

Patents Act 1953

Trade Marks Act 2002

Consumer Guarantees Act 1993

TAX

Income Tax Act 2007

Tax Administration Act 1994

Goods and Services Tax Act 1985

MINISTRY SPECIFIC LEGISLATION

Cancer Registry Act 1993

Epidemic Preparedness Act 2006

Health and Disability Services (Safety) Act
2001

Health Sector (Transfers) Act 1993

Intellectual Disability (Compulsory Care and
Rehabilitation) Act 2003

Medicines Act 1981

Misuse of Drugs Act 1975

New Zealand Public Health and Disability
Act 2000

Human Tissue Act 2008

Public Service Act 2020

Public Records Act 2005

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