



Audit & Risk Committee Meeting

7 September 2022

Minutes

To: Audit & Risk Committee Meeting Members and Councillors.

Here within are the Meeting Minutes of the Audit & Risk Committee Meeting, held on the above-mentioned date in the Shire of Toodyay Council Chambers, 15 Fiennes Street, Toodyay WA 6566.

A handwritten signature in blue ink, appearing to read 'Suzie Haslehurst', is located above the printed name.

Suzie Haslehurst

CHIEF EXECUTIVE OFFICER



Preface

When the Chief Executive Officer approves these Minutes for distribution they are in essence "Unconfirmed" until the next Committee Meeting, where the Minutes will be confirmed subject to any amendments made by the Committee.

The "Confirmed" Minutes are then signed off by the Presiding Person.

Attachments that formed part of the Agenda, in addition to those tabled at the Meeting are incorporated into separate attachments to these Minutes.

Unconfirmed Minutes

These minutes were approved for distribution on 9 September 2022.



Suzie Haslehurst

CHIEF EXECUTIVE OFFICER

Confirmed Minutes

These minutes were confirmed at a meeting held on 7 December 2022.

Signed: 

Note: The Presiding Member at the meeting at which the minutes were confirmed is the person who signs above.

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1 DECLARATION OF OPENING

Cr B Ruthven, Chairperson, declared the meeting open at 2.07pm.

1.1 ANNOUNCEMENT OF VISITORS

Nil.

1.2 RECORD OF ATTENDANCE AND APOLOGIES

Members

Cr B Ruthven	Deputy Shire President (Chair)
Cr R Madacsi	Shire President
Cr P Hart	Councillor (via Zoom)
Cr D Wrench	Councillor (via Zoom)
Mrs H McDonald-Appleby	Community Member (via Zoom)
Mr S Hefferon	Community Member

Staff

Mrs M Rebane	Executive Assistant
Ms T Bateman	Manager Corporate and Community Services
Mrs N Mwale	Finance Coordinator (via Zoom)

Visitors

Nil

Apologies

Cr C Duri	Councillor
Cr S Pearce	Councillor

1.3 DISCLOSURE OF INTEREST

The Chairperson advised that no disclosures of interest in the form of a written notice had been received prior to the commencement of the meeting.

2 MINUTES AND ADDITIONAL INFORMATION

2.1 CONFIRMATION OF MINUTES

2.1.1. Minutes of Meeting held on 1 June 2022

It was noted that in the June 2022 ARC Minutes, Cr Ruthven was recorded as a visitor and a chairperson.

**OFFICER'S RECOMMENDATION/ARC RESOLUTION NO.
ARC008/09/22**

MOVED Cr R Madacsi

That the Unconfirmed Minutes of the Audit & Risk Committee Meeting held on 1 June 2022 be confirmed subject to the amendment being made to the Announcement of Visitors to remove Cr Ruthven's name as she was a member attending that meeting.

MOTION CARRIED 6/0

2.2 REVIEW OF STATUS REPORT

2.2.1 Review of Status Report

Attachments:	1. Updated Status Report.
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The Status Report was reviewed.

2.3 INWARD/OUTWARD CORRESPONDENCE

Nil.

3 BUSINESS LEFT OVER FROM PREVIOUS MEETING (IF ADJOURNED)

Nil.

4 OFFICER REPORTS

4.1 Legislative Compliance Policy

Date of Report:	5 August 2022
Applicant or Proponent:	Shire of Toodyay
File Reference:	MAN6/PCY2
Author:	M Rebane – Executive Assistant
Responsible Officer:	T Bateman – Manager Corporate and Community Services
Previously Before Council:	April 2022 OCM
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Executive
Attachments:	1. Current Legislative Compliance Policy; and 2. REVISED Legislative Compliance Policy.

PURPOSE OF THE REPORT

To consider and make a recommendation to Council in regard to the adoption of the Legislative Compliance Policy (Attachment 1 & 2).

BACKGROUND

Council authorised a review of all Shire Policies in February 2022.

The Legislative Compliance Policy was provided to Council as part of their Ordinary Council Meeting Agenda in April 2022. At that meeting Council did not resolve to adopt the REVISED policy however, it did resolve to defer the consideration of the Legislative Compliance Policy to another workshop.

At the April 2022 Council Meeting the Legislative Compliance Policy was deferred to the next Policy Workshop. It was proposed at that time that the policy be presented to the Audit and Risk Committee prior to it coming to Council.

COMMENTS AND DETAILS

In relation to the policy being presented:

- Definitions were amended to provide clarification;
- Duplication of text from other documents, legislative clauses, words or phrases, and sub-numbering was removed;
- Legislative references have been included to ensure compliance; and
- Reference Information; Legislation; Associated documents; Version control; and document control information, have been updated.

The approach of having a legislative compliance policy is to enable the Shire to promptly identify issues, manage risk and assure accountability. Effective legislative compliance supports good decision-making and is driven by a compliance culture with controls across key compliance focus areas.

The current policy titled [Legislative Compliance](#) was adopted by Council on 25 November 2014.

References to the following are included:

- Register of Delegations. The previous policy stated that the **Shire** would ensure x, y, and z. The REVISED policy states that the Council will ensure x, y, and z. The Register of Delegations was adopted by Council at its May 2022 Council Meeting.
- Integrity Strategy published by the Public Sector Commission.

Legislative Compliance is achieved by way of Officers being aware of the requirements of the local government; enforced by legislation and ingrained through policy.

A Compliance Calendar is updated and reviewed annually by officers.

Shire Officers access legislation on a regular basis through the [Parliamentary Counsel's Office](#) of the Department of Justice website. The Western Australian Government Gazette is published by the same office as a means of gazetting changes to legislation and Shire Officers then determine whether those changes are incorporated into processes and procedures of the Shire.

The Shire also receives regular circulars on any new or amended legislation from the:

- Department of Local Government, Sport and Cultural Industries;

- Department of Planning, Lands and Heritage; and
- Western Australian Local Government Association (WALGA).

The Shire will obtain advice on matters of legislation and compliance where this is necessary.

IMPLICATIONS TO CONSIDER

Consultative:

Advice was sought from the Governance Department of the Western Australian Local Government Association (WALGA).

Strategic:

A key point of the Shire's Strategic Community Plan – Toodyay 2028 (SCP) is Governance – the way the Shire leads and operates.

The strategic outcome is that Council will engage with the community and provide good governance on behalf of the Community.

The Governance Framework.

Policy related:

The structure of policies presented is in line with Council's Corporate Documents Policy, adopted in November 2021.

Financial:

Nil

Legal and Statutory:

Local Government 1995 and various regulations provide the head of power for relevant policies.

Regulation 14 of the *Local Government (Audit) Regulations 1996* requires local governments to carry out a compliance audit for the period 1 January to 31 December in each year. The compliance audit is structured by the Department of Local Government, Sporting and Cultural Industries and relates to key provisions of the Local Government Act 1995.

Regulation 17 of the *Local Government (Audit) Regulations 1996* also requires a review of the appropriateness and effectiveness of systems and procedures in relation to legislative compliance at least once every three financial years and a report to the Audit and Risk Committee on the results of that review.

Risk related:

Without the adoption of the policy there is moderate risk to the compliance of the organisation.

Workforce related:

The REVISED Policy will be published on the Shire website.

VOTING REQUIREMENTS

Simple Majority

Manager Corporate and Community Services advised that Cr Hart queried typographical amendments. A new point was added to the recommendation.

Clarification was sought.

Cr Madacsi moved the Officer's Recommendation.

The motion was put.

OFFICER'S RECOMMENDATION/ARC RESOLUTION NO. ARC009/09/22

MOVED Cr R Madacsi

That the Audit & Risk Committee recommends to Council the following:

That Council:

1. Adopts the REVISED Legislative Compliance Policy (Attachment 2), as amended; and
2. Requests the CEO make typographical amendments where required following the adoption of the policy.

MOTION CARRIED 6/0

Attachments

- 1 AMENDED Legislative Compliance Policy.

4.2 Financial Compliance Update

Date of Report:	2 September 2022
Applicant or Proponent:	N/A
File Reference:	COC2/FIN7
Author:	T Bateman – Manager Corporate and Community Services
Responsible Officer:	S Haslehurst – Chief Executive Officer
Previously Before Council:	N/A
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	Nil

PURPOSE OF THE REPORT

This report provides information regarding the Shire's progress on the Datascape transition, the annual budget and the annual financial audit process.

BACKGROUND

Section 6.4(3) of the *Local Government Act 1995* requires a local government to submit to its auditor by 30 September following each financial year;

- (a) the accounts of the local government, balanced up to the last day of the preceding financial year; and
- (b) the annual financial report of the local government for the preceding financial year.

Due to on-going issues with the transition of Datascape, officers applied for an extension to 31 October 2021 to submit the balanced accounts and annual financial report for 2020/21 but were unable to meet the deadline.

At the Audit and Risk Committee meeting held on 9 December 2021, Officers developed an action plan with a view to finalising the 2020/21 annual financials by February 2022. Issues with Datascape continued to arise and a further update was presented to the Committee on 1 June 2022.

Based on the timeline provided at that meeting, it was envisaged that the annual financial audit for the 2020/21 financial year would be completed by the end of September 2022. As planned, the audit fieldwork took place in June, however, could not be completed when it was identified that the opening and closing balances between the 2019/20 and 2020/21 years could not be verified between SynergySoft and Datascape. In addition, the processing and reporting functions in the asset register were incomplete and unreliable. As a result, the auditors postponed completion of the audit while officers referred to Datacom for assistance.

Following the audit visit held 13-17 June 2022, further audit work was scheduled for 25-29 July 2022, but the audit was not finalised. During this time, officers worked on preparation

of the annual budget without clarity around the year end surplus position for the preceding two financial years.

COMMENTS AND DETAILS

Since the initial audit visit, officers have been working almost daily with Datacom to resolve the issues. To date, this has involved identifying errors and determining whether they can be rectified at an adjustment level or a software level. Fixes are generally sent to the development team and returned for testing by the Shire. The turnaround for fixes can be as quick as one day or ongoing for months, as is the case with the mapping for financial reports.

As detailed previously, the preparation of the 2020/21 financials have been an ongoing challenge. Officers continue to liaise with the auditors and the OAG who have now indicated that, due to their commitments to the State Government audits, are unlikely to be available until October 2022. Officers expressed concern around this timeframe considering the 2021/22 financial audit is due for submission to the auditor by 30 September 2022.

Other impacts to consider

Compliance issues

Until the 2020/21 financials are finalised, the Shire risks non-compliance in the following areas;

- Finalisation of the 2021/22 audit – because the 2021/22 interim and final audit cannot be completed by 30 September 2022 as required, the Shire of Toodyay will need to seek an extension from the Minister. Following discussions with the auditors, and considering their commitments, it is envisaged that a request for extension to 31 March 2023 would be appropriate.
- Timing of the Financial Management Regulation 17 and Audit Regulation 5 Reviews – both of these reviews must be undertaken at least once every three financial years. The last review was conducted inhouse and reported to the Audit and Risk Committee in April 2018. A scope was prepared for this work to be completed by an external consultant in November 2021 however, advice received from Butler Settineri (now named Dry Kirkness) was that a review would not be recommended until the issues with Datascape were rectified. Officers acknowledge that compliance has not been met in this area and are preparing for a review later this year.

It is clear that elements of the transition were flawed, and errors arose potentially from a lack of focus on project management, insufficient understanding of Datascape capabilities and the partial move to Datascape i.e. expenditure processes moved across in 2020/21 and revenue processes, in 2021/22.

Whilst there are a number of improvements still to be made to Datascape around reporting and asset management, Officers consider that once the opening and closing balances are corrected, the reporting of actuals for the 2021/22 year and beyond will not present major difficulties. Officers are confident that Datascape is collecting and storing financial information but acknowledge that further work needs to be done around the presentation of monthly financial reports.

Adoption of the 2022/23 Annual Budget

To date, the Shire awaits Ministerial approval for the proposed mining differential rate. Concern was raised by the Department of Local Government, Sports and Cultural Industries that the Shire adopted its budget without this approval. Had the Shire waited for this approval, it would have been unable to comply with the adoption deadline of 31 August. Officers reported that in the event the new mining rate was not approved by the Minister, a

budget amendment would be brought to Council for consideration. It appears that due to technicalities of the *Local Government Act*, this process would not satisfy the Minister. Seven weeks have passed since the application was submitted. Officers have requested to meet with the Department to work through this issue and are seeking advice as to the best course of action.

Officers are highly aware of the significant risk the above issues present and are working very hard to resolve these. Officers will keep the Committee and Council abreast of the progress and will bring a report back to the Committee in December 2022.

IMPLICATIONS TO CONSIDER

Consultative:

Office of the Auditor-General

Dry Kirkness (formerly Butler Settineri)

Department of Local Government, Sport & Cultural Industries

Strategic:

The way the Shire leads and operates:

- 1: Provide accountable and transparent leadership for the community.
- 2: Consistently improve our governance practices.
- 3: Ensure rigorous organisational systems

Policy related:

F6 Significant Accounting Policy

Financial:

The indicative cost of the 2020/21 audit was based on a cost recovery model. The 2022/23 budget includes \$40,000 to cover this cost.

Legal and Statutory:

Local Government Act 1995

Part 5.54(1) prescribes that the annual report (including the auditor's report) should be accepted by 31 December each year. However, part 5.5.4(2) states that if the auditor's report is not ready, then the annual report should be accepted no later than 2 months after the auditor's report becomes available.

Risk related:

Section 7.1A of the Act requires that all local governments establish an audit committee. The audit committee plays a key role in assisting a local government to fulfil its governance and oversight responsibilities in relation to financial reporting, risk management systems, legislative compliance and the external audit functions. Failure to have an audit committee in place exposes Shire officers and Councillors to significant risk. This report assists in mitigating these risks.

Workforce related:

The transition to Datascape and challenges in preparing the budget and annual financials has had a significant impact on the finance team. A dedicated project manager (who is a certified practicing accountant) continues to focus on the Datascape transition.

VOTING REQUIREMENTS

Simple Majority

Clarification was sought.
OFFICER'S RECOMMENDATION/ARC RESOLUTION NO. ARC010/09/22 MOVED Cr P Hart That the Audit & Risk Committee recommends that Council notes the annual financial audit process update as provided in this report to the Audit & Risk Committee. MOTION CARRIED 6/0

5 OTHER BUSINESS / NEW BUSINESS OF AN URGENT NATURE

Manager Corporate and Community Services provided an update in regard to grants and payments (The Shire is \$86,000 in front).

Manager Corporate and Community Services provided responses to queries from members as to the financial impacts of the Shire taking on the responsibility for the Toodyay Community Resource Centre.

6 CONFIRMATION OF NEXT MEETING

The next meeting of the Audit & Risk Committee is scheduled to be held on 7 December 2022 commencing at 2.00pm.

7 CLOSURE OF MEETING

The Chairperson closed the meeting at 2.39pm.



ATTACHMENTS MINUTES

Audit & Risk Committee Meeting

Wednesday, 7 September 2022

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Legislative Compliance

Introduction

This policy ensures that Council:

- defined as a prescribed public authority under the *Criminal Procedure Act 2004*;
- defined as a public authority under the *Financial Management Act 2006*; and
- defined as an enforcement agency and a public authority under the *Public Health Act 2016*;

will, in performance of its role, ensure that the Shire of Toodyay (the Shire) complies with provisions contained in legislation affecting local government, including Prescribed Acts and subsidiary legislation; supported by operational policies, procedures and processes.

Objective

Council and the Shire are committed to ensuring that Members, Shire Officers and other workers are informed and conscious of the four key improvement areas within the Integrity Strategy published by the Public Sector Commission; promoting integrity and ethics to help prevent misconduct and corruption.

Members, Shire Officers, and other workers fulfilling their obligations to the Shire through their roles must ensure compliance with all legislation applicable to local government.

Scope

This policy applies to all Members, Shire Officers, and Workers who work for the Shire.

Definitions

Term	Definition
CEO	Chief Executive Officer
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .
DPLH	Department of Planning, Lands and Heritage
Executive Managers	Means the Managers defined as Senior Employees that Council resolved (Res. No. OCM026/03/22) to designate in accordance with section 5.37 of the <i>Local Government Act 1995</i> : <ul style="list-style-type: none"> • Manager Corporate and Community Services; • Manager Infrastructure and Assets; and • Manager Development and Regulation.

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Term	Definition
Member	Means, in relation to a council or committee, a Council Member in the Act; Elected Member; or Councillor; or a member of the committee.
OAG	Office of the Auditor General
PSC	Public Sector Commission
Prescribed Act	<p>Means an Act that is prescribed by the regulations made under the Criminal Procedure Act 2004.</p> <p>Schedule 1A of the <i>Criminal Procedure Regulations 2005</i> (Infringement Notices) provides a list of Prescribed Acts as follows:</p> <ul style="list-style-type: none"> • <i>Associations Incorporation Act 2015</i>; • <i>Biodiversity Conservation Act 2016</i>; • <i>Building Act 2011</i>; • <i>Building and Construction Industry (Security of Payment) Act 2021</i>; • <i>Building Services (Complaint Resolution and Administration) Act 2011</i>; • <i>Building Services (Registration) Act 2011</i>; • <i>Business Names Act 1962</i>; • <i>Charitable Collections Act 1946</i>; • <i>Chattel Securities Act 1987</i>; • <i>Child Care Services Act 2007</i>; • <i>Companies (Co-operative) Act 1943 3</i>; • <i>Co-operative and Provident Societies Act 1903 3</i>; • <i>Credit Act 1984</i>; • <i>Credit (Administration) Act 1984</i>; • <i>Debt Collectors Licensing Act 1964</i>; • <i>Electricity Act 1945</i>; • <i>Emergency Management Act 2005</i>; • <i>Employment Agents Act 1976</i>; • <i>Energy Coordination Act 1994</i>; • <i>Energy Safety Act 2006</i>;

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Term	Definition
	<ul style="list-style-type: none"> • <i>Fair Trading Act 2010;</i> • <i>Gas Standards Act 1972;</i> • <i>Health (Miscellaneous Provisions) Act 1911;</i> • <i>Health Services Act 2016;</i> • <i>Hire-Purchase Act 1959;</i> • <i>Juries Act 1957;</i> • <i>Land Administration Act 1997;</i> • <i>Land Valuers Licensing Act 1978;</i> • <i>Limited Partnerships Act 2016;</i> • <i>Mining Rehabilitation Fund Act 2012;</i> • <i>Public Health Act 2016;</i> • <i>Real Estate and Business Agents Act 1978;</i> • <i>Residential Parks (Long-stay Tenants) Act 2006;</i> • <i>Residential Tenancies Act 1987;</i> • <i>Retail Trading Hours Act 1987;</i> • <i>Settlement Agents Act 1981;</i> • <i>Shipping and Pilotage Act 1967;</i> • <i>Street Collections (Regulation) Act 1940;</i> • <i>Ticket Scalping Act 2021;</i> • <i>Tobacco Products Control Act 2006;</i> • <i>Transport (Road Passenger Services) Act 2018;</i> • <i>Water Services Act 2012;</i> • <i>Western Australian Meat Industry Authority Act 1976.</i>
Shire	the Shire of Toodyay.
Shire Officer	Employee of the Local Government. May also be referred to as Worker in accordance with WHS legislation.
Shire President	means a mayor or president elected by the Council from amongst the councillors.
WALGA	Western Australian Local Government Association
WHS legislation	Work Health and Safety Act 2020.

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Term	Definition
	Work (Health and Safety) General Regulations 2022.
Workers	Means Employees, contractors and volunteers as per the WHS legislation.

Policy Statement

The Shire will have appropriate processes and structures in place to ensure that legislative requirements are achievable and are integrated into the operations of the Shire. These processes and structures will aim to:

1. Develop and maintain a system for identifying the legislation that applies to the Shire's activities;
2. Assign responsibilities for ensuring that legislation and regulatory obligations are fully implemented;
3. Provide training and resources for Members, Shire Officers and Workers whose roles are affected by the impact of relevant legislative provisions to identify and remain up to date with new legislation;
4. Review accidents, incidents and other situations where there may have been non-compliance; and
5. Review audit reports, incident reports, complaints and other information to assess how the systems of compliance can be improved.

1. Reporting

The Public Sector Commission requires Local Governments to:

- Equal Employment Opportunity annual collection (March/April each year)
The information is collected to assist entities and the Director of Equal Opportunity in Public Employment (DEOPE) fulfil reporting obligations under Part IX of the *Equal Opportunity Act 1984*.
- Integrity and conduct annual collection (June/July each year)
The information is collected to assist the Commissioner fulfil annual reporting obligations under the *Public Sector Management Act 1994*, *Public Interest Disclosure Act 2003* (PID Act) and the *Corruption, Crime and Misconduct Act 2003* (CCM Act). Responses also assist principal executive officers to meet their obligation to report annually to the Public Sector Commissioner under section 23 of the PID Act.

The *Local Government Act 1995* enables Western Australian local governments to make local laws considered necessary for the good government of their districts.

Legislation requires local governments to carry out a compliance audit against the requirements of the compliance audit return for the period 1 January to 31 December each year in accordance with r.14 of the *Local Government (Audit) Regulations 1996*. The audit is submitted to the Department Local Government, Sport and Cultural Industries (DLGSC) who monitor and provide advice to assist local governments.

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Regulation 17 of the *Local Government (Audit) Regulations 1996* also requires the CEO of a local government to review the appropriateness and effectiveness of a local government's systems and procedures in relation to risk management, internal control, and legislative compliance not less than once in every 3 financial years. The CEO is also required to report to the Audit and Risk Committee the results of that review.

2. Responsibilities

The Shire shall have systems in place to ensure that Members, Shire Officers and Workers are given the opportunity to be kept fully informed, briefed and/or trained about key legal requirements relative to their role, within its financial capacity to do so.

Members, Shire Officers and Workers are also to have the onus of being aware of, and abide by, legislation applicable to their role; ensuring that, irrespective of legislative amendments, that they comply with the objectives of this policy.

Executive Managers shall ensure that directions relating to compliance are clear and unequivocal and that legal requirements which apply to each activity for which they are responsible are identified.

3. Advice - Legislative Provisions

The Shire will obtain advice on matters of legislation and compliance where necessary.

Contact can be made with the DLGSC; the DPLH; the OAG; the PSC; or any other relevant government department for advice.

Governance advice can also be sought from WALGA.

4. Non-compliance

When a Member becomes aware of non-compliance they shall report matters to the Shire President, who will determine the appropriate response and liaise with the CEO regarding the matter.

Where a Shire Officer or Worker becomes aware of non-compliance they shall report matters to their immediate Executive Manager, who will determine the appropriate response and report the matter to the CEO.

The CEO may investigate any reports of significant non-compliance and report to Council and/or the relevant government authority, if required.

Corrective action will be taken through the implementation and improvement of operational procedures and processes, including training.

Reference Information

- Local Government Compliance Framework (DLGSC) - <https://www.dlgsc.wa.gov.au/local-government/local-governments/compliance-and-governance/local-government-compliance-frameworkc>
- Australian Standard on Compliance Programs (AS 3806-2006) - <https://assets.hcca-info.org/Portals/0/PDFs/Resources/library/AustralianStandards.pdf>.

Legislation

Local Government Act 1995

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- Division 2 – Legislative Functions;
- Division 3 – Executive Functions of local governments;
- Division 4 – Local Government Employees.

Local Government (Audit) Regulations 1996

- 9A. CEO to provide documents to Auditor General carrying out financial audit;
- 13. Prescribed statutory requirements for which compliance audit needed (Act s. 7.13(1)(i));
- 14. Compliance audits by local governments;
- 17. CEO to review certain systems and procedures;
- 15. Certified copy of compliance audit return and other documents to be given to Departmental CEO.

Associated documents

[Register of Delegations.](#)

Version control information

Version No.	Date Issued	Review position	Developed by	Approved by
V1	25/11/14	Policy Adopted	Executive Services	Council
V2	04/05/2022	Revised Policy	Executive Services	


Document control information	
Document Theme	Governance
Document Category	Administration
Document Title	Legislative Compliance
Document ID	ADM20
Document Owner (position title)	Chief Executive Officer
Author (position title)	Executive Services
Date of approval	25 November 2014 (Res. No. 344/11/14)
Approving authority	Council
Access restrictions	Nil
Date Published	To be applied

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Document control information	
Date of last review	25 November 2014 (CRN. 344/11/14)
Date of next review	February 2025
Archived antecedent documents and previous versions	Administration Policy.

DRAFT

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ARC STATUS REPORT
Audit & Risk Committee

Supporting Officer
Manager Corporate & Community Services



Meeting Date	Purpose	Resolution	Target date for completion	Actioned by	Completion Date	Meeting Commentary / Comments made
02/03/2022	Review of Audit Report	Datascape to be included in the Status Report as a matter reported on.	Ongoing	MCCS	Ongoing	1.6.22 Noted.

Shire of Toodyay Policy Manual

POLICY MANUAL

POLICY NO	A.20
PROCEDURE SUBJECT	LEGISLATIVE COMPLIANCE POLICY
FILE NUMBER	
ADOPTION DATE	25 NOVEMBER 2014 (Council Resolution No. 344/11/14)
REVIEW DATE	

OBJECTIVES

To ensure that the Shire of Toodyay (the Shire) complies with legislative requirements.

BACKGROUND

A fundamental principle of good public administration is that public officials comply with both the letter and the spirit of the law.

The Shire has an obligation to ensure that legislative requirements are complied with. The community and those working at the Shire have an expectation that the Shire will comply with applicable legislation and that the Shire will take all appropriate measures to ensure that expectation is met.

Regulation 14 of the *Local Government (Audit) Regulations 1996* requires local governments to carry out a compliance audit for the period 1 January to 31 December in each year. The Compliance Audit is structured by the Department of Local Government and Communities (DLGC) and relates to key provisions of the *Local Government Act 1995*.

Regulation 17 of the *Local Government (Audit) Regulations 1996* also requires a review of the appropriateness and effectiveness of systems and procedures in relation to legislative compliance at least once every two calendar years and a report to the Audit Committee on the results of that review.

POLICY STATEMENT

The Shire will have appropriate processes and structures in place to ensure that legislative requirements are achievable and are integrated into the operations of the Shire. These processes and structures will aim to:

1. Develop and maintain a system for identifying the legislation that applies to the Shire's activities;
2. Assign responsibilities for ensuring that legislation and regulatory obligations are fully implemented;
3. Provide training for relevant staff, Councillors, volunteers and other relevant people within the legislative requirements that affect them;

Administration Policy No A.20 – Legislative Compliance Policy

Shire of Toodyay Policy Manual

4. Provide people with the resources to identify and remain up to date with new legislation;
5. Establish a mechanism for reporting non-compliance;
6. Review accidents, incidents and other situations where there may have been non-compliance; and
7. Review audit reports, incident reports, complaints and other information to assess how the systems of compliance can be improved.

ROLES & RESPONSIBILITIES

1. Councillors & Committee Members

Councillors and Committee Members have a responsibility to be aware of and abide by legislation applicable to their role.

2. Senior Management

Senior Management should ensure that directions relating to compliance are clear and unequivocal and that legal requirements which apply to each activity for which they are responsible are identified.

Senior Management should have systems in place to ensure that all staff are given the opportunity to be kept fully informed, briefed and/or trained about key legal requirements relative to their work within their financial capacity to do so.

3. Employees

Employees have a duty to seek information on legislative requirements applicable to their area of work and to comply with the legislation.

Employees shall report through their supervisors to Senior Management any areas of non-compliance that they become aware of.

4. Implementation of Legislation

The Shire will have procedures in place to ensure that when legislation changes, steps are taken to ensure that future actions comply with the amended legislation.

LEGISLATIVE COMPLIANCE PROCEDURES

1. Identifying Current legislation

The Shire accesses electronic up to date versions of legislation through the Western Australian State Law Publisher website at www.slp.wa.gov.au.

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Direct access to this site is provided from the Shire's networked computers.

2. Identifying New or Amended Legislation

(a) Western Australian Government Gazette (WAGG)

The Shire receives hard copies of the WAGG which publishes all new or amended legislation applicable to Western Australia. Copies of WAGGs are distributed to Senior Management and other designated staff. It is the responsibility of the CEO and Senior Management to determine whether any gazetted changes to legislation need to be incorporated into processes.

(b) Department of Local Government and Communities (DLGC)

The Shire receives regular circulars from the DLGC on any new or amended legislation. Such advice is received and processed through the Shire's Records Department and is distributed to the CEO and other relevant Officers for implementation.

(c) Department of Planning

The Shire receives Planning Bulletins from the Department of Planning on any new or amended legislation. Such advice is received and processed through the Shire's Records Department and is distributed to the CEO and other relevant Officers for implementation.

(d) Western Australian Local Government Association (WALGA)

The Shire receives regular circulars from WALGA and these Circulars highlight changes in legislation applicable to local government. Such advice is received and processed through the Shire's Records Department and is distributed to the CEO and other relevant Officers for implementation.

3. Obtaining Advice on Legislative Provisions

The Shire will obtain advice on matters of legislation and compliance where necessary. Contact can be made with the DLGC, WALGA or the relevant initiating government department for advice.

4. Informing Council of Legislative Changes

If appropriate, the CEO will, on receipt of advice of legislative amendments, advise the Council on new or amended legislation.

The Shire's format for all its reports to Council meetings provides that all reports have a section headed 'Statutory Implications' which shall detail

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relevant Sections of any Act, Regulation or other relevant and/or applicable legislation.

5. Review of Incidents & Complaints of Non-Compliance

The Shire shall review all incidents and complaints of non-compliance. Such reviews will assess compliance with legislation, standards, policies and procedures that are applicable.

6. Reporting of Non-Compliance

All instances of non-compliance shall be reported immediately to the relevant Manager. The Manager shall then determine the appropriate response and then report the matter to the CEO.

The CEO may investigate any reports of significant non-compliance and if necessary, report the non-compliance to the Council and/or the relevant government department.

The CEO will then take all necessary steps to improve compliance systems.

Adopted by Council Ordinary Meeting of Council 25 November 2014



Legislative Compliance

Introduction

This policy ensures that Council:

- defined as a prescribed public authority under the *Criminal Procedure Act 2004*;
- defined as a public authority under the *Financial Management Act 2006*; and
- defined as an enforcement agency and a public authority under the *Public Health Act 2016*;

Will, in performance of its role, ensure that the Shire of Toodyay (the Shire) complies with provisions contained in legislation affecting local government, including Prescribed Acts and subsidiary legislation; supported by operational policies, procedures and processes.

Objective

Council and the Shire are committed to ensuring that Members, Shire Officers and other workers are informed and conscious of the four key improvement areas within the Integrity Strategy published by the Public Sector Commission; promoting integrity and ethics to help prevent misconduct and corruption.

Members, Shire Officers, and other workers fulfilling their obligations to the Shire through their roles must ensure compliance with all legislation applicable to local government.

Scope

This policy applies to all Members, Shire Officers, and Workers who work for the Shire.

Definitions

Term	Definition
CEO	Chief Executive Officer
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .
DPLH	Department of Planning, Lands and Heritage
Executive Managers	Means the Managers defined as Senior Employees that Council resolved (Res. No. OCM026/03/22) to designate in accordance with section 5.37 of the <i>Local Government Act 1995</i> : <ul style="list-style-type: none"> • Manager Corporate and Community Services; • Manager Infrastructure and Assets; and • Manager Development and Regulation.

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Term	Definition
Member	Means, in relation to a council or committee, a Council Member in the Act; Elected Member; or Councillor; or a member of the committee.
OAG	Office of the Auditor General
PSC	Public Sector Commission
Prescribed Act	<p>Means an Act that is prescribed by the regulations made under the Criminal Procedure Act 2004.</p> <p>Schedule 1A of the <i>Criminal Procedure Regulations 2005</i> (Infringement Notices) provides a list of Prescribed Acts as follows:</p> <ul style="list-style-type: none"> • <i>Associations Incorporation Act 2015</i>; • <i>Biodiversity Conservation Act 2016</i>; • <i>Building Act 2011</i>; • <i>Building and Construction Industry (Security of Payment) Act 2021</i>; • <i>Building Services (Complaint Resolution and Administration) Act 2011</i>; • <i>Building Services (Registration) Act 2011</i>; • <i>Business Names Act 1962</i>; • <i>Charitable Collections Act 1946</i>; • <i>Chattel Securities Act 1987</i>; • <i>Child Care Services Act 2007</i>; • <i>Companies (Co-operative) Act 1943 3</i>; • <i>Co-operative and Provident Societies Act 1903 3</i>; • <i>Credit Act 1984</i>; • <i>Credit (Administration) Act 1984</i>; • <i>Debt Collectors Licensing Act 1964</i>; • <i>Electricity Act 1945</i>; • <i>Emergency Management Act 2005</i>; • <i>Employment Agents Act 1976</i>; • <i>Energy Coordination Act 1994</i>; • <i>Energy Safety Act 2006</i>;

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Term	Definition
	<ul style="list-style-type: none"> • <i>Fair Trading Act 2010;</i> • <i>Gas Standards Act 1972;</i> • <i>Health (Miscellaneous Provisions) Act 1911;</i> • <i>Health Services Act 2016;</i> • <i>Hire-Purchase Act 1959;</i> • <i>Juries Act 1957;</i> • <i>Land Administration Act 1997;</i> • <i>Land Valuers Licensing Act 1978;</i> • <i>Limited Partnerships Act 2016;</i> • <i>Mining Rehabilitation Fund Act 2012;</i> • <i>Public Health Act 2016;</i> • <i>Real Estate and Business Agents Act 1978;</i> • <i>Residential Parks (Long-stay Tenants) Act 2006;</i> • <i>Residential Tenancies Act 1987;</i> • <i>Retail Trading Hours Act 1987;</i> • <i>Settlement Agents Act 1981;</i> • <i>Shipping and Pilotage Act 1967;</i> • <i>Street Collections (Regulation) Act 1940;</i> • <i>Ticket Scalping Act 2021;</i> • <i>Tobacco Products Control Act 2006;</i> • <i>Transport (Road Passenger Services) Act 2018;</i> • <i>Water Services Act 2012;</i> • <i>Western Australian Meat Industry Authority Act 1976.</i>
Shire	the Shire of Toodyay.
Shire Officer	Employee of the Local Government. May also be referred to as Worker in accordance with WHS legislation.
Shire President	means a mayor or president elected by the Council from amongst the councillors.
WALGA	Western Australian Local Government Association
WHS legislation	Work Health and Safety Act 2020.

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Term	Definition
	Work (Health and Safety) General Regulations 2022.
Workers	Means Employees, contractors and volunteers as per the WHS legislation.

Policy Statement

The Shire will have appropriate processes and structures in place to ensure that legislative requirements are achievable and are integrated into the operations of the Shire. These processes and structures will aim to:

1. Develop and maintain a system for identifying the legislation that applies to the Shire's activities;
2. Assign responsibilities for ensuring that legislation and regulatory obligations are fully implemented;
3. Provide training and resources for Members, Shire Officers and Workers whose roles are affected by the impact of relevant legislative provisions to identify and remain up to date with new legislation;
4. Review accidents, incidents and other situations where there may have been non-compliance; and
5. Review audit reports, incident reports, complaints and other information to assess how the systems of compliance can be improved.

1. Reporting

The Public Sector Commission requires Local Governments to:

- Equal Employment Opportunity annual collection (March/April each year)
The information is collected to assist entities and the Director of Equal Opportunity in Public Employment (DEOPE) fulfil reporting obligations under Part IX of the *Equal Opportunity Act 1984*.
- Integrity and conduct annual collection (June/July each year)
The information is collected to assist the Commissioner fulfil annual reporting obligations under the *Public Sector Management Act 1994*, *Public Interest Disclosure Act 2003* (PID Act) and the *Corruption, Crime and Misconduct Act 2003* (CCM Act). Responses also assist principal executive officers to meet their obligation to report annually to the Public Sector Commissioner under section 23 of the PID Act.

The *Local Government Act 1995* enables Western Australian local governments to make local laws considered necessary for the good government of their districts.

Legislation requires local governments to carry out a compliance audit against the requirements of the compliance audit return for the period 1 January to 31 December each year in accordance with r.14 of the *Local Government (Audit) Regulations 1996*. The audit is submitted to the Department Local Government, Sport and Cultural Industries (DLGSC) who monitor and provide advice to assist local governments.

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Regulation 17 of the *Local Government (Audit) Regulations 1996* also requires the CEO of a local government to review the appropriateness and effectiveness of a local government's systems and procedures in relation to risk management, internal control, and legislative compliance not less than once in every 3 financial years. The CEO is also required to report to the Audit and Risk Committee the results of that review.

2. Responsibilities

The Shire shall have systems in place to ensure that Members, Shire Officers and Workers are given the opportunity to be kept fully informed, briefed and/or trained about key legal requirements relative to their role, within its financial capacity to do so.

Members, Shire Officers and Workers are also to have the onus of being aware of, and abide by, legislation applicable to their role; ensuring that, irrespective of legislative amendments, that they comply with the objectives of this policy.

Executive Managers shall ensure that directions relating to compliance are clear and unequivocal and that legal requirements which apply to each activity for which they are responsible are identified.

3. Advice - Legislative Provisions

The Shire will obtain advice on matters of legislation and compliance where necessary.

Contact can be made with the DLGSC; WALGA; the DPLH; the OAG; the PSC; or any other relevant government department for advice.

4. Non-compliance

When a Member becomes aware of non-compliance they shall report matters to the Shire President, who will determine the appropriate response and liaise with the CEO regarding the matter.

Where a Shire Officer or Worker becomes aware of non-compliance they shall report matters to their immediate Executive Manager, who will determine the appropriate response and report the matter to the CE

The CEO may investigate any reports of significant non-compliance and report to Council and/or the relevant government authority, if required.

Corrective action will be taken through the implementation and improvement of operational procedures and processes, including training.

Reference Information

- Local Government Compliance Framework (DLGSC) - <https://www.dlgsc.wa.gov.au/local-government/local-governments/compliance-and-governance/local-government-compliance-frameworkc>
- Australian Standard on Compliance Programs (AS 3806-2006) - <https://assets.hcca-info.org/Portals/0/PDFs/Resources/library/AustralianStandards.pdf>.

Legislation

Local Government Act 1995

- Division 2 – Legislative Functions;

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- Division 3 – Executive Functions of local governments;
- Division 4 – Local Government Employees.

Local Government (Audit) Regulations 1996

- 9A. CEO to provide documents to Auditor General carrying out financial audit;
- 13. Prescribed statutory requirements for which compliance audit needed (Act s. 7.13(1)(i));
- 14. Compliance audits by local governments;
- 17. CEO to review certain systems and procedures;
- 15. Certified copy of compliance audit return and other documents to be given to Departmental CEO.

Associated documents

[Register of Delegations.](#)

Version control information

Version No.	Date Issued	Review position	Developed by	Approved by
V1	25/11/14	Policy Adopted	Executive Services	Council
V2	04/05/2022	Revised Policy	Executive Services	


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