



Province of the
EASTERN CAPE
COOPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS

LEGISLATIVE COMPLIANCE MANAGEMENT POLICY

2022

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Related Policies	Litigation Management Policy, Governance Protocol for Sourcing of Legal Opinions and Enterprise-Wide Risk Management Policy.

SIGN OFF

Head of Department

This Policy on the Legislative Compliance Management has been recommended by Mr. A.A Fani in his capacity as Head of Department for the Eastern Cape Department of Cooperative Governance and Traditional Affairs.

I am satisfied and concur with the contents of this Policy.

Recommended	
Designation	Head of Department
Date	14/12/2024

2. Executive Authority


Signed	
Designation	MEC: Honourable Mr. X.E Ngatha for the Eastern Cape Department of Cooperative Governance and Traditional Affairs
Date	21/12/2024

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1. PREAMBLE

Compliance with laws is both a legal and ethical duty of organisations. In the context of a public body it may also serve as a mechanism to adhere to the concept of constitutional supremacy and the rule of law.

Supremacy of the Constitution and the rule of law are one of the founding values of the Constitution of the Republic of South Africa. One of the components of the rule of law is the "principle of legality" in terms of which an organ of State can only exercise public power if it is authorised by law to do so.

In order to adhere to the Rule of Law, Regulation 11(d) of the Public Service Regulations, 2016 require all employees in government to abide by and strive to be familiar with all legislation and other lawful instructions applicable to their conduct and official duties.

Non-compliance with the legislation has serious consequences which include disruption in service delivery, litigation, prosecution, imposition of penalties and reputational damage to the Department.

2. PURPOSE OF POLICY

The purpose of this policy is to ensure that the Department delivers on its mandate in a manner that is prescribed by the applicable legislation and to mitigate risks and adverse consequences associated with non-compliance with applicable legislation.

3. POLICY OBJECTIVES

The objectives of this policy are:-

- 3.1 To promote and enhance compliance culture within the department.
- 3.2 To assist employees of the department, in discharging their functions to comply with applicable statutory and regulatory requirements.
- 3.3 To facilitate the management of legal compliance within the department.
- 3.4 To ensure consistent application of the laws and policies by the department.
- 3.5 To keep the department updated with legislative framework applicable to it.

4. APPLICATION AND SCOPE

The provisions of this policy shall apply to all employees and decision makers in the performance of duties and exercise of powers.

5. DEFINITIONS AND TERMS

Terms and definitions that will be used throughout the policy that need clarification for the reader can also include any keywords, technical terms and abbreviations that may be used in this document.

WORD/TERM	DEFINITION
Decision maker	Means the Member of the Executive Council and / or the Head of Department or any official who is delegated and authorized to take a decision in his or her area of responsibility.
Department	Means Eastern Cape Department of Cooperative Governance and Traditional Affairs.
Non-compliance	An act of omission(including failure or refusal) or commission, contrary to the statutory obligation.
Regulatory Universe	Means all legislation that governs the operations of the department. It provide for a comprehensive list of statutory obligation and risks associated with non-compliance of those obligations.

6. LEGAL FRAMEWORK

6.1 Constitution of the Republic of South Africa, 1996 (Act No 8 of 1996)

In terms of Section 2 of the Constitution, the *Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.*

6.2 Public Audit, 2004 (Act 25 of 2004)

In terms of section 20(1)(b) of the Public Audit Act, *the Auditor-General must in respect of each audit referred to in section 11 prepare a report on the audit ...compliance with any applicable legislation relating to financial matters, financial management and other related matters;*

6.3 Public Finance Management Act, 1999 (Act 1 of 1999) and regulations

In terms of Section 38(1)(n) of the Public Finance Management Act, *the accounting officer must comply and ensure compliance by the department, with provisions of this Act. In terms of Regulation 3.1.10 (f) of the Treasury regulations, the audit committee must, amongst others, review the institution's compliance with legal and regulatory provisions.*

6.4 Public Service Act, 1994 (Proclamation 103 of 1994) and regulations

In terms of Section 28 of the Public Service Act, *an employee shall fulfil the obligations imposed upon him by this Act or any other law.*

In terms of regulation 11(d) of Public Service Regulations, 2016, *an employee shall—abide by and strive to be familiar with all legislation and other lawful instructions applicable to his or her conduct and official duties.*

7. POLICY PRINCIPLES

7.1 Accountability

The Department recognises its accountability to its stakeholders by complying with legal and regulatory requirements in the execution of its mandate.

7.2 Consistency

The Department acknowledges its general duty to consistently apply the law and to carry out that duty, it must be kept updated with all applicable legal prescripts.

7.3 Respect for the Rule of Law

The department acknowledges its Constitutional obligation as an organ of State to only exercise public power if it is authorised by law to so and that this cannot be achieved unless all its employees abide by and strive to be familiar with all applicable legislation.

7.4 Transparency

The Department, in striving to promote compliance culture, embraces the basic principle of compliance governance to disclose upfront risks associated with non-compliance with applicable legislation.

8. POLICY STATEMENT

The Department views legislative compliance within the context of its overall risk profile. It is more than development of manuals and checklists or any other reactive systems, but a shift to a proactive approach to compliance.

It is acknowledged that for a successful fostering of compliance culture, a multidisciplinary approach and support of compliance systems and its objectives by all Programmes, is a prerequisite.

It is further acknowledged that, without management of compliance risk, service delivery may be seriously disrupted.

9. COMPLIANCE METHODOLOGY

Compliance methodology consists of three phases, namely identification of applicable regulatory framework, compliance assessments and management of compliance risks.

9.1 Identification of applicable Regulatory Framework

Identification of applicable regulatory framework entails determination of all laws applicable in the department and developing a regulatory universe. The universe must detail the compliance obligations.

9.2 Compliance Assessments

- 9.2.1 Compliance assessments entails development of an assessment tool to measure the risk exposure in the event of non-compliance and compliance status.
- 9.2.2 the risk exposure is determined by considering seriousness of non-compliance, that is, the impact of financial loss and reputation loss and probability of non-compliance (determined by assessing the effectiveness of current controls).

9.3 Management of Compliance Risk

- 9.3.1 The management of Compliance Risk forms part of the overall risk management framework of the department.
- 9.3.2 The Department must develop or subscribe to an automated compliance management system.
- 9.3.3 The system must enable the department to easily identify a compliance obligation and risk associated with non-compliance with legislation applicable in the department. It must enable the department to have a compliance calendar and early warning systems on legislative changes.
- 9.3.4 Program compliance coordinators must be designated to work closely with Legal Advisory Services and facilitate resolution and reporting on compliances issues in terms of compliance monitoring tool.

10. ROLES AND RESPONSIBILITIES

10.1 Head of Department

- 10.1.1 Ensure that management resolves compliance issues effectively and timeously;
- 10.1.2 Enable the compliance function to be sufficiently independent of management;
and
- 10.1.3 Provide adequate support for the compliance function, i.e. financial and otherwise.
- 10.1.4 To designate an official to whom serious incidents of contravention of legislation must be reported.

10.2 Management and staff

- 10.2.1 Ensure that material compliance issues are afforded the necessary focus;
- 10.2.2 Be aware of the laws applicable to the department, as well as their impact on the organisation.
- 10.2.3 Understand the organisation's compliance framework and its role and accountability relating thereto.
- 10.2.4 Immediately report to the designated official, any other act which constitutes a serious contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to their attention during the course of their employment.

10.3 Legal Advisory Services

- 10.3.1 Assess and understand the department's compliance with laws by developing and maintaining the department's legislative compliance universe.
- 10.3.2 Ensure that the department has and maintains compliance monitoring systems.
- 10.3.3 Ensure throughout the department, that management effectively and appropriately reports the results of compliance monitoring;
- 10.3.4 Explain compliance risk, the consequences of non-compliance and the department's approach to managing these risks; and
- 10.3.5 Is generally responsible for the effective implementation of the Compliance Policy.

11. MONITORING AND REPORTING

- 11.1 Legal Advisory Services must provide quarterly reports to the Head of Department on compliance levels of the department. In addition, such reports may be made to the Audit Committee and Risk Management Committee meetings.

12. COMMITMENT AND CONSEQUENCES OF NON-COMPLIANCE

- 12.1 Management of compliance risks require a collective and collaborative effort.

- 12.2 Commitment by management and staff is imperative because consequences of non-compliance may result in a serious disruption of service delivery and reputational damage to the department.
- 12.3 The department must capacitate staff involved in facilitation of compliance management through on- going training and acquisition of relevant qualifications.
- 12.4 Where non-compliance with the requirements of this policy, disciplinary action shall be considered in accordance with the applicable disciplinary code.

13. COMMUNICATION OF THE POLICY

The Legislative Compliance Management Policy must be communicated to all staff members by placing it in the intranet, issuing circulars and advocacy sessions

14. REVIEW OF THE POLICY

The policy must be reviewed in every five years or as when there are developments in the legislative compliance systems.

15. DATE OF EFFECT AND APPROVAL

Legislative Compliance Management Policy will become effective upon approval by the Executive Authority.

16. VERSION CONTROL AND CHANGE HISTORY

Version Control	Date Effective	Approved By	Amendment