

# Policy

## Legislative Compliance Policy

May 2024

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## 1. Purpose of this policy

This policy identifies the legislation for which the Office of the Children's Guardian (OCG) has compliance responsibility, assigns primary responsibility for ensuring compliance with each Act and provides a process for reporting on legislative compliance, including broad criteria to be followed where any breach of legislative requirements may have occurred.

This policy provides a broad, overarching framework and is one element of the OCG's corporate governance arrangements. It is intended to complement existing processes and procedures.

The Key Compliance Areas by Responsible Area (the Schedule) indicates the area of the agency with primary responsibility for ensuring compliance with each piece of legislation. In some cases, responsibility is shared by more than one part of the agency. The Executive Member of the area in question is nominated as the Responsible Officer. Responsible Officers will ensure that the Children's Guardian is able to meet the requirements of an accountable officer in relation to legislative compliance.

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## 2. Responsibilities (Table 1)

Children's Guardian	Accountable Officer in relation to legislative compliance
Executive Members	<p>Responsible Officers in relation to legislative compliance.</p> <p>Are responsible, supported by the Responsible Areas nominated in the schedule, for ensuring that the OCG is compliant with the requirements of legislation and relevant standards in their area. These responsibilities are to be incorporated into the relevant officers' Performance Agreement with the Children's Guardian.</p> <p>Ensure that staff administering legislation are fully aware of their roles and responsibilities, including any duties and obligations arising under any formal delegation of legislative powers and responsibilities.</p> <p>Ensure that instances of reportable non-compliance are identified and appropriate remedial action is taken to address instances of reportable non-compliance, in consultation with the General Counsel Directorate (GCD).</p> <p>Maintain appropriate systems or processes for recording instances of reportable non-compliance.</p> <p>Escalate issues involving reportable non-compliance to the Children's Guardian, where this is appropriate given the scale or frequency of any reportable non-compliance.</p> <p>Establish processes to identify changes in compliance requirements arising from new legislation or legislative amendments.</p>
Internal Audit	<p>Maintains a rolling schedule of legislative compliance audits across the Office of the Children's Guardian.</p> <p>Reports to the Children's Guardian and the Audit and Risk Committee of these audits, including details of recommended remedial actions.</p>
General Counsel Directorate (GCD)	<p>Reviews this policy every two years to ensure an up-to-date version of this policy, including the legislative schedule.</p> <p>Provides legal advice with respect to legislative compliance across the OCG (except to the NDIS Worker Check, which receives separate legal advice).</p>

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## 3. Process

### 3.1 Legislative responsibilities

This policy relates to compliance with NSW legislation outlined in the Key Compliance Area by Responsible Area (the Schedule). The Schedule indicates the area of the agency with primary responsibility for ensuring compliance with each piece of legislation. In some cases, responsibility is shared by more than one part of the agency.

Responsible Officers will ensure that the Children’s Guardian is able to meet the requirements of an accountable officer in relation to legislative compliance.

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### 3.2 Reporting a breach

Any officer, who becomes aware that a statutory responsibility or obligation may have been breached, should:

- report the breach to their manager or supervisor, and
- consult with their manager or supervisor to determine whether the breach constitutes reportable non-compliance.

Any officer, their manager or supervisor who considers that an incident of reportable non-compliance has occurred, should immediately report the matter to the GCD and the Responsible Officer together with details of recommended remedial action. The GCD should be consulted to provide advice on proper identification of the breach and recommended remedial action.

If a manager or supervisor is not sure whether any particular breach constitutes reportable non-compliance, they should assume that it does and seek advice from GCD.

If the breach is not a reportable non-compliance they should:

- seek advice from the GCD as necessary, and
- take any steps to remedy the potential breach as soon as practicable as agreed with the manager or supervisor and in accordance with GCD advice.

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## 4. Definitions (Table 2)

Accountable Officer	The Children’s Guardian of the Office of the Children’s Guardian
Delegation of legislative powers and responsibilities	A delegation made under a statutory instrument (i.e. an Act or Regulation passed by Parliament).
Agency specific legislation	Includes key pieces of NSW legislation that: <ul style="list-style-type: none"><li>• Provide for high performing, responsive, professional public service</li><li>• Promote the effectiveness and efficiency of government entities, and/or</li><li>• Provide for the administration, employment and management of public service employees.</li></ul>

Non reportable non-compliance	A breach of any statutory responsibility or obligation that is minor, technical or temporary in nature.
Performance Agreement	An agreement between the Children's Guardian and a Responsible Officer that specifies responsibilities and goals for the period of the agreement.
Remedial Action	A change made to address a deficiency in compliance with legislative requirements.
Reportable non-compliance	A breach of any statutory responsibility or obligation that cannot be considered to be minor, technical or temporary in nature.
Responsible Officer	A member of the OCG Executive Leadership Forum.

## Policy metadata (Table 3)

Category	Description
Status	Final
Date of approval	May 2024
Approver	Children's Guardian
Directorate	General Counsel Directorate
Policy owner	General Counsel
Document location	Internal – Objective and Intranet and External – Website
Next review date	May 2026
Superseded document	All previous versions of the OCGs Legislative Compliance Policy
Document Reference	A8761282

## Appendices

Appendix 1 – Key compliance areas by responsible area

### Office of the Children's Guardian

[www.ocg.nsw.gov.au](http://www.ocg.nsw.gov.au)

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## Appendix 1: Key compliance areas by responsible area (Table 4)

Child Safe Organisations	Out-of-Home Care	Reportable Conduct	NDIS Worker Check
<p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li>• <i>Children’s Guardian Act 2019</i></li> <li>• <i>Children’s Guardian Regulation 2022</i></li> <li>• <i>Child Protection (Working with Children) Act 2012</i></li> <li>• <i>Child Protection (Working with Children) Regulation 2013</i></li> </ul>	<p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li>• <i>Children’s Guardian Act 2019</i></li> <li>• <i>Children’s Guardian Regulation 2022</i></li> <li>• <i>Children and Young Persons (Care and Protection) Regulation 2022.</i></li> <li>• <i>Children and Young Persons (Care and Protection) Act 1998</i></li> </ul>	<p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li>• <i>Children’s Guardian Act 2019</i></li> <li>• <i>Children’s Guardian Regulation 2022</i></li> </ul>	<p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li>• <i>National Disability Insurance Scheme (Worker Checks) Act 2018</i></li> <li>• <i>National Disability Insurance Scheme (Worker Checks) Regulation 2020</i></li> </ul>
Working with Children Check	Corporate Services (People and Culture)	Corporate Services (Finance)	Corporate Services (IT)
<p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li>• <i>Children’s Guardian Act 2019</i></li> <li>• <i>Child Protection (Working with Children) Act 2012</i></li> <li>• <i>Child Protection (Working with Children) Regulation 2013</i></li> </ul>	<p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li>• <i>Anti-Discrimination Act 1977</i></li> <li>• <i>Government Sector Employment Act 2013</i></li> <li>• <i>Public Interest Disclosure Act 2022</i></li> <li>• <i>Work Health and Safety Act 2011</i></li> <li>• <i>Workers Compensation Act 1987</i></li> </ul> <p><b>Commonwealth</b></p> <ul style="list-style-type: none"> <li>• <i>Age Discrimination Act 2004</i></li> <li>• <i>Disability Discrimination Act 1992</i></li> <li>• <i>Racial Discrimination Act 1975</i></li> <li>• <i>Sex Discrimination Act 1984</i></li> </ul>	<p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li>• <i>Government Sector Finance Act 2018</i></li> </ul> <p><b>Commonwealth</b></p> <ul style="list-style-type: none"> <li>• <i>A New Tax System (Goods and Services Tax) Act 1999</i></li> <li>• <i>Banking Act 1959 (Part II)</i></li> <li>• <i>Federal Financial Relations Act 2009 (Parts 1 &amp; 4)</i></li> <li>• <i>Fringe Benefits Tax Assessment Act 1986</i></li> </ul>	<p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li>• <i>Government Information (Public Access) Act 2009I</i></li> <li>• <i>Privacy and Personal Information Protection Act 1998</i></li> <li>• <i>State Records Act 1998</i></li> </ul> <p><b>Corporate Services (Communications)</b></p> <p><b>New South Wales</b></p> <ul style="list-style-type: none"> <li>• <i>Anti-Discrimination Act 1977</i></li> <li>• <i>Privacy and Personal Information Protection Act 1998</i></li> <li>• <i>Government Sector Finance Act 2018</i></li> </ul> <p><b>Commonwealth</b></p> <ul style="list-style-type: none"> <li>• <i>Spam Act 2003</i></li> </ul>