

Managing Building Compliance – overview

South Australian Government agencies are obliged to comply with a growing number of building related legislative requirements and government policies and directives.

Achieving compliance is becoming increasingly difficult given the aging nature of most asset portfolios, heightened public expectations and competing pressures on limited financial resources.

This guide outlines the array of compliance obligations arising from legislation and government directives / policies, with a focus on the management of existing building assets and the implications for building owners and managers.

A Glossary of Terms has also been provided.

Existing buildings pose some confronting decisions for building owners and managers already dealing with a plethora of other asset management performance issues. New buildings are required to meet current standards, but existing buildings are trapped in time and subject to changing community and business standards and advances in technologies.

Compliance obligations are one of a suite of performance measures that generally reflect the asset requirements of an organisation's business service delivery objectives. Together they form a significant measure of performance and unlike most other measures is accompanied by legal and due diligence responsibilities. They therefore need to be dealt with in a structured way that ensures they are being appropriately managed within a range of other operational priorities and financial constraints.

The aim of the guide is to help agencies take a more balanced view of the impact of legislation and directives on their assets. It also highlights the need for authorities to take a more consistent and integrated approach within the context of overall legislative obligations, while recognising the competing demands for scarce resources.

Common Approach to Compliance

This guide advocates dealing with compliance obligations in accordance with the asset management planning processes and in particular applying risk management and continuous improvement methodologies.

Most legislation acknowledges that it is often impracticable and even impossible to immediately achieve full compliance, at least initially, and uses terms such as 'as far as is reasonable' or 'as far as is reasonably practicable'. Risk management principles outlined in AS / NZS ISO 31000 Risk management—Principles and guidelines, can be applied to determine what constitutes a reasonable level of compliance within funding restraints and business service obligations. This process can be applied to the range of compliance obligations as well as particular obligations.

Agencies should note that the **Risk Management Policy Statement, Government of South Australia, 2009** requires the application of risk management principles to all activities.

Agencies responsible for building assets must ensure fire, life safety, access, environmental and other compliance issues are covered by an appropriate risk management strategy. This involves identifying, analysing and evaluating risk, considering various remedial options and the associated level of residual risk, and developing a risk treatment or action plan. The latter should be integrated into the risk register and in the asset management plan for the building.

The first step is to undertake a risk and compliance assessment of an agency's asset portfolio to prioritise areas of highest risk. This may involve categorising types, ages and the critical nature of assets. Hot spots can then be identified and each investigated in more depth, i.e. by 'drilling down'. This helps ensure that various compliance risks are dealt with in a balanced and prioritised manner within the 'big picture', and that issues are not merely considered in isolation.

It is important to bear in mind that risk management is more about *managing* risks rather than completely *eliminating* them, although the latter may be required in certain life-threatening circumstances. Together with adopting a risk management approach, government agencies should adopt performance assessment/management and continuous improvement principles so that the 'compliance bar' is progressively raised over time and ensure that compliance 'gaps' are tackled. Such an approach demonstrates that 'duty of care' and 'due diligence' obligations are met.

This guide is intended to help government agencies understand the benefits from managing their compliance obligations and applying risk management principles. This approach should set an acceptable base line standard when considering particular obligations that impact upon buildings such as the following.

1. General & WHS Safety
2. Building Code of Australia (BCA) as part of the National Construction Code
3. Fire Safety and Protection
4. Emergency Management
5. Hazardous Substances
6. Disability Access and Egress
7. Public and Environmental Health
8. Heritage Conservation and Native Vegetation
9. Environmental Protection
10. Earthquake Resistance
11. Ecologically Sustainable Development (ESD) including Energy
12. Aged Care

Understanding the legislative requirements is an essential element of asset and facility management. The mechanisms to manage the risks associated with planning, acquiring and managing building assets are contained in a range of Acts, Regulations, Standards and Codes. They may be used to modify, reduce or eliminate risk throughout the asset's lifecycle.

The guideline has been developed to assist building owners and occupiers to identify and manage their building asset compliance obligations.

Main Compliance Requirements

For government agencies the main obligations arise from the following legislation and government directives and policies.

Main Legislation

- *Aged Care Act 1997 (Cth)*
- *Dangerous Substances Act 1979*
- Dangerous Substances Regulations 2002
- Planning, Development & Infrastructure Act 2016 and Regulations
- Development Act 1993* (*being replaced by Planning, Development & Infrastructure Act 2016*)
- *Disability Discrimination Act 1992 (Cth)*
- *Electricity Act 1996*
- *Emergency Management Act 2004*
- *Environment Protection Act 1993*
- Environment Protection Regulations 2009
- *Fire and Emergency Services Act 2005*
- *Gas Act 1997*
- *Water Industry Act 2012*
- *Heritage Places Act 1993*
- National Construction Code (incorporating Building Code of Australia)
- *Native Vegetation Act 1991*
- Native Vegetation Regulations 2003
- South Australian Public Health (Legionella) Regulations 2013
- *South Australian Public Health Act 2011*
- *Work Health and Safety Act 2012*
- Work Health and Safety Regulations 2012

Government Directives

- Premier and Cabinet Circular PC114 – Government Real Property Management, April 2019.
- Premier and Cabinet Circular PC020 – Upgrading of Safety and Access in Crown Buildings, December 2002
- Risk Management Policy Statement, Government of South Australia, 2009
- Government Buildings Energy Strategy 2013-2020, Government of South Australia
- Promoting Independence: Disability Action Plans for South Australia
- State Emergency Management Plan, Government of South Australia, June 2013
- Treasury Circular 314: Seismic Assessment and Earthquake Mitigation Works for Existing Government Buildings

Glossary of Terms

Agencies	Departments, Offices and Authorities of the Government of South Australia
Common Law Negligence	Failure to exercise the degree of care expected of a person of ordinary prudence in like circumstances in protecting others from a foreseeable and unreasonable risk of harm in a particular situation.
Determination of what is Reasonably Practicable	<p>Has been determined through precedent of common law court decisions by assessing the following.</p> <ul style="list-style-type: none"> • Foreseeability – was the injury / illness foreseeable? • Causation – was the injury related to an unsafe matter controlled by the individual and / or company? • Preventable – is there a practicable alternative / method to do the job safely? • Reasonableness – was it reasonable to do something about the unsafe matter?
Due Diligence	<p>Such diligence as a reasonable person under the same circumstances would use: use of reasonable but not necessarily exhaustive efforts (also referred to as <i>reasonable diligence</i>).</p> <p><i>Note:</i> Due diligence is used most often in connection with the performance of a professional or fiduciary duty, or with regard to proceeding with a court action. Due care is used more often in connection with general tort actions.</p>
Duty of Care	A duty to use due care toward others in order to protect them from unnecessary risk of harm.
Holistic	Emphasising the importance of the whole and the interdependence of its parts.
Occupier	In relation to a place, means a person who has the management or control of the place.
Residual Risk	The remaining level of risk after risk treatment measures have been taken (see AS / NZS ISO 31000 Risk management—Principles and guidelines).