

Module	<b>NSW STATE GOVERNMENT ENTITIES</b>
Jurisdictions	<b>NSW</b>

## Module Scope

### Employment

Does the government agency comply with the Government Sector Employment (General) Rules 2014 (NSW) when recruiting staff for positions within the agency?

Does the government agency establish employment contracts for applicable employees and ensure that the contracts comply with any related industrial instrument (awards)?

Does the government agency ensure that it pays all remuneration entitlements and follows all working hour conditions for each employee under applicable industrial instruments?

### Governance

Does the government agency maintain governance arrangements in accordance with legislation designed to protect the integrity, longevity and accountability of public sector entities in New South Wales?

Do government agency heads develop policies and procedures that support employees and stakeholders to act in accordance with the government employee code of conduct and ethics?

Do government agency heads ensure the agencies under their control appropriately use resources and manage risks by implementing a risk management framework?

### Reporting, Record Keeping and Information Security

Does your government agency submit reports, keep records and protect the integrity of data in accordance with legislation designed to maintain the accountability of public sector entities in New South Wales?

Does the government agency submit annual financial reports containing the required information and does it obtain exemptions, variations and extensions when necessary?

Does the government agency make information contained in its records available to the public?

### Resource Management

Are you aware of the harmonised Work Health and Safety laws?

Is your organisation aware of its duties under the relevant Work Health and Safety Act?

Has your organisation taken steps to comply with the relevant Work Health and Safety laws?

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## Module Application

The Infrastructure Resilience and Security Module explains the obligations of relevant entities under the Australian critical infrastructure protection regime.

The module addresses the obligations of each category of relevant entity. These obligations vary according to whether the entity is a:

- **Responsible entity**, which is an organisation that has a prescribed relationship with the asset and carries the greatest legal responsibility for its protection
- **Direct interest holder**, which is an organisation that holds an interest of at least 10% of the asset or holds enough interest to exert influence or control over the asset
- **Asset operator**, which is an organisation that operates the asset or part of the asset, or
- **Managed service provider**, which is an organisation that manages, manages an aspect, or manages an aspect of the operation of all or part of an asset

The NSW State Government module has 4 sub modules:

- Employment
- Governance
- Reporting, Record Keeping and Data Integrity
- Resource Management

The module informs the New South Wales public sector of their legislated legal obligations. The module demonstrates effective practical advice and assistance to the public sector to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the New South Wales public sector.

New South Wales is home to multiple categories of public sector entities including;

- Government departments;
- Statutory bodies;
- State owned corporations;
  - Commercial businesses established by the state government.
- Public service agencies; and
  - The broadest category as it includes all public sector entities that employ public servants; and
  - All government departments and almost all statutory bodies are also public services agencies.
- Statutory authorities;
  - Individuals who hold an office established by NSW legislation and their staff, including inspectors and commissioners.

The module uses the term ‘government agency’ to collectively describe these various entities that are individually required to meet public sector legal obligations. Some of the legal obligations only apply to a particular category or categories of public sector entity and do not apply uniformly across the NSW public sector. A NSW public sector entity may fall within more than one of the categories.

The module primarily focuses on legal obligations applying to public sector entities which are in the 'government department' and 'statutory bodies' categories.

The broad scope of the module is to provide answers to these questions for the NSW public sector entity;

- What are our legal obligations?
- From where are our legal obligations derived?
- How can we ensure that we are complying with our obligations?
- What are the consequences if we do not comply with our obligations?

All government agencies must have effective policies and procedures in place to address all legislative and New South Wales government legal obligations. All staff must receive training on the policies and procedures necessary for fulfilling their duties and responsibilities. Policies and procedures must be regularly reviewed and updated in accordance with changing laws and New South Wales government directions.

### **Employment**

The *EMPLOYMENT* sub module covers all legislated employment obligations of NSW public sector entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with and best practice processes are implemented and maintained. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply to the NSW public sector entity.

The three main areas that are comprehensively covered in the *EMPLOYMENT* sub module are;

- **The legislative and regulatory landscape from which the primary employment obligations are derived;**
  - Industrial Relations Act 1996 (NSW);
  - Disability Discrimination Act 1992 (Cth);
  - Anti-Discrimination Act 1977 (NSW);
  - Crimes (Sentencing Procedure) Act 1999 (NSW);
  - Government Advertising Act 2011 (NSW);
  - Long Service Leave Act 1955 (NSW);
  - Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 (NSW);
  - Crown Employees Wages Staff (Rates of Pay) Award 2017 (NSW);
  - Statutory and Other Officers Remuneration Act 1975 (NSW);
  - Annual Wage Review 2018-19 Full Decision;
  - Apprenticeship and Traineeship Act 2001 (NSW);
  - Treasury of New South Wales – Treasury Circular;
  - Compliance and Enforcement Policy August 2017 (Cth);
  - Workers' Compensation Act 1987 (NSW);
  - Workers' Compensation Regulation 2016 (NSW);
  - Workplace Injury Management and Workers' Compensation Act 1998 (NSW);
  - Superannuation Administration Act 1996 (NSW);
  - Superannuation Guarantee (Administration) Act 1992 (Cth);
  - Police Regulation (Superannuation) Act 1906 (NSW);
  - State Authorities Non-Contributory Superannuation Act 1987 (NSW);

- State Authorities Non-Contributory Superannuation Regulation 2015 (NSW); and
- Supreme Court Act 1970 (NSW).

**The employment legal obligations or duties imposed on NSW public sector entities;**

- Recruitment;
  - Senior executives;
  - Public sector employees;
  - Transfers between departments; and
  - Conditions of employment.
- Employment contracts;
  - Enterprise agreements;
  - Unfair contracts; and
  - Procurement
- Remuneration and working hours;
  - Awards;
  - Part-time employment;
  - Full-time employment; and
  - Casual, temporary and voluntary employment.
- Apprenticeship, traineeship, cadetship and graduate programs;
  - Employment diversity and the Aboriginal employment strategy; and
  - Disabled employment opportunities.
- Fair treatment in the workplace;
  - Diversity;
  - Unions;
  - Health and safety;
  - Discrimination and misleading conduct;
  - Inspections; and
  - Surveillance
- Leave entitlements and flexible work arrangements;
  - Child care;
  - Jury service; and
  - Victims of crime.
- Terminating employment;
  - Resignation;
  - Retirement;
  - Senior executive roles;
  - Unsatisfactory performance and suspension;
  - Managing excess employees;
  - Redundancy;
  - Unfair dismissal; and
  - Unlawful termination.
- Industrial relations;
  - Industrial action under the NSW system;
  - Industrial action under the commonwealth system; and
  - Conciliation and arbitration.
- Workers' compensation;
  - Workplace injuries;
  - Returning to work assistance;
  - Injury prevention; and
  - Health monitoring.

- Employment records and management systems;
  - Performance management systems; and
  - Management of personal and remuneration records.
- Superannuation;
  - Non-contributory superannuation funds;
  - Employee nominated superannuation funds;
  - Superannuation payments; and
  - Quarterly reporting.

**The consequences that can be applied to NSW public sector entities and employed individuals that are found to have breached or not complied with their legal obligations.** These consequences vary considerably depending on the nature and extent of the breach. The *EMPLOYMENT* sub module covers specific consequences in detail. They can include monetary penalties and even terms of imprisonment for individuals committing serious criminal offences.

The *EMPLOYMENT* sub module's primary focus is on the legal obligations and duties of NSW public sector entities relating to effective and compliant employment. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable NSW state legislation which in many cases applies to both private and public sector entities.

The *EMPLOYMENT* sub module primarily focuses on employment legal obligations applying to public sector entities which are in the 'government department' and 'statutory bodies' categories but again there is significant crossover with other categories of public sector entities;

- State owned corporations;
- Public service agencies; and
- Statutory authorities.

## **Governance**

The *GOVERNANCE* sub module uses the term 'government agency' to collectively describe these various entities that are individually required to meet public sector legal obligations. Some of the legal obligations only apply to a particular category or categories of public sector entity and do not apply uniformly across the NSW public sector. A NSW public sector entity may fall within more than one of the categories.

The *GOVERNANCE* sub module primarily focuses on legal obligations applying to public sector entities which are in the 'government department' and 'statutory bodies' categories.

The *GOVERNANCE* sub module covers all legislated governance obligations of NSW public sector entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with and best practice processes are implemented and maintained. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply to the NSW public sector entity.

The three main areas that are comprehensively covered in the *GOVERNANCE* sub module are;

**The legislative and regulatory landscape from which the primary governance obligations are derived;**

- › Crime Commission Act 2012 (NSW);
- › Government Sector Employment Act 2013 (NSW);
- › Government Sector Employment (General) Rules 2014 (NSW);
- › Public Finance and Audit Act 1983 (NSW);
- › Public Interest Disclosures Act 1994 (NSW);
- › State Emergency and Rescue Management Act 1989 (NSW);
- › State Owned Corporations Act 1989 (NSW);
- › State Insurance Regulatory Authority (SIRA);
- › Ombudsman Act 1974 (NSW);
- › NSW Ombudsman;
- › Independent Commission Against Corruptions Act 1988 (NSW);
- › Independent Commission Against Corruption (ICAC);
- › NSW Crime Commission;
- › NSW Public Service Commission;
- › Code of Ethics and Conduct for NSW Government Sector Employees;
- › State Emergency Management Plan; and
- › Treasurer's Directions (NSW).

**The governance legal obligations or duties imposed on NSW public sector entities;**

- › The duties of state government officials specifically Chief Executive Officers, Chief Employees, Secretaries of Departments, and heads of government agencies;
- › Codes of conduct; and
- › Aboriginal engagement affairs.
- › Proper use of resources and risk management;
- › International travel.
- › Financial planning, reporting and budgets;
- › Agency duties for appropriation, use and retention of public money;
- › Budgeted management;
- › Reporting and annual reporting;
- › Unclaimed public money;
- › Payment authorisations;
- › Loans;
- › Financial statements; and
- › Estimate inquiries.
- › Audit committees;
- › The appointment;
- › Audit and advisory functions as distinct from operational functions;
- › Certification of financial statements; and
- › Dispute resolution.
- › Performance assessment and reporting;
- › Performance management systems;
- › Public interest disclosures;
- › Sector reporting;
- › Diversity reporting;
- › Contractor performance reporting;

- Annual reporting and statements of compliance;
- Ministerial and parliamentary inquiries; and
- Record keeping.
- Insurance and indemnities;
- State icare insurance systems;
- State insurance regulatory authority (SIRA) return to work; and
- State owned corporations.
- Emergency management;
- State emergency management planning;
- Co-operating with emergency authorities; and
- Control and coordination centres.
- State owned corporations;
- Constitution;
- Board of directors;
- Duties of directors;
- Maintaining solvency;
- Appointment of Chief Executive Officer;
- Public interest policies and directions;
- Statement of corporate intent;
- Financial reports; and
- Annual reports.
- Complying and cooperating with all required authorities;
- NSW ombudsman;
- Independent Commission Against Corruption (ICAC);
- NSW Crime Commission; and
- NSW Public Service Commission.
- Managing public interest disclosures;
- Identifying;
- Creating a policy;
- Notifying and reporting; and
- Protection

**The consequences that can be applied to NSW public sector entities and employed individuals that are found to have breached or not complied with their legal obligations.** These consequences vary considerably depending on the nature and extent of the breach. The *GOVERNANCE* sub module covers specific consequences in detail. They can include monetary penalties and even terms of imprisonment for individuals committing serious criminal offences.

The *GOVERNANCE* sub module's primary focus is on the legal obligations and duties of NSW public sector entities relating to effective and compliant governance. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable NSW state legislation which in many cases applies to both private and public sector entities.

The *GOVERNANCE* sub module primarily focuses on governance legal obligations applying to public sector entities which are in the 'government department' and 'statutory bodies' categories but again there is significant crossover with other categories of public sector entities;

- State owned corporations;
- Public service agencies; and
- Statutory authorities.



## **Reporting, Record Keeping and Information Security**

The *REPORTING, RECORD KEEPING AND DATA INTEGRITY* sub module informs the New South Wales public sector of their legislated legal obligations related to reporting, record keeping and data integrity. The module demonstrates effective practical advice and assistance to the public sector to implement procedures and processes that will ensure compliance and regulatory accountability throughout all levels of the New South Wales public sector.

The three main areas that are comprehensively covered in the *REPORTING, RECORD KEEPING AND DATA INTEGRITY* sub module are;

### **The legislative and regulatory landscape from which the primary reporting, record keeping and data integrity obligations are derived;**

- › Annual Reports (Departments) Act 1985 (NSW);
- › Annual Reports (Statutory Bodies) Act 1984 (NSW);
- › Government Information (Public Access) Act 2009 (NSW);
- › Government Sector Employment Act 2013 (NSW);
- › Health Records and Information Privacy Act 2002 (NSW);
- › Privacy and Personal Information Protection Act 1998 (NSW);
- › Public Finance and Audit Act 1983 (NSW);
- › Public Interest Disclosures Act 1994 (NSW);
- › State Records Act 1998 (NSW);
- › Digital Information Security Policy;
- › Standard on Records Management (NSW);
- › Standard on the Physical Storage of State Records (NSW); and
- › Treasurer's Directions 2015 (NSW).

### **The reporting, record keeping and data integrity legal obligations or duties imposed on NSW public sector entities;**

- › Financial reports;
- › Requirements to submit;
- › Contents to include;
- › Audit requirements; and
- › Extensions of time.
- › Annual reports;
- › Requirements to submit;
- › Report of operations;
- › Contents to include;
- › Letter of submission;
- › Extension of time; and
- › Format for publication.
- › Complying with Treasurer's Directions;
- › Expenditure records;
- › Certificate of reconciliation;
- › Employment expenditure records;
- › Drawing and advance account transfer records;
- › Bank correspondence records;
- › Cheque stoppage records;
- › Unclaimed money register;
- › Register of debts; and
- › Security of digital information.



- › The requirements to keep state records;
- › Management program;
- › Protection and storage of records;
- › Digital and technology dependent records;
- › Disposal;
- › Transfer; and
- › Access
- › Access to government information;
- › Open access information for all public agencies;
- › Public interest considerations;
- › Agency information guide;
- › Policy documents;
- › Government contracts register;
- › Access applications and review of application decisions;
- › Responding to and processing access applications;
- › Providing access;
- › Disclosure logs; and
- › Annual reports.
- › Dealing with personal information;
- › Information protection principles;
- › Exemptions from information protection principles;
- › Privacy codes of practice;
- › Privacy management plan;
- › Complaints processes;
- › Disclosure of information from public registers;
- › Dealing with health information;
- › Health privacy principles and appropriate exemptions; and
- › Health privacy codes of practice.
- › Public interest disclosures;
- › Policy and guidelines;
- › Making disclosures;
- › Protection of individuals who make disclosures; and
- › Reports
- › Digital Information Security;
- › Information security management system;
- › Certification of information security compliance;
- › Community of practice;
- › Annual attestation;
- › Labelling of sensitive information; and
- › Disaster recovery.
- › Controls for digital financial systems;
- › Operational;
- › Processing, input and editing;
- › Management trails; and
- › Workstation controls.

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The *REPORTING, RECORD KEEPING AND DATA INTEGRITY* sub module's primary focus is on the legal obligations and duties of NSW public sector entities relating to effective and compliant reporting, record keeping and data integrity. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable NSW state legislation which in many cases applies to both private and public sector entities.

The *REPORTING, RECORD KEEPING AND DATA INTEGRITY* sub module primarily focuses on reporting, record keeping and data integrity legal obligations applying to public sector entities which are in the 'government department' and 'statutory bodies' categories but again there is significant crossover with other categories of public sector entities;

- State owned corporations;
- Public service agencies; and
- Statutory authorities.

### **Resource Management**

The *RESOURCE MANAGEMENT* sub module covers all legislated resource management obligations of NSW public sector entities and demonstrates practical assistance and guidance to ensure that these obligations are complied with and best practice processes are implemented and maintained. The module also covers the role of the regulator as well as exemptions to the obligations, if applicable, and how they may or may not apply to the NSW public sector entity.

The three main areas that are comprehensively covered in the *RESOURCE MANAGEMENT* sub module are;

**The legislative and regulatory landscape from which the primary resource management obligations are derived;**

- Crimes Act 1900 (NSW);
- Government Advertising Act 2011 (NSW);
- Government Advertising Regulation 2018 (NSW);
- Government Sector Employment Act 2013 (NSW);
- Independent Commission Against Corruption Act 1988 (NSW);
- Public Finance and Audit Act 1983 (NSW);
- Public Works and Procurement Act 1912 (NSW);
- Government Sector Finance Act 2018 (NSW);
- Government Sector Finance Regulation 2018 (NSW);
- Federal Financial Relations Act 2009 (Cth);

- › Government Information (Public Access) Act 2009 (NSW);
- › Crimes (Sentencing Procedure) Act 1999 (NSW);
- › The Department of Premier and Cabinet Circulars;
- › The Department of Premier and Cabinet Good Practice Guides;
- › The Department of Premier and Cabinet Memorandums;

**The resource management legal obligations or duties imposed on NSW public sector entities;**

- › Sources of funding;
- › Appropriations;
- › Specific purpose accounts; and
- › Receipts and user charges.
- › Committing to and entering into expenditure of public money.
- › Grant management and administration;
- › Establishing;
- › Administration;
- › Reporting; and
- › Evaluation
- › Procurement;
- › Minor;
- › Major;
- › Whole of government procurement processes;
- › Advertising;
- › Sanctions and restrictions;
- › Promoting competition, sustainability and support for certain types of businesses;
- › Reporting; and
- › Prevention of modern slavery.
- › Borrowing capacity and credit cards or payments.
- › Cash management;
- › Banking and investing public money;
- › Collection, waiver and set off;
- › Ex gratia payments; and
- › Managing cash.
- › Managing assets other than real property;
- › Physical assets;
- › Disposal and gifting;
- › Vehicles and fleet management; and
- › Managing and controlling intellectual property.
- › Other forms of spending;
- › Gratuities, entertainment and hospitality;
- › Interstate and overseas travel; and
- › Advertising
- › Contractual arrangements;
- › Issuing, managing and reporting instruments of assurance;
- › Addressing competitive neutrality issues when obtaining government guarantees; and
- › Accepting performance bonds and unconditional undertakings.
- › Land and buildings;
- › Acquiring property;
- › Construction and fit-out;
- › Management and maintenance;

- Identification of surplus assets; and
- Disposing of property.

**The consequences that can be applied to NSW public sector entities and employed individuals that are found to have breached or not complied with their legal obligations.** These consequences vary considerably depending on the nature and extent of the breach. The *RESOURCE MANAGEMENT* sub module covers specific consequences in detail. They can include monetary penalties and even terms of imprisonment for individuals committing serious criminal offences.

The *RESOURCE MANAGEMENT* sub module's primary focus is on the legal obligations and duties of NSW public sector entities relating to effective and compliant resource management. The module does not intentionally focus on the interests of the private sector, although there is significant crossover with applicable NSW state legislation which in many cases applies to both private and public sector entities.

The *RESOURCE MANAGEMENT* sub module primarily focuses on resource management legal obligations applying to public sector entities which are in the 'government department' and 'statutory bodies' categories but again there is significant crossover with other categories of public sector entities;

- State owned corporations;
- Public service agencies; and
- Statutory authorities.

### About LexisNexis Regulatory Compliance

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