

**RUAPEHU DISTRICT COUNCIL
RISK & ASSURANCE COMMITTEE**

Confidential Reports Released into the Public Business

FROM THE MEETING OF RISK & ASSURANCE COMMITTEE
ON THURSDAY 12 OCTOBER 2023

Item

C3 Legislative Compliance Risk

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
Legislative Compliance Risk	s7(2)(a) To protect the privacy of natural persons, including that of deceased natural person	s48(1)(a)(i) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 7

Members resolved a redacted version of the report be released as publicly available information.

Report to: Risk & Assurance Committee**Meeting Date:** 12 October 2023**Subject:** Legislative Compliance Risk**Report for:** Information**Author(s):** Aaron Pendergrast **Contractor to Ruapehu DC****Endorsed By:** Neil Ward **ACTING MANAGER: FINANCE, STRATEGY & GOVERNANCE****Purpose of Report | Te take mō te pūrongo**

- 1.1 The purpose of this Report is to brief the Committee on the status of Council's compliance with legislation and the risks associated with non-compliance.

Recommendation(s) | Ngā tūhunga

That the Risk & Assurance Committee:

- 1 Receives the Confidential Report **Legislative Compliance Risk** for information;
- 2 **Does** record this resolution in the Public Business Minutes of this meeting; and
- 3 **Does** release a redacted version of this report as publicly available information.

Significance and Engagement | Takenga mai

- 2.1 **Significance**
This report does not trigger the Significance and Engagement Policy.

Background | Tuhinga

- 3.1 In addition to the legal need to comply with the law, Council adopted a Legal Compliance Policy that further requires that Council complies with all legislation imposed on it.
- 3.2 Assessment of Council's performance and compliance with laws, rules, good practice, etc. are conducted by Audit NZ, Waka Kotahi NZ Land Transport and others. This assessment of Council's legislative compliance is effectively one internal audit measure that fits within a wider audit and compliance framework.
- 3.3 The Quantate Compliance system works by identifying legislation that places obligations on Council, then identifying staff who are primarily responsible for compliance with a given legislative obligation (e.g., section xyz of the Resource Management Act 1991), and then asking that person whether Council has complied. The engagement with this system in 2022 is on the same simple basis as previous years i.e., it is reliant on staff's best recollection.
- 3.4 Legislative obligations have been marked by staff as:
 - (a) No requirement for compliance (i.e., does not apply to Ruapehu District Council).
 - (b) Requirement has not arisen (i.e., the circumstances that place an obligation have not happened).
 - (c) Does not comply (there may be many instances of compliance but in the case of this obligation there are some cases where Council has not complied).
 - (d) Complies.

- 3.5 Legislation can conflict with other legislation e.g., the need for privacy conflicts in places with the legislated requirement to archive records. Management must walk a fine line at times and reported non-compliance may just represent management's view of the right compromise between legislative obligations.
- 3.6 The consequences of failing to comply with some provisions may be that Council's reputation is minimally harmed for a short period while the consequences of other infractions may be life threatening to Council's customers and may result in significant prosecutions against Council.
- 3.7 Council must comply with the law.

Discussion | He Kōrerorero

- 4.1 During the year Acts were repealed and added with changes to existing law. Legislative obligations were brought up to date for this 2022 review.
- 4.2 After eliminating legislative obligations that do not relate to territorial local authorities and those that did not apply in 2021/22, the Quantate Compliance database consisted of 97 Acts of Parliament or similar (**Attachment 1**) and 761 obligations from these Acts.
- 4.3 For the 761 obligations there were 773 verifications that were commented on; some obligations had more than one verifier.
- 4.4 Obligations range from simple to understand, through to complex that require some real understanding of the relevant legislative field.
- 4.5 Summary analysis (**Attachment 2 graphs**) would show that Council did not comply with eight Statutory Obligations, overall is 99 per cent compliant within the Quantate system framework, and that the Council trend took a slight dip in an otherwise upwards flow over a number of years.
- 4.6 **Acts reported to be breached are:**
 - (a) Local Government Official Information and Meetings Act 1987
 - (b) Privacy Act 2020
 - (c) Privacy Act 1993
 - (d) Public Records Act 2005
 - (e) Heritage New Zealand Pouhere Taonga Act 2014
 - (f) Health and Safety at Work (Hazardous Substances) Regulations 2017
- 4.7 A more detailed report on instances of non-compliance is attached (**Attachment 3**).
- 4.8 The technical consequence of non-compliance might include risk to Council reputation, possibility of legal implications in some situations, or that some auditing authority will review and may make recommendations to improve. Appendix C includes short statements on what Council is doing to address non-compliance. Council is taking measures to comply fully.
- 4.9 All non-compliance responses have been reviewed and investigated, and Management is satisfied that the level of risk posed to Council in these instances is low.

Attachment(s) | Ngā āpitihanga

- 1 Schedule of Laws that apply to Ruapehu District Council.
- 2 Analysis Graphs
- 3 Schedule of Breached Obligations

Attachment 1

Schedule of Laws that apply to Ruapehu District Council

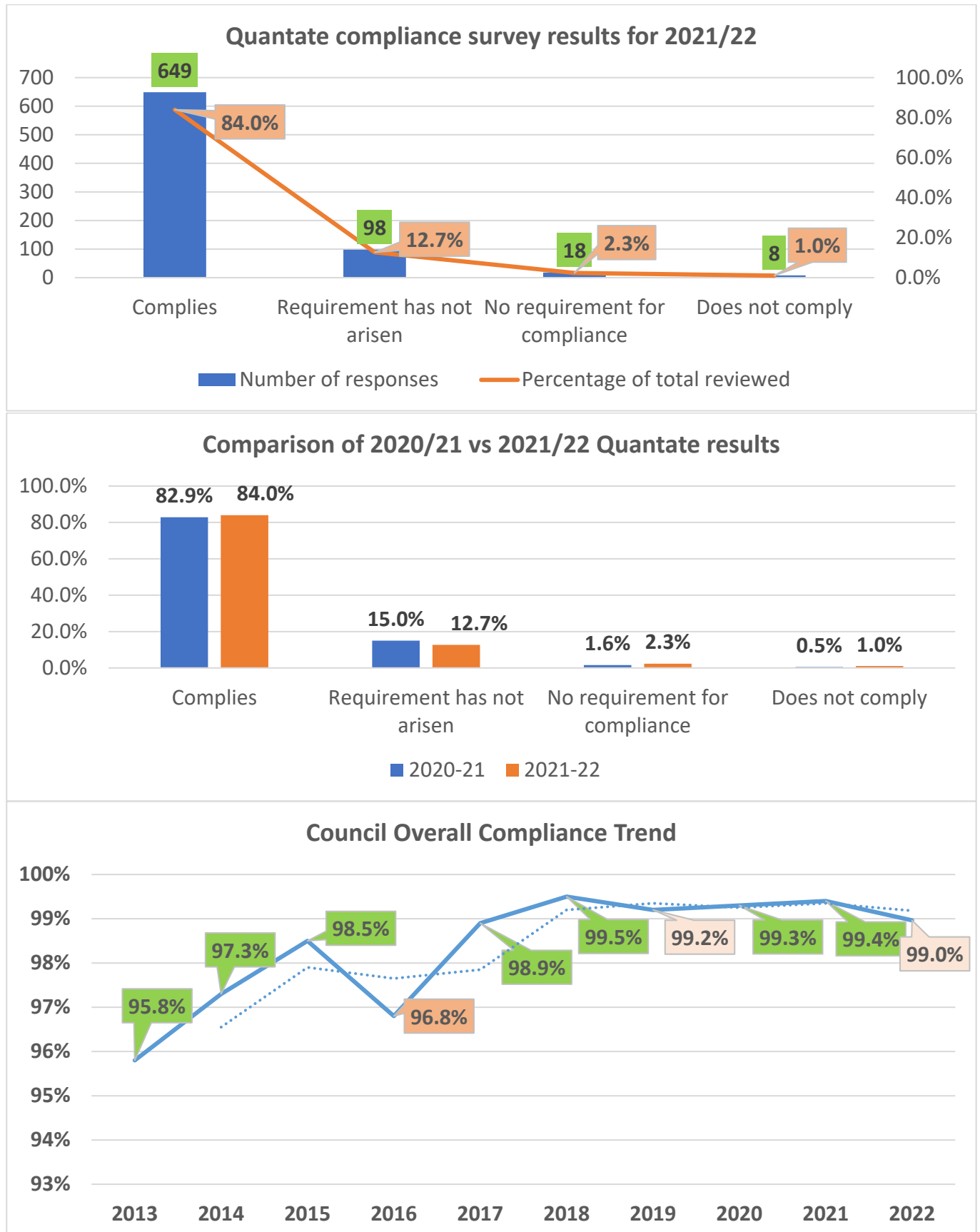
Accident Compensation Act 2001
Agricultural Compound and Veterinary Medicines Act 1997
Animal Welfare Act 1999
Arts Council of New Zealand Toi Aotearoa Act 1994
Building Act 2004
Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967
Burial and Cremation Act 1964
Camping Grounds Regulations 1985
Child Support Act 1991
Civil Aviation Act 1990
Civil Aviation Rule Part 12 - Accidents, Incidents and Statistics
Civil Defence Emergency Management Act 2002
Commerce Act 1986
Consumer Guarantees Act 1993
Contract and Commercial Law Act 2017
Copyright Act 1994
Defamation Act 1992
Dog Control Act 1996
Electricity (Safety) Regulations 2010
Electricity Act 1992
Employment Relations Act 2000
Energy Companies Act 1992
Equal Pay Act 1972
Fair Trading Act 1986
Fees and Travelling Allowances Act 1951
Fencing Act 1978
Fire and Emergency New Zealand (Fire Safety, Evacuation Procedures and Evacuation Schemes) Regulations 2018
Fire and Emergency New Zealand Act 2017
Fire Safety and Evacuation of Buildings Regulations 2006
Food Act 2014
Freedom Camping Act 2011
Gambling Act 2003
Goods and Services Tax Act 1985
Government Roding Powers Act 1989
Hazardous Substances and New Organisms Act 1996
Health (Burial) Regulations 1946
Health (Registration of Premises) Regulations 1966
Health Act 1956
Health and Safety at Work (Asbestos) Regulations 2016
Health and Safety at Work (General Risk and Workplace Management) Regulations 2016
Health and Safety at Work (Hazardous Substances) Regulations 2017
Health and Safety at Work Act 2015
Health and Safety in Employment Regulations 1995
Heritage New Zealand Pouhere Taonga Act 2014
Holidays Act 2003
Human Rights Act 1993
Immigration Act 2009
Impounding Act 1955
Income Tax Act 2007
Kiwi Saver Act 2006
Land Act 1948

Land Transport (Infringement and Reminder Notices) Regulations 2012
Land Transport Act 1998
Land Transport Management Act 2003
Litter Act 1979
Local Authorities (Members Interests) Act 1968
Local Electoral Act 2001
Local Electoral Regulations 2001
Local Government (Financial Reporting and Prudence) Regulations 2014
Local Government (Rating) Act 2002
Local Government Act 1974
Local Government Act 2002
Local Government Borrowing Act 2011
Local Government Official Information and Meetings Act 1987
Minimum Wage Act 1983
New Zealand Bill of Rights Act 1990
Occupiers Liability Act 1962
Parental Leave and Employment Protection Act 1987
Privacy Act 1993
Privacy Act 2020
Property Law Act 2007
Prostitution Reform Act 2003
Protected Disclosures Act 2000
Psychoactive Substances Act 2013
Public Audit Act 2001
Public Bodies Leases Act 1969
Public Records Act 2005
Public Works Act 1981
Railways Act 2005
Rates Rebate Act 1973
Rating Valuations Act 1998
Reserves Act 1977
Residential Tenancies Act 1986
Resource Management Act 1991
Road User Charges Act 2012
Sale and Supply of Alcohol Act 2012
Smoke-free Environments Act 1990
Statistics Act 1975
Tax Administration Act 1994
Trustee Act 1956
Unit Titles Act 2010
Unsolicited Electronic Messages Act 2007
Wages Protection Act 1983
Walking Access Act 2008
Waste Minimisation Act 2008
Wild Animal Control Act 1977

Attachment 2

Analysis Graphs

Showing number of responses in the context of whole survey by category.



Attachment 3

Schedule of Breached Obligations

Privacy Act 2020; Principle 9, Sec. 22

Verifier:

Verification Wording:

- > Correct retention of personal information through business processes?

Comments on Non-Compliance:

- > A recent records appraisal revealed that we have HR records that have been kept for longer than required. Retention and disposal had not been applied to these hard copy records. However, this is part of a current work programme to become compliant.

Additionally in the digital records space, subjective judgement on what is relevant to be retained and logged by staff is an issue with policy not being adhered to in some cases.

Practical Consequences:

- Potential loss of records or breaches of confidentiality/privacy.

What Are We Doing:

- > Part of a journey to full compliance starting with appraisal and back capture of records required to be archived. This journey is expected to continue over the next few years.

Additionally, training materials and self-help tools are upgrading currently to support staff in judgment calls on information relevance. New reporting will come through with current system upgrades.

Privacy Act 1993 6

Verifier:

Verification Wording:

- > Information is not kept for longer than necessary?

Comments on Non-Compliance:

- > Some records still in hard copy, and so retention and disposal policy cannot be guaranteed.

Practical Consequences: Potential loss of records or breaches of confidentiality/privacy

What Are We Doing:

- > Part of a journey to full compliance starting with appraisal and back capture of records required to be archived. This journey is expected to continue over the next few years.

Privacy Act 1993 40

Verifier:

Verification Wording:

- > Advice to applicants on information requests done in a timely manner?

Comments on Non-Compliance:

- > Not coming back to applicant in a timely manner that could be deemed to be refusal to provide information under the specific Act requirement. While this was not the intention nor reality, some statutory timeframes were not met in the course of Council business for timely responses.

Practical Consequences:

Potential reputational and legal risk, potential fines and penalties.

What Are We Doing:

- > Communications need to be well-timed to mitigate risk to Council. Improvements to systems and related processes are expected to support Council's expectation of full compliance.

Local Government Official Information and Meetings Act 1987 44A

Verifier:

Verification Wording:

- > LIM are issued on application in writing and within 10 working days of receipt and include the information specified in the section?

Comments on Non-Compliance:

- > Specific records are not available in digital format slowing down retrieval and collation times. Staff experience some situations where peaks in demand that can cause legislative timeframes to be missed. It is an exception rather than a systemic issue.

Practical Consequences:

May have an Audit finding and recommendation for improvement, and there is some reputational risk.

What Are We Doing:

- > Part of a journey to full compliance starting with appraisal and back capture of records. Additional planned system upgrades will further enhance Council's levels of service in this space.

Public Records Act 2005 17

Verifier:

Verification Wording:

- > Public office and local authority record keeping according to requirements?

Comments on Non-Compliance:

- > Records kept, but not managed effectively by organization. Policy not being adhered to in some instances, and subjective judgement on what is relevant to be logged by officers.

Practical Consequences: Potential reputational and legal risk, potential fines and penalties.

What Are We Doing:

- > Training materials and self-help tools are upgrading currently to support staff in judgment calls on information relevance. New reporting will come through with current system upgrades.

Local Government Official Information and Meetings Act 1987 13

Verifier:

Verification Wording:

- > Decisions on requests for information are responded to within statutory timeframes.

Comments on Non-Compliance:

- > There have been instances where timeframes were not met. Additionally, in those instances, it was also noted that communication back to the applicant had not advised of potential delays or the reasons for those delays.

Practical Consequences: Risk of reputational damage, and Audit may have findings and recommendation for improvement.

What Are We Doing:

- > Extension of time considerations on requests need to be done sooner by responsible officer. Improved tracking and reporting of outstanding requests in the system will support better communication and levels of services from Council with their community.

Heritage New Zealand Pouhere Taonga Act 2014 76

Verifier:

Verification Wording:

- > Lists of all relevant places and information available to the public?

Comments on Non-Compliance:

- > Investigation found that Council in fact does have a list of relevant places and information available on website, but that the list has not been reviewed for some time and is not complete. It is also noted that there are cultural considerations for what is or should be included on that list at this time particularly as Iwi settlement claims are in process.

Practical Consequences:

Potential reputational and relationship risk, and possibility of doing more harm than good through misinformation with full disclosure otherwise based on un-concluded matters.

What Are We Doing:

- > It is recommended that the list will need up dating with next district plan review and in consideration of any new partnership agreements and Iwi settlement legislation.

Health and Safety at Work (Hazardous Substances) Regulations 2017

Verifier:

Verification Wording:

- > Does the organization have up-to-date emergency response plans?

Comments on Non-Compliance:

- > Investigation found that responding officer was not aware of a corporate response plan related to hazardous substances and could not find one when searching records. The response was related specifically to the RDC corporate office and property space as opposed to the many robust plans that are related to contractors acting on behalf of Council in other activities. The list in question would likely be quite short and common sense to meet compliance levels, and exists in fundamental form, but is not as visible as it needs to be to support staff.

Practical Consequences:

Risk of reputational damage, possible legal implications in the event of incident, staff being unsupported from a Health and Safety perspective, and external audit may have findings and recommendation for improvement.

What Are We Doing:

- > It was recommended that the matter be raised with H&S Committee for RDC Corp list update, and a refreshed communication and visibility outcome to support officer reference and awareness.