

ENFORCEMENT POLICY

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Review Frequency	4 yearly or as required
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File Number	18.87.001 / PL202060
Responsible Division	Wellbeing
Related Documents	Alexandrina Council By-laws Order Making Policy Order Making Procedure Complaint Handling Policy
Applicable Legislation	<i>Local Government Act 1999 & Regulations</i> <i>Dog & Cat Management Act 1985 & Regulations</i> <i>Fire & Emergency Services Act 2005 & Regulations</i> <i>South Australian Public Health Act 2011 & Regulations</i> <i>Food Act 2001 & Regulations</i> <i>Supported Residential Facilities Act 1992 & Regulations</i> <i>Australian Road Rules & Regulations</i> <i>Road Traffic Act</i> <i>Expiation of Offences Act 1996</i> <i>Development Act 1993</i> <i>Local Nuisance and Litter Control Act 2016</i>

Preamble

Local Government is charged with legislative responsibilities to protect individuals and the community as a whole. Stakeholders include both those on whom the law places a duty and those whom the law protects. While it is ultimately the responsibility of individuals and other bodies to comply with the law, Council staff are required to carry out activities which enforce compliance.

This policy outlines Council's approach to enforcement matters and provides staff with direction about the manner in which enforcement activities are to be undertaken.

In addition to enforcement, Council carries out a range of activities to ensure compliance such as community education programs to encourage conformance. Detailed policies and procedures about these specific activities may also apply.

Enforcement activities include:

- patrolling streets and public places
- inspecting premises either on a routine programmed basis or a random basis
- responding to enquiries and complaints.

Purpose

The purpose of this Policy is to:

- ensure that enforcement action is proportionate to the alleged offence in each case
- ensure duties are carried out in a fair, equitable and consistent manner
- transparency when dealing with stakeholders
- work with others and develop effective partnerships in achieving these aims.

Policy Principles

Council will ensure that the Enforcement Policy adheres to the following principles:

Transparency

Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces. It will consult on and provide ready access to published standards, the levels of service and performance that can be expected, and be clear and open about what is expected from those on whom the law places a duty (duty holders).

In educating the community at large and dealing with duty holders, Council will make a clear distinction between what is legally required and what is desirable but not compulsory.

Staff will be open to discussing potential and actual compliance failures, before, during and after formal action has been taken.

When remedial action is needed, Council will explain clearly and in plain language why the action is necessary. Where it is required by legislation or deemed necessary, it will give notice of its intent to commence formal action. It will point out what action is required to achieve compliance and the timeframe for undertaking that action. Advice will be provided on the process for seeking a review of, or how to appeal against that decision.

Where it is not practical to give notice, reasons will be recorded in accordance with Council's Records Management protocols.

Complainants will be advised what actions have been taken and why, when deemed necessary.

Proportionality

A proportionate response means that Council's actions will be scaled to the seriousness of the breach.

Council recognises most individuals want to comply with the law, and will assist compliance by being open and helpful, offering informal advice and providing the chance to discuss compliance problems.

Attention will be focussed on those whose activities give rise to the most serious risks, or where potential hazards are not well controlled. Depending on the seriousness and persistence of the infringement, Council will minimise the costs to the individual or body infringing the law by enforcing the minimum action necessary to secure future compliance. Prosecution will generally be used as a last resort, or for continuous serious offences.

Consistency

Council will take a similar approach in similar cases to achieve similar outcomes. While decisions on enforcement require the use of professional judgement and discretion to assess varying circumstances, Officers will:

- follow standard operating procedures wherever possible
- ensure fair, equitable and non-discriminatory treatment
- record any deviation from standard operating procedures and the reasons.

Policy

Enforcement decisions must be fair, consistent, balanced and relate to common standards that ensure the public is adequately protected.

In deciding the most appropriate means of enforcement, the Officer shall consider, amongst other relevant factors the following:

- the seriousness of the offence
- the degree of wilfulness involved

- the offender's past history
- the consequences of non-compliance
- the likely effectiveness of the various enforcement options
- deterrence
- consistency of approach to similar breaches/offences.

Factors to be ignored when choosing an enforcement strategy:

- any element of discrimination or bias against the individual such as ethnicity, nationality, political association, religion, gender, sexuality or beliefs
- personal association or relationship with the alleged offender or any other individual involved
- possible political advantage or disadvantage to a government or any political group or party.

Where a personal association or relationship with the alleged offender or any other individual involved exists:

- an alternative Officer will make decisions where possible
- details of any conflict of interest or relationship will be recorded in accordance with Council's Records Management protocols.

Enforcement Options:

Informal Action

No action - It may be appropriate to take no action when:

- alleged offences are outside of Council's area of operation, or are trivial in nature
- upon investigation, breaches of the legislation are not discovered
- taking action may prejudice more major considerations.

Education - The Authorised Officer uses education as a tool to enhance compliance by informing businesses and the public about legislative and other requirements, and by guiding them to relevant sources of information. This is achieved by various means including media releases, newsletters, Council's web site and appearances at business and public gatherings.

Informal action - to achieve compliance with legislation may include the following:

- the offer of verbal or written advice
- verbal warnings and requests for action
- written warnings and requests for action.

Advice - from Officers will be clear, simple and confirmed in writing. Written documentation will:

- include all the information necessary to comply with legal requirements, required timeframe and if necessary, the reason
- include the relevant legislation, necessary measures required to ensure compliance and the consequences of non-compliance
- clearly differentiate between legal requirements and recommendations of good practice.

The circumstances in which informal action may be appropriate could include:

- the act or omission is not serious enough to warrant formal action
- the offender's past history reasonably suggests that informal action will secure compliance
- the Officer's confidence in the individual/organisation is high
- the consequence of non-compliance will not pose a significant risk
- informal action may prove more effective than a formal approach. This may be particularly relevant in the case of volunteers and the relevant organisation

- where statutory action is not possible, but it would be beneficial in a wider public safety context to urge a particular outcome.

Mediation - is available and is a possible alternative where, after investigation, an Officer determines the issues are unable to be resolved through other formal or informal means. The use of mediation services may also be appropriate where an aggrieved individual has no wish to pursue action to resolve a complaint by legal means.

Formal action

Council has obligations under various pieces of legislation which provides the ability to order an individual to undertake or refrain from certain actions. These include Statutory Notices, and Orders. Teams will serve Notices/Orders where there is a duty to do so unless there are good reasons for not doing so.

Procedures are laid out within the Acts for making and revoking notices/orders, and (if required) for advising of a proposed order and inviting submissions with respect to the matter(s) (notice of intention / pre-order). Notices/Orders require the recipient to comply with the terms within a specified timeframe. Typically Orders/Notices allow a lesser or greater amount of time for compliance depending on the urgency of the matter. Officers will balance the risk to the community with the time required to undertake the specified actions to determine a suitable timeframe.

Under certain circumstances such as threat to life, immediate threat to public health, public safety or an emergency situation, an Order/Notice which would typically require a pre-order or notice of intention may be made without giving notice and immediate compliance be required to resolve a situation.

In most cases the recipient has a right of appeal to Council or an appropriate body (for example District Court, Public Health Review Panel, ERD Court). If an Order/Notice is served for which an appeal is possible, the Officer will advise the recipient in writing of the right to appeal and the relevant legal provisions at the time of service.

Extensions to timeframes may be issued where deemed suitable; this is to be undertaken at the officer's discretion, taking into account the situation, particularly the effort made to comply with the requirements, the work required and the risk to the community.

Where an offence has been committed Council may issue an Expiation Notice in addition to the service of the Notice/Order, this will usually be undertaken where the conduct of the recipient justified taking both steps.

Failure to comply with some Notices/Orders allows Council to consider expiation or prosecution, or taking action in default. This will only be considered where the conduct of the recipient justifies taking either or both of these steps. In considering expiation, the Officer must take into account any attempt by the recipient to comply with the notice.

Action in Default

The use of this option will be considered to secure compliance with the requirements of an Order or Notice where the necessary works have not been carried out in the time allowed without good reason and action in default is provided for by legislation. Before undertaking the work consideration will be given to whether there is a realistic prospect the person responsible will complete the works within a reasonable time. Where Council carries out work in default, recovery of costs over a fair period will be sought, using all statutory means available.

Failure to comply with some Orders or Statutory Notices allows Council to consider expiation or prosecution as well as taking action in default. Council will normally only do this where the conduct of the recipient justifies taking both steps. Council will have regard to factors such as giving false information, the obstruction of Council staff and the harm or risk of harm caused by the recipient's delay.

The decision to carry out action in default will be made by the Chief Executive Officer or the Delegate in consultation with the Authorised Officer.

Service of an Expiation Notice

Expiation Notices may be appropriate for minor breaches of legislation. The following circumstances are likely to warrant an Expiation Notice:

- strict offence such as a breach of the *Road Traffic Act (Australian Road Rules SA)*
- failure to correct an identified problem after having been given reasonable opportunity to do so by an Authorised Officer.
- failure to comply with the requirements of a Order or Statutory Notice
- confidence in the individual/organisation is low
- warning has been given for a similar offence
- minor breach of legislation which warrants a deterrent.

A person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence; hence there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the alleged offence.

Prosecution

Prosecution will not be used as a punitive response to minor breaches of legislation. Prosecution must only proceed where there is a reasonable prospect of a conviction being secured.

The following circumstances are likely to warrant a prosecution:

- flagrant breach of the law such that health, safety and welfare have been put at risk
- failure to correct an identified serious problem after having been given reasonable opportunity to do so
- failure to comply with the requirements of an Order or Statutory Notice
- history of similar offences
- unwillingness, on the part of the individual or business, to prevent a recurrence of the problem
- Where an individual elects to be prosecuted following issue of expiation notice.

Where circumstances warrant prosecution, all relevant evidence and information must be considered to enable a consistent, fair and objective decision to be made.

Before prosecution is recommended there must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the offence.

A decision to prosecute must be in the public interest. In considering whether prosecution is in the public interest, the following additional factors should be considered:

- Whether the offence was premeditated
- The need to influence the offenders future behaviour
- The effect on the offenders, or a witnesses, physical or mental health, balanced against the seriousness of the offence
- The availability and efficacy of any alternatives to prosecution
- The prevalence of the alleged offence and the need for deterrence, both personal and general
- The likely length and expense of a trial.

Where prosecution is considered, regard must be had when assessing any negligence to the fact that the investigating Officer has the benefit of hindsight.

The final decision to prosecute will be made by the Chief Executive Officer or the Delegate in consultation with Council's Solicitors.

Delegations

Council acknowledges that the Chief Executive Officer may sub-delegate matters related to this Policy to staff or other persons employed or engaged by council.

Documentation

To assist in demonstrating that Enforcement processes are cost effective, fair, transparent and accountable, and meet community needs, we will document all matters relating to any Enforcement process.

Availability of Policy

This Policy will be available for inspection at the Council's offices during normal business hours and on the Council's website www.alexandrina.sa.gov.au. Copies will also be provided to interested members of the community upon payment of a fee in accordance with Council's Schedule of Fees and Charges.