

COUNCIL POLICY	
Reference Number	771987
Responsible Business Unit	Development & Regulation
Responsible Officer	General Manager Community Development
Legislation	<p>Australian Road Rules Council By-Laws Development Act 1993 (& Regulations) Dog and Cat Management Act 1995 (& Regulations) Expiation of Offences Act 1996 Fire and Emergency Services Act 2005 Food Act 2001 (& Regulations) Local Government Act 1999 Local Nuisance and Litter Control Act 2016 (& Regulations) Planning, Development & Infrastructure Act 2016 Private Parking Areas Act 1986 Public Interest Disclosure Act 2018 Road Traffic Act 1961 SA Public Health Act 2011 (& Regulations) Safe Drinking Water Act 2011 Supported Residential Facilities Act 1992 (& Regulations) ICAC Act 2012</p>
Relevant Delegations	<p>Chief Executive Officer General Manager Community Development Manager Development & Regulation</p>
Related Policies Management Guidelines Frameworks	<p>Order Making Policy Code of Conduct for Staff Expiation Write Off Policy Fraud & Corruption Prevention Policy Risk Management Framework Good Public Administration Framework Complaint Management Framework Reviewing and Withdrawing an Expiation – Management Guideline Unlawful Development Enforcement – Management Guideline</p>
Link to Strategic Plan	Objective 5.4 - Transparent
Council resolution	146.5
Date Adopted	14 September 2020
Review Date	Once during a Council term or as required by legislation
Previous Revisions	<p>29 January 2013, item 13.5 Supersedes Unlawful Development Enforcement Policy; Unsanitary Premises Policy</p>

POLICY STATEMENT

Council is charged with legislative responsibilities which protect individuals and the community as a whole. While it is ultimately the responsibility of individuals and organisations to comply with legislation, Councils Authorised Officers are required to carry out activities which may include enforcement and compliance.

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

Examples of activities subject to this enforcement policy include (but are not limited to):

- Handling and sale of food for human consumption;
- Installation and operation of wastewater systems;
- Responding to animal management issues;
- Monitoring of parking controls within the Council area;
- Unlawful development;
- Unsightly premises;
- Non-compliance with Council By-Laws;
- Responding to burning complaints; and
- Responding to enquiries and complaints relating to public health and public safety.

OBJECTIVES

The primary objectives of this Policy are to:

- Establish a framework which guides Council in enforcement and prosecution action with respect to matters of non-compliance;
- Provide consistency in the management of enforcement action in matters of non-compliance;
- Ensure transparency, procedural fairness and natural justice principles are applied;
- To ensure that enforcement action is proportionate to the alleged offence in each case; and
- Advocate a risk-based approach to enforcement through the adoption of a proportionate response to non-compliance.

PRINCIPLES OF GOOD ENFORCEMENT

Enforcement actions are taken within the context of both a legal and policy framework. Council staff will carry out their enforcement related work with due regard to the following principles.

Proportionality

A proportionate response means that the extent of Council's actions will be determined by having regard to the seriousness of the breach.

The Council recognises that most individuals want to comply with the law and will assist compliance by being open and cooperative, offering information to Council and being available to discuss compliance concerns.

In respect of proportionality, the following criteria will be considered by Council employees in determining the best course of action:

- Whether there are serious safety or health risks
- Where potential hazards are least well controlled.

The seriousness and nature of the breach, the relevant legislation, the willingness of the individual or entity to cooperate with any investigation, their contrition and the cost to the Council in pursuing the breach, are all relevant considerations to the Council's exercise of discretion.

Consistency

The Council will take a similar approach in similar cases to achieve similar outcomes. Decisions on enforcement and compliance require the use of professional judgement and discretion to assess varying circumstances. To assist this, Council will:

- Establish and follow standard operating procedures wherever relevant;
- Ensure fair, equitable and non-discriminatory treatment.

Transparency

The Council will be open and transparent about the manner in which it undertakes enforcement activities and the laws it enforces.

When remedial action is needed, the Council will explain clearly and in plain language wherever possible why the action is necessary. Where practicable, 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

Action and decisions relating to compliance and enforcement action will be recorded in accordance with the Council's Records Management protocols.

Complainants will be advised of what action has been taken and why, at an appropriate point in the process.

The *Public Interest Disclosure Act 2018* must also be considered in the view of improving transparency and accountability in public administration. Public officers must make a disclosure of the following two types of public interest information:

1. Environmental and health information – where there is a substantial risk to the environment or to public health and safety.
2. Public administration information – where there is potential corruption, misconduct or maladministration in public administration.

IMPLEMENTATION

Decision Making

Where non-compliance is discovered as a result of enforcement activities, options available to the Council to seek or promote compliance include:

- Explaining legal requirements and, where appropriate, the means to achieve compliance;
- Providing an opportunity to discuss points of issue where appropriate;
- Allowing reasonable timeframes to achieve compliance;
- Facilitating mediation between affected parties;
- Issuing a verbal or written warning; or
- Enforcement actions such as issuing an expiation, issuing an order/direction or prosecution.

Enforcement decisions are dependent on a number of different variables and must be fair, consistent, balanced and relate to common standards that ensure the public is appropriately considered.

In coming to a decision on the most appropriate means of enforcement, the authorised officer shall consider, amongst other relevant factors:

- The seriousness of the offence;
- The objectives of the relevant legislation;
- The degree of wilfulness involved;

- Past history;
- The consequences of non-compliance;
- The likely effectiveness of the various enforcement options;
- Deterrence;
- The effect on the community and other people; and
- Consistency of approach to similar breaches/offences.

An authorised Officer must, in the course of their enforcement duties adhere to State legislation [*Local Government (General)(Employee Code of Conduct) Variation Regulations 2018*] and relevant Council Policies including, but not limited to, the Code of Conduct, and Fraud and Corruption Prevention Policy.

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

- An alternative person will make decisions where possible; and
- The facts about any conflict/relationship will be recorded in accordance with the Council's Records Management protocols.

Written documentation will:

- Include all the information necessary to make clear what needs to be done to comply with legal requirements, the required time frame and if necessary, the reasons for these actions and potential penalties for failing to comply with the request;
- Include the legislation contravened, measures necessary to ensure compliance and the consequences of non-compliance; and
- Clearly differentiate between legal requirements and recommendations of good practice.

Written documentation and any other relevant evidence (such as photos) will be recorded in accordance with Council's Records Management protocols.

No action

No action will be taken when, after investigation, no breaches of the legislation are discovered.

In addition, it may also be appropriate to take no action when:

- The complaint is frivolous, vexatious or trivial in nature;
- The duty holder who may have breached a law has, or has committed to, making good the breach;
- The alleged breach is outside the Council's jurisdiction;
- Taking action may prejudice other major investigations; or
- Having regard to the principles of proportionality and consistency, Council has determined that the breach is of such minor nature that action would be an unreasonable use of Council resources.

Informal Action

Informal action to achieve compliance with legislation may include:

- Offering the duty holder who may have breached a law with a verbal or written warning;
- Verbal or written warnings that may include requests for remedial action.

Advice from officers will be conveyed clearly and simply wherever possible and any verbal advice or requests for action will be confirmed in writing.

The circumstances in which informal action may be appropriate include:

- The act or omission is not serious enough to warrant formal action;
- The duty holder's past history reasonably suggests that informal action will secure compliance;
- Confidence in the individual/other body is high;
- The consequences of non-compliance will not pose a significant risk; or

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- Where informal action may prove more effective than a formal approach.

Where statutory action is not possible or advisable, but it would be beneficial in a wider public safety context to urge a particular outcome, informal action may be taken and the reasons recorded in accordance with Council's Records Management protocols. The recipient will be made aware that the requested actions are not legally enforceable.

Mediation

Where practical, Council may strongly recommend mediation through an external provider. Mediation is a possible alternative where, after investigation, Council considers that the issues are unlikely or incapable of resolution through either 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

Service of Orders and Directions

Various pieces of legislation specify the procedures which Councils must follow, in order to:

- Advise of the intention to issue an Order;
- Invite submissions with respect to the matter;
- Order a person to do or refrain from doing a thing under specified circumstances; and/or
- Issue directions specifying how the Order may be complied with.

Authorised Officers will use professional judgement and discretion to assess the variables relating to each matter under consideration, including the reasonableness of the actions required by an Order, Notice or direction and the timeframe to comply.

Where possible and / or advisable, a notice of intention will be issued prior to proceeding to issue a Notice and / or Order.

In most cases the person receiving the Order/Notice has a right of appeal to the appropriate court if the Order/Notice is considered unreasonable. If an Order is served for which an appeal is possible, Council will advise the recipient in writing of the right to appeal and the relevant legal provisions at the time of serving the Order/Notice.

Action in Regard to a Default

Failure to comply with Orders and / or a Notice will incur further enforcement action such as launch of a prosecution.

Where action in regard to a default is provided for by legislation and the necessary work has not been carried out in the time allowed without good reason, the Council may undertake the required work. Before doing the work the Council will consider whether there is a realistic prospect that the person responsible will complete the work within a reasonable time. Where work in default is undertaken, the Council will seek to recover all costs over a fair period, using all statutory means available.

The decision to carry out action in default will be made by the Authorised Officer in conjunction with the relevant Manager.

Where an offence has been committed Council may issue an Expiation Notice or launch a prosecution in addition to taking action to fulfil an Order and / or Notice. This will only be done where the conduct of the recipient justifies taking such steps. Factors such as giving false information, the obstruction of Authorised Officers and the harm or risk of harm caused by the recipient's delay will be considered in determining additional enforcement actions.

Service of an Expiation Notice

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

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organisation has committed the alleged offence. In other words, there must be sufficient evidence on the face of it to enable a conclusion to be reached that there is a reasonable prospect of being able to prove an offence beyond reasonable doubt.

The following circumstances are likely to warrant an Expiation Notice:

- Certain breaches of the legislation administered by the Council;
- 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 an Order and / or Notice;
- Confidence in the individual/other body is low; or
- A written warning has been given for a similar offence.

Prosecution

A prosecution will only proceed where there is a reasonable prospect that an offence can be proved beyond reasonable doubt.

The following circumstances are likely to warrant a prosecution:

- A flagrant breach of the law such that public health, safety and welfare have been put at risk;
- The alleged breach is too serious or the risks too great to be dealt with by means of an expiation;
- A failure to correct an identified serious problem after having been given reasonable opportunity to do so;
- A failure to comply with the requirements of an order and / or Notice;
- An established and recorded history of similar offences;
- An unwillingness, on the part of the individual or other body, to prevent a recurrence of the problem; or
- The recovery of the costs of the investigation or remedial work or financial compensation that are required by the council or an aggrieved party.

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

Before a prosecution is recommended there must be reasonable and reliable 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 will be considered:

- Whether the offence was premeditated;
- The need to influence the offender's future behaviour;
- The effect on the offender's or witness's 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; and
- The likely length, expense and outcome of a trial.

The final decision to prosecute will be made by the Chief Executive Officer or delegate.

Appealing a Decision

In most cases where an Order or Notice has been served, the recipient will have the ability to appeal the decision. Appeals processes vary dependant on the legislation under which the Order or Notice has been served.

Councils Complaint Management Framework highlights the alternative statutory process available to recipient and is updated accordingly as the Courts are changed.

Appeal provisions are also available to a recipient of an expiation under the *Expiation of Offences Act 1996*.

DEFINITIONS

Authorised Officer

A person who is authorised to carry out statutory functions or powers as specified within a particular piece of legislation. The decision to appoint an Authorised Officer may only be made by Council or a delegate of Council.

CEO

Refers to the Chief Executive Officer (including their delegate) of the Rural City of Murray Bridge

Compliance

The act of adhering to and demonstrating adherence to an Act, By-Law, Regulation or similar. Compliance may or may not involve the process of enforcement.

Enforcement

Enforcement refers to the use of legislative provisions to direct a person or body to make good a breach of the Act and / or otherwise penalise a person for a breach. Enforcement is a tool to ensure compliance and accountability for illegal conduct or other wrongdoing.

Order/Notice

Formal direction(s) issued by Council or Council delegate to a person or entity concerning a breach of a particular piece of legislation.

Prosecution

The process of instituting legal proceedings against a person or body in relation to an illegal activity, with the intent of penalising the person/body for illegal activity.

Public Officer

A member of a local government body or an officer or employee of a local government body. Broader definition contained within the *Independent Commissioner Against Corruption Act 2012*.