

Enforcement Policy

Contents

1. Introduction
2. Our Approach
3. Achieving Compliance
4. Compliance Methods
5. Use of Discretion
6. Assessment of Risk and Response
7. Monitoring

1. INTRODUCTION

Council, the community and business have a shared responsibility to protect public, health, amenity, community wellbeing and the environment. Council are aware of its responsibilities to ensure specific laws and regulations are enforced and undertake to ensure that the community and business are aware of their legal requirements. Council commits to take action where required to ensure, legal requirements are met, that the community and business are fully aware of their responsibilities and understand the requirements placed upon them. Shared responsibility and knowledge will lead to increased compliance and thus reduced enforcement.

Council's Enforcement Policy is designed to ensure that all enforcement and compliance activities undertaken by Council to protect public amenity, community safety and the environment are undertaken independently, consistently, in the public interest with integrity, professionally and without fear, favour or bias.

2. OUR APPROACH

In undertaking our enforcement activities, we will strive to

- carry out the activities in a transparent manner which helps those we regulate comply and understand our shared responsibilities;
- base our regulatory and enforcement activities on risk;
- ensure clear information, guidance and advice is available to help those we regulate to meet their responsibilities;
- design easy to understand standard enforcement protocols regarding specific compliance functions e.g. parking, general animal related offences.

Using this approach, we will undertake our actions with:

- Fairness – to those we regulate and those who we safeguard and protect. Our approach will be firm and fair, tackling expediently those who commit the most serious risks to public and environmental safety and health and

those who continue to deliberately and flagrantly breach important regulatory standards and requirements;

- Integrity– we will be impartial, trustworthy, and sound in the judgements we make;
- Openness – we will explain with clarity our actions and any next steps to secure compliance with those we regulate and make available information to ensure our community our informed;
- Support – our focus is to help our community and businesses secure compliance, be better informed and better able to understand their own as well as Council’s responsibilities and their own rights for seeking redress;
- Responsiveness - we will respond with speed where high-risk, high impact noncompliance exists, and when called upon be flexible, agile and in-touch to seek out and tackle current and emerging high-risk activities.

3. ACHIEVING COMPLIANCE

When we seek to achieve compliance, the following principles will guide our enforcement and compliance activities:

- Targeted – focus on compliance in the highest risk activities whilst ensuring that critical consent conditions and requirements of permits, licences and registrations are fully complied with;
- Transparent – we will ensure that through our interventions and inspections, where regulatory non-compliance is found, our officers make clear the action and next steps they propose to take;
- Consistent – we aim to achieve consistency in our inspection and enforcement services, recognising that for all of the community and businesses, it is important to ensure there is a consistent approach;
- Proportionate – we will put in place and adopt systems and operating procedures to ensure the compliance requirements and any necessary enforcement action is proportionate to the risks and impacts posed and seriousness of the breach;
- Risk based – adapt a risk-based approach to non-compliant activities to provide robust, speedy and effective enforcement against those that commit the most serious regulatory offences and serial offenders who deliberately and wilfully flout the law, including those who seek to take commercial advantage from such offences;
- Accountable – we recognise the importance of, and the impact Council has on protecting the safety and health of the public and the quality of our local environment. We will be accountable for our decisions and actions to the community, stakeholders and business.

4. COMPLIANCE METHODS

When initially seeking compliance from the community and business we will work with them using non-enforcement processes and only use enforcement options as a first resort for activities that are:

- of high impact or risk to the community or environment;
- undertaken by those that are wilful or recalcitrant in their actions;
- specified within any internal enforcement protocols;

- undertaken by individuals or business who would or should be fully aware of their responsibilities or;
- repeat offenders.

As part of any enforcement-based approach Council will ensure that all the parties involved are provided with full details of the legislative requirements and further details regarding how they can lodge any internal or external appeals against the action taken by Council.

Non-enforcement-based options include:

- Education initiatives designed to highlight the legislative requirements a specific group or the community must meet;
- Providing detailed advice to applicants for permits, licences or registrations regarding their responsibilities and duties as well as the role that Council can take in ensuring compliance. This detailed advice can be provided in writing or verbally and can include formal documentation stating what actions must be undertaken to comply with the breach;
- Providing clear advice to those who are non-compliant on the requirements that have not been met and how these breaches can be rectified. This can include the need to apply for a permit/registration retrospectively so that any technical breach can be rectified if appropriate.

It should be noted that Council will strive to ensure full details regarding policies, processes and procedures are available for the community and business to access to ensure that they are able to make themselves aware of what is expected of them and the potential actions that Council can take.

If compliance cannot be obtained through non-enforcement techniques or if due to circumstances the initial response is to undertake enforcement action, there are a variety of enforcement based tools available to Council. All enforcement options will meet the appropriate legislative requirements.

Enforcement based options include:

- Issuing of a penalty infringement notice. The issuing of a penalty infringement notice is usually used where the offence that has occurred is of a minor nature, is not recurring and it is considered that the issuing of the notice will bring about compliance. A penalty infringement notice is unlikely to be issued without initial consultation with the offender unless the offender should have been aware of the requirement breached and/or Council has undertaken action to ensure that the offender is aware of the breach e.g. parking signage stating what is or is not allowed. The issuing of a Penalty Infringement Notice generally finalises a matter. Some penalty infringement notices can however be issued in conjunction with a notice (what notice?) or can include requirements to undertake additional items or works.
- Issuing a notice to comply. Notices to comply will be issued where the offence is ongoing, can be rectified by the offender and is of a nature that cannot be allowed to continue. It should be noted that in some circumstances it is possible to issue a penalty infringement notice and a

notice to comply for the same issue and both be concurrent. Non-compliance with a notice to comply can involve council taking various steps including:

- Issuing a penalty infringement notice;
 - Undertaking the works required and then seeking reimbursement of the costs incurred through the courts;
 - Taking legal action through the court/justice? system for non-compliance.
- Undertaking direct actions to secure compliance with the requirements of permits, licences or registrations issued which can include the impounding of items or potentially forced closure of a business e.g. under the Food Act.
 - Seeking direct intervention through the Judicial system including Magistrates Court and Victorian Civil and Administrative Tribunal (VCAT) where an activity poses a serious threat to the public or the environment and other options may unreasonably delay resolution of the issue.

5. USE OF DISCRETION

Council's discretion in determining the most appropriate level of response is established by legislation, case law, delegations, risk assessments, operating procedures, relevant public interest considerations and the facts of the individual case.

When determining the most appropriate level of response, the following discretionary factors must be considered. Improper considerations **will not** form the basis for any enforcement action undertaken by Council.

Acceptable Discretionary factors

<p>Offence related Factors</p> <ul style="list-style-type: none">• The seriousness of the offence• Impact on the community, public health and safety, environment and amenity• The likelihood of the offence continuing or being repeated• Whether there is an opportunity for voluntary compliance• The age of the offence• Infringement offence v prosecution
<p>Other factors</p> <ul style="list-style-type: none">• The manner in which the public would reasonably expect the matter to be dealt with• The cost to pursue the offence compared to the public interest of pursuing it• The most appropriate response to ensure an effective deterrent• Whether the proposed response would be counterproductive in terms of maximising compliance with legislation

Person related Factors

- The history of offending by the person concerned
- The level of malice or culpability of the person concerned (i.e. intentional, reckless, negligent or by mistake)
- Cooperation of the person concerned
- Personal circumstances including physical, mental health, financial hardship, and family violence
- Whether the compliance was inherited, or the person committed the offence

Unacceptable Discretionary factors

- The ethnicity, religion, sex, national origin or political associations of the person
- Political pressure or interference
- Personal feelings concerning the offence, the offender or the victim/issue
- The possible effect of the decision on those responsible for the decision

6. ASSESSMENT OF RISK AND RESPONSE

Council can become aware of compliance-based issues in two distinct ways, they are;

- Proactive, usually through the monitoring of permit, licence, or registration conditions or;
- Reactive, often complaint driven, where Council is informed of, or becomes aware of non-compliance issues. Council will generally not act upon anonymous complaints unless the complaint is considered a Tier 4 rating in the risk matrix. Council cannot act upon complaints of nuisance unless the person making the complaint is willing to provide their details and if required attend legal proceedings. All complainants' details are kept confidential (unless they are required as part of an enforcement process through the judicial system) to reduce any potential for retribution.

Once Council becomes aware of a breach the following risk-based Compliance Risk Matrix will be used to guide our enforcement activity.

Compliance Risk Matrix*to

Likelihood or Consequence	Insignificant No impact to the wider community or environment. Minor impact to a single or small group of the public	Minor May have a minor impact on the wider community or environment. Harm abated and some remedial works required	Moderate Has a moderate impact on community or environment. Noncompliance for a short duration (days). Harm abated and remedied	Major Has a major impact on community or environment
<ul style="list-style-type: none"> • Repeated non-compliance. • Past enforcement activity or breaches of related law and no remedial works undertaken. 	Tier 3	Tier 3	Tier 4	Tier 4
<ul style="list-style-type: none"> • Requirements are apparent (e.g. signage in place) • Previous enforcement activity or breaches of related law. 	Tier 2	Tier 3	Tier 3	Tier 4
<ul style="list-style-type: none"> • Non-compliance of medium duration (weeks). • Harm abated and some remedial works undertaken 	Tier 1	Tier 2	tier 3	Tier 4
<ul style="list-style-type: none"> • No history of noncompliance • Non-compliance of short duration (days). • Harm abated and remedied. 	Tier 1	Tier 1	Tier 2	Tier 3

- The risk matrix only applies if enforcement documentation relevant to a specific breach/es is not available eg some Food Act related matters and Animal registration matters are already documented and specific actions are implemented.

Levels of Enforcement

The level of enforcement response when considering the outcomes of the Compliance Risk Matrix are detailed below. Ultimately any council action is a combination of the outcome detailed in the Compliance Risk matrix and consideration of the discretion principles specified

Tier 1 Response

Tier 1 responses may include:

- provision of information or advice on how to be compliant;
- negotiating with the person so they voluntarily comply, or an agreement is reached to address the issues of concern;
- issuing a letter requiring work to be done or activity to cease instead of more formal action;
- issuing a warning.

Examples of compliance matters where a Tier 1 level of enforcement action may be appropriate are:

- A resident cutting their lawn once outside of the permitted hours;
- residents accessing a property other than via an approved driveway as an isolated incident.

Tier 2 Response

Tier 2 responses may include issuing:

- an infringement notice;
- a notice or a notice of intention to serve an order or notice under relevant local laws or legislation, then serving an order or notice if appropriate.

Examples of compliance matters attracting a Tier 2 level of enforcement action may include:

- general parking offences such as parking in a 'No Stopping' zone, parking for longer than indicated by a sign, or blocking a footpath;
- non-compliance with a Local Law permit condition;
- non-compliance with the Food Act;
- failing to maintain a residential property to the extent it is considered unsightly;
- failing to maintain an on-site sewage management system (septic system);
- non-compliance with a condition placed upon a planning permit;
- General domestic animal related offences such as not registering a dog or cat or a dog found wandering.

Tier 3 Response

Tier 3 responses may include:

- issuing an order or notice to stop someone doing something which causes
- issuing a direction for a person to carry out work.

Examples of a compliance matter with a Tier 3 elevated level of enforcement action may include:

- major non-compliance with the Food Act;
- rectifying an unsafe building or structure;
- failing to comply with dangerous dog requirements.

Tier 4 Response

Tier 4 responses may include:

- issuing an order or direction under relevant legislation;
- seeking an injunction through the courts to prevent future or continuing unlawful activity;
- commence legal proceedings for an offence against the relevant Act or regulation.

Examples of compliance matters with a Tier 4 level of enforcement action may include:

- illegal dumping where there are aggravating factors including toxic or hazardous materials, such as asbestos;
- sale of food which has been deemed to be a public health risk;
- when an Emergency Building Order is required;
- removal of significant vegetation.

7. Monitoring

Monitoring of Council staff adherence to this Enforcement Policy is essential to ensure its effectiveness. All issues taken to court will be assessed against this policy or adopted internal process before proceedings are initiated. 10% of all penalty infringement notices and 10% of all complaints (up to a maximum of 200) received by Council will be assessed against this policy to ensure conformity. The results of the monitoring will be presented to Council annually.