



# Enforcement Policy

<b>Reference Number:</b>	4.30
<b>Type:</b>	Council
<b>Category:</b>	Safety and Community
<b>Relevant Community Plan Outcome:</b>	<ul style="list-style-type: none"><li>• Educate and regulate to enable a safe and healthy environment.</li><li>• Provide accessible social infrastructure and services that engage our diverse community.</li><li>• Be bold and innovative in our practices, leadership and decision making.</li></ul>
<b>Responsible Officer(s):</b>	Manager Public Health and Safety, Manager Planning & Development
<b>First Issued/Approved:</b>	3 September 2012
<b>Minutes Reference:</b>	CoS 2/05/2022, Item 4.14
<b>Last Reviewed:</b>	May 2022
<b>Next Review Due:</b>	May 2024
<b>Applicable Legislation:</b>	Refer to Scope
<b>Related Policies:</b>	Order Making Policy Customer Experience Policy Expiation Notice Review Policy Unreasonable Requests for Service, Information and Complaints Policy Staff Code of Conduct Policy Engagement of Legal Services Policy
<b>Related Procedures:</b>	Standard Operating Procedures documented across Public Health and Safety and Planning and Development portfolios.

## 1. Purpose

The purpose of this policy is to establish a framework to provide consistency in enforcement action in matters of non-compliance and to ensure that any action is proportionate to the alleged offence in each case. The existence of this policy will assist to ensure transparency, procedural fairness and natural justice principles are applied in regard to enforcement action.

## 2. Scope

This Policy is relevant to all enforcement actions undertaken by Council staff and its authorised contractors for and on behalf of the Council within the City of Charles Sturt. This includes, but is not limited to, enforcement activities relating to the following legislation:

The Local Government Act 1999  
 Expiation of Offences Act 1996 and Regulations  
 Road Traffic Act 1961, Regulations and Codes  
 Private Parking Areas Act 1986 and Regulations  
 Dog and Cat Management Act 1995 and Regulations  
 Fire and Emergency Services Act 2005 and Regulations  
 City of Charles Sturt By-Laws  
 Local Nuisance and Litter Control Act 2016 and Regulations  
 The Public Health Act 2011 and associated Regulations, Standards and Policies  
 The Food Act 2001 and Regulations.  
 Supported Residential Facilities Act 1992 and Regulations.  
 The Environment Protection Act 1993 and Regulations.  
 The Development Act 1993 and Development Regulations 2008.  
 The Planning Development and Infrastructure Act 2016 and various regulations

## 3. Policy Statement

### 3.1 Introduction

Council is charged with legislative responsibilities which protect individuals and the community as a whole. Council's customers 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 is an "umbrella" policy which outlines Council's approach to enforcement matters and provides staff with direction about the manner in which enforcement activities are to be undertaken. Council will adopt an education, encouragement and enforcement approach where appropriate (3 E's philosophy) to secure legislative compliance. In line with the 3E's, it is recognised that prevention of behaviours to avoid a breach of legislation is optimal; therefore, education is a critical component in our roles. The provision of education to the community is an important element for all regulatory staff to influence the prevention of inappropriate practices and behaviours. It is recognised that prevention may not always be achievable, which is where encouragement and enforcement may take the lead role. Each of the issues under the responsibility of the Public Health and Safety and Planning and Development Portfolios is unique and require careful consideration to ensure that the right balance of education, encouragement and enforcement is achieved.

### 3.2 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.

### **3.2.1 Proportionality**

A proportionate response means that Council's actions will be scaled to the seriousness of the breach. It is important to note however that expiation amounts for offences are set by the State Government within each piece of legislation administered; therefore, Council does not have the discretion to reduce or set these fees.

Council recognises that 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 least well controlled. Depending on the seriousness and persistence of the infringement, Council will minimise the costs to the person or body infringing the law by enforcing the minimum action necessary to secure future compliance. To this effect mediation will be considered and utilised as appropriate to resolve disputes.

Prosecution will generally be used as a last resort, or for continuous serious offences.

### **3.2.2 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; and
- ensure fair, equitable and non-discriminatory treatment.

### **3.2.3 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 and 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 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.

People raising concerns will be advised of what action has been taken and why that action has been taken.

### 3.3 Authorised Officers

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of Council's policies and procedures to ensure a consistent approach to their duties. Any decision to act other than in accordance with this policy must have approval from the relevant Manager and the reasons for action recorded in accordance with Council's Records Management protocols.

Officers are required to show their Authorised Officer/Person identification card on request.

### 3.4 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; and/or
- enforcement actions such as issuing an expiation, issuing an order/direction or prosecution.

Enforcement decisions must be fair, consistent, balanced and relate to common standards that ensure the public is adequately protected. Where a decision is made not to investigate concerns raised, the decision and reasons, will be recorded in accordance with Council's Records Management protocols and the person raising the concerns will be advised verbally and/or in writing.

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

- the seriousness of the offence;
- 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.

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

- an alternative authorised officer will make decisions where possible;
- the facts about any conflict/relationship will be recorded in accordance with Council's Records Management protocols; and
- Planning and Development staff will comply with the requirements of the Planning and Development Code of Conduct Guidelines.

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.

### **3.5 Enforcement Options**

A number of enforcement options are available which will be dependent on the merits of each matter being considered. These options are detailed below:

#### **3.5.1 No Action**

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

It may also be appropriate to take no action when:

- the concerns raised are frivolous, vexatious or trivial in nature;
- the alleged offence is outside Council's area of authority; or
- taking action may prejudice other major investigations.

Education and encouragement tools may be utilised in accordance with departmental standard operating procedures in accordance with the 3 E's approach.

#### **3.5.2 Informal Action**

Informal action to achieve compliance with legislation may include:

- offering verbal or written advice;
- verbal warnings and requests for action; or
- written warnings.

Education and encouragement tools may be utilised in accordance with departmental standard operating procedures in accordance with the 3 E's approach.

Advice from officers will be put clearly and simply and 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
- where informal action may prove more effective than a formal approach.

Where statutory action is not possible, but it would be beneficial in a wider public safety context to urge a particular outcome, such action will be taken by an officer of Council 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.

#### **3.5.3 Service of Orders/Notices**

An Order/Notice is a written direction of Council requiring specific action to be taken to secure legislative compliance. A range of legislation administered across the organisation provides authorised officers with the ability to issue an Order and specific requirements as detailed in the appropriate Act that the officer is working under. For example a number of Acts follow a similar process to the following procedure:

- 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.

Council 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 and the timeframe to comply.

Only in circumstances such as a threat to life or immediate threat to public health or safety, or where there is a statutory requirement or limited timeframe to secure compliance, will an Order/Notice be made without giving notice of intention. In these circumstances immediate compliance to resolve a situation can be required.

In many cases the person receiving the Order/Notice has a right of appeal to the appropriate court or directly with Council if the Order is considered unreasonable. If an Order/Notice 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 in accordance with the relevant legislation.

Where there is evidence that an offence has been committed Council may issue an Expiation Notice or launch a prosecution in addition to serving an Order/Notice (not including an Expiation Notice). This will only be done where it is determined that the conduct of the recipient justifies taking both steps.

#### **3.5.3.1 Action in Regard to a Default of Order/Notice**

Failure to comply with Orders/Notices will incur further enforcement action such as the issuing of an Expiation Notice or the launch of a prosecution.

Where action in regard to a default is provided by legislation and the necessary work has not been carried out in the time allowed without good reason, Council may have the powers to undertake the required work. Before doing the work, 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 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 Team Leader and/or 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. This will only be done where the conduct of the recipient justifies taking such steps. Factors such as giving false information, the obstruction of Council staff and the harm or risk of harm caused by the recipient's delay will be considered in determining additional enforcement actions.

#### **3.5.4 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 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 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/Notice;
- confidence in the individual/other body is low; or
- a written warning has been given for a similar offence.

### **3.5.5 Mediation**

Where appropriate, dependent upon the severity of the breach, Council will make mediation available. Mediation is a possible alternative where, after investigation, an officer determines that the non-compliance is capable of resolution through mediation rather than enforcement means. The use of mediation services may also be appropriate where a positive outcome for Council, in the interests of the broader community, is considered possible through this alternative dispute resolution process in order to minimise the costs to both Council and the individual.

### **3.5.6 Prosecution**

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

The following circumstances are likely to warrant a prosecution:

- a blatant 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/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 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 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 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 their delegate.

#### 4. Definitions

Key Term – Acronym	Definition
Enforcement	<p>a combination of the provision of advice and assisting compliance with formal action where necessary. This is intended to encourage higher levels of voluntary compliance with legal requirements by individuals, businesses and other bodies.</p> <p>Notwithstanding the above, Council will take immediate action when required (for example to ensure public health and safety or to protect the environment) and take firm action against those who act unlawfully when circumstances warrant.</p>
Prosecution	the process of instituting legal proceeding.
Compliance	the act of adhering to and demonstrating adherence to an Act, By-Law, Regulation or similar.
3E's	Educate, Encourage, Enforce
Order/Notice	A written direction of Council requiring specific action to be taken to secure legislative compliance