Enforcement Policy

Strategic Reference	Outcome 5 – Leadership Strategy 3.1 – Council is an organisational leader, reinforcing our position as a leading local government body. Strategy 3.5 – Council reports openly and transparently on its performance. Strategy 3.6 – Council staff and elected members act with integrity and accountability.
File reference	AR18/3369
Responsibility	Community & Corporate Department
Revision Number	4
Effective date	August 2011
Last revised date	October 2025
Minutes reference	278/25, 017/18, 234/14, 244/11
Next review date	October 2028
Applicable Legislation	Local Government Act 1999 Expiation of Offences Act 1996 Development Act 1993 Planning, Development and Infrastructure Act 2016 Dog and Cat Management Act 1995 Environmental Protection Act 1993 Fire and Emergency Services Act 2005 Food Act 2001 Motor Vehicles Act 1959 SA Public Health Act 2011 Road Traffic Act 1961
Related Policies	Council's By Laws
Related Procedures	N/A

1. 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 other bodies to comply with legislation, Council's Authorised Officers are required to carry out activities which may include enforcement and compliance.

The Enforcement Policy (the 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.

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 (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 Council's area;
- unlawful development;
- unsightly premises;
- general local nuisance issues;
- unlawful use of Council roads or land;
- non-compliance with Council By-Laws;
- fire safety;
- burning complaints;
- management of public health and public safety issues;
- patrolling streets and public places;
- inspecting premises either on a routine programmed basis or on a random basis; and
- responding to enquiries and complaints.

2. Purpose of the policy

- to provide consistency in enforcement action in matters of non-compliance;
- to ensure transparency, procedural fairness and natural justice principles are applied; and
- to ensure that enforcement action is proportionate to the alleged offence in each case.

3. Definitions

"Assessment Manager" - the person acting under authority of the Minister for Planning under the *Planning, Development and Infrastructure Act 2016.*

"Authorised Officer" - a person who is authorised by the Council to carry out statutory functions or powers as an authorised person, officer or inspector as specified within a particular piece of legislation.

"Compliance" - the act of adhering to and demonstrating adherence to the law.

"Enforcement" - Council adopts a broad definition of "***enforcement***" which combines 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.

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.

"Expiation notice" - alleges that an individual or entity has committed an offence and sets out an expiation fee, which may be paid to expiate the offence, as an alternate to prosecution.

"Non-Compliance" includes:

- failure to comply with the law;
- undertaking an activity without the required permit or consent;
- commencing or carrying on an activity contrary to the terms or conditions of a permit or consent;
- failure to comply with an Order;
- breaching the criminal law.

"Order" - a written direction or requirement, such as an order or notice, requiring specific action to be taken to ensure compliance.

"Prosecution" - the process of instituting legal proceedings against a person or body in relation to an alleged non-compliance and may result in a criminal conviction, fines, costs, orders, and/or terms of imprisonment being imposed

4. 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.

4.1 Proportionality

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

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.
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

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.

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

4.2 Consistency

Council will endeavour to 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; and
- record any deviation from standard operating procedures and the reasons.

4.3 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 on.

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.

Where it is not practical to give notice, the reasons why will be recorded in accordance with Council's records management protocols.

Complainants will be advised of what action has been taken and why that action has been taken.

The *Public Interest Disclosure Act 2018* must also be considered in the context of improving transparency and accountability in public administration. Public officers are required to disclose 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.

5. Authorisation of Officers

Only officers appointed by the Chief Executive Officer and holding appropriate qualifications 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 authorisation(s) on demand.

6. Decision making

Council administers and enforces a broad range of legislation. As a result, the enforcement action taken by Council may vary, depending on the legislation being enforced. In some circumstances, more than one enforcement option will be available, in which case the most appropriate option will be considered, having regard to the principles in this policy and/or, consultation with the Assessment Manager or Accredited Building Professional (if appropriate).

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 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 a complaint, the decision and reasons will be recorded in accordance with Council's records management protocols and the complainant will be advised in writing.

Subject to a provision of this policy to the contrary, Council decisions about which enforcement option to pursue will be made by the Authorised Officer, Accredited Professional or Assessment Manager with responsibility for enforcement of the relevant provision, or otherwise by resolution of Council.

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.

An Authorised Officer , Assessment Manager or Accredited Professional must, in the course of their enforcement duties adhere to applicable legislation and other relevant Codes of Conduct and/or Council policies.

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 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 or video) will be recorded in accordance with Council's Records Management protocols.

7. Enforcement options

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

Following a full consideration of the matter, a determination to take no action is, itself, a decision of the Council.

7.2 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.

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 person'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 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.

7.3 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.

7.4 Formal action

7.4.1 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.

Orders to address matters of non-compliance may be used, or sought from a court, where:

- an order is required to prevent further unlawful activities or non-compliance;
- the non-compliance is of such a serious nature so, as to warrant immediate action;
- the non-compliance has resulted in a threat to life or an immediate threat to public health or safety;
- informal action has failed to achieve Compliance.

Where possible and / or advisable, a notice of intention will be issued prior to proceeding to issue an Order. This is not required in all cases and may not be possible in emergency situations.

In most cases the person receiving the Order has a right of appeal to the appropriate court if the Order 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.

Where there is evidence that an offence has been committed Council may issue an Expiation Notice or commence prosecution in addition to serving an Order. .

7.4.2 Action in regard to a default

Failure to comply with Orders 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, Council may 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 action is undertaken, the Council will seek to recover its costs of doing so (over a fair period), using all statutory means available. The decision to carry out action in default will be made by the Chief Executive Officer or delegate.

Where an offence has been committed, Council may determine to issue an Expiation Notice or commence prosecution proceedings, in addition to taking the action required by the Order. Factors such as giving false information, the degree to which the recipient has wilfully ignored the Order, the obstruction of Authorised Officers and the harm or risk of harm caused by the person's delay will be considered in determining additional enforcement action(s).

7.4.3 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:

- there has been a failure to comply with relevant legislative provisions and an enforcement response, short of prosecution, is justified in the circumstances;
- 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;
- confidence in the individual/other body is low; or
- A written warning has been given for a similar offence.

7.4.4 Civil Penalties and Enforceable Undertakings under the Local Nuisance and Litter Control Act 2016

Council has the ability under Section 34 of the Local Nuisance and Litter Control Act 2016 to recover civil penalties in relation to offences against that Act.

This power is a targeted, pragmatic, and efficient way to address compliance matters commonly faced by the Council.

Council is to use its discretion as to when it is appropriate to utilise this power, bearing in mind generally it will be for situations involving a breach of the legislation which warrants a form of punishment that is more serious than an expiation, but not serious enough to warrant a prosecution.

A civil penalty may be recovered in one of two ways, either by negotiation with the alleged offender, or by application to the Environment, Resources and Development Court.

Council may not recover an amount by way of civil penalty in respect of a contravention if the relevant offence requires proof of intention or some other state of mind. The Council must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under civil penalty provisions, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.

If the Council applies to the Court for a civil penalty, it is required to give the offender the option of electing to be prosecuted first. It therefore should, prior to making such an application, ensure there is a reasonable prospect that the offence can be proven beyond reasonable doubt.

If Council negotiates a civil penalty, in determining what it considers an appropriate penalty, it should take into account:

- the maximum penalty for the offence under the relevant act;
- the nature and extent of the offence;
- the seriousness of the offence;
- the offenders history of compliance with the relevant act;
- any detriment to the public that has resulted from the offence;
- any financial benefit or saving the offender stood to gain from the offending; and
- any other factors that aggravate or mitigate the offending.

Should Council determine that a civil penalty is appropriate, the alleged offender is to be notified in writing setting out basic details of the alleged offence, the appropriate penalty and the factors taken into account in arriving at that quantum.

7.4.5 Civil Penalties and Enforceable Undertakings under the Planning, Development and Infrastructure Act 2016

Council is authorised by the State Planning Commission to use civil penalties under section 225 of the Planning, Development and Infrastructure Act 2016 ('PDI Act') and enforceable voluntary undertakings under section 230 of the PDI Act.

Civil penalties and/or enforceable voluntary undertakings may be utilised as an alternative to prosecution where enforcement action by an authorised officer appointed by the Council under the PDI Act has commenced in the following circumstances:

- The enforcement action relates to an unlawful change of use or unlawful building work; or
- The enforcement action relates to unlawful Regulated or Significant Tree removal; or
- The enforcement action relates to a repeat-offence by a person or a company under the PDI Act

7.4.6 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;
- 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;
- whether the individual or entity has shown remorse or contrition;

- any defences available to the individual or entity;
- the need to maintain confidence in the Council as a prosecuting authority

The likely length and expense of any trial is a relevant (but not determinative) factor when deciding whether to prosecute for unlawful activities. Similarly, the implications and financial burden on a person or entity will not be determinative in considering whether to proceed with a prosecution.

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

8. Availability/Accessibility

This policy is available for inspection at Council's offices during normal business hours and Council's website, and will be emailed to interested parties on request (please lodge request in writing via email to council@coorong.sa.gov.au).

9. Document History

This policy will be reviewed at least every three (3) years or more frequently if legislation or Council requires.

Version	Adopted	Minute No	Description of change(s)
1	16 August 2011	245/11	New policy
2	21 October 2014	234/14	Cyclical review
3	20 February 2018	017/18	Cyclical review
4	21 October 2025	278/25	Definitions refined References to Assessment Manager and/or Accredited Professional clearly stipulated throughout Provisions of *Public Interest Disclosure Act 2018* inserted at clause 4.3 Powers for civil enforceable undertakings inserted at clauses 7.4.4 and 7.4.5 owing to commencement of legislation since policy was last reviewed