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|  <b>Adelaide Plains Council</b> | <b>Enforcement Policy</b>   |  |
|  | <b>Version Adoption by Council:</b> 23 September 2019<br><b>Resolution Number:</b> 2019/378<br><b>Current Version:</b> V1 |  |
|  | <b>Administered by:</b><br>General Manager –<br>Development and Community   | <b>Last Review Date:</b> 2019<br><b>Next Review Date:</b> 2021 |
| <b>Document No:</b> D19/24583  | <b>Strategic Outcome</b><br>4.1.1.3: Support Community Safety   |  |

## 1. Objective

Council has legislative requirements and responsibilities to protect individuals and the broader community. In this context Council’s customers include those on whom the law imposes and duty and those who the law seeks to protect. Whilst acknowledging that the ultimate responsibility to comply with the law rests with individuals and other bodies, Council staff are at times required to carry out activities that ensure legislative compliance.

This is an “umbrella” policy which outlines Council’s approach to enforcement matters and provides staff with guidance about the way in which enforcement activities should be undertaken. Council may also carry out other activities such as community education to encourage compliance, to which specific policies and/or procedures may also apply.

## 2. Scope

This Policy applies to all legislation administered and enforced by Council, including, but not limited to:

- *Australian Road Rules*
- *Council by-laws*
- *Development Act 1993 and Development Regulations 2008*
- *Dog and Cat Management Act 1995*
- *Environment Protection Act 1993*
- *Expiation of Offences Act 1996*
- *Fire and Emergency Services Act 2005*
- *Food Act 2001*
- *Housing Improvement Act 1940*
- *Local Government Act 1999*
- *Local Nuisance and Litter Control Act 2016*
- *Planning, Development and Infrastructure Act 2016*
- *Road Traffic Act 1961*

- *Safe Drinking Water Act 2011*
- *South Australian Public Health Act 2011*
- *Supported Residential Facilities Act 1992*

### **3. Definitions**

Council adopts a broad definition of enforcement, which includes the provision of advice and ensuring compliance through formal action where necessary. It is intended that high levels of voluntary compliance with legal requirements, by both individuals and other bodies, will be achieved. Notwithstanding this, there will be occasions when immediate action is required and firm action against those who act unlawfully is warranted.

### **4. Principles of Good Enforcement**

Enforcement actions are taken in the context of a legal and policy framework. Council staff shall carry out enforcement related work with due regard to the below listed principles.

#### 4.1. Proportionality

- Council's actions shall be scaled with regard to the seriousness of the breach(es).
- Council acknowledges that most individuals and other bodies want to comply with the law. Staff will assist with compliance by being open and transparent, offering informal advice and providing opportunity to discuss compliance matters.
- Resources will be focussed on activities and non-compliance that give rise to serious risks and hazards. Enforcement action will be scaled with regard to the seriousness of the breach and need to secure future or ongoing compliance.
- A prosecution will generally only be commenced for serious offences, continuous offences or offences that pose a severe risk to the community.

#### 4.2. Consistency

- Council will take a similar approach to similar cases to achieve similar outcomes.
- Decisions on enforcement require professional judgement and discretion to be used in varying circumstances. Council staff will ensure fair, equitable and non-discriminatory treatment of all persons.

#### 4.3. Transparency

- Council will be open and transparent about how it undertakes enforcement and the laws it enforces, and will be clear and open about what is expected from those on whom the law places a duty.
- In all education and enforcement activities undertaken by Council, staff will make a clear distinction between what is legally required and what is desirable but not compulsory.

- When remedial action is required Council will explain clearly and in plain language why the action is necessary. If practicable, Council will give notice of its intent to commence formal action and will clearly outline the actions required to be taken. Advice about seeking a review of, or appealing Council's decision will be provided.
- Where not practical to give notice, where there is a serious risk or hazard, or where legislation requires immediate action, reasons as to why notice of intent was not given will be recorded in line with Council's Records Management protocols.
- Complainants (other than anonymous complaints) will be kept apprised of actions undertaken in relation to their complaint.

## **5. Authorisation of Officers**

- 5.1. Only officers who have undertaken appropriate training, qualifications and or have relevant experience will be authorised to take enforcement action. Officers will also have training in and understanding of Council's policies and procedures to ensure a consistent approach to their duties.
- 5.2. Officers shall be issued with identity cards that list their authorisations and must show these on request or as required by the legislation they are administering.

## **6. Decision Making**

- 6.1. When non-compliance is identified as a result of enforcement activities, the following options will be available to Council to seek compliance any may include all or any of:
  - Explaining legal requirements and the means to achieve compliance;
  - Providing opportunity to discuss points of issue where appropriate;
  - Allowing reasonable timeframes to achieve compliance;
  - Issuing warnings either verbally or in writing;
  - Enforcement action such as issuing an order, direction, expiation or commencing prosecution.
- 6.2. An enforcement decision must be fair, consistent and balanced to ensure the adequate protection of the community. Where a decision is made not to investigate a complaint, the decision and reasons will be recorded in line with Council's Records Management protocols and the complainant informed (other than anonymous complaints, where this cannot occur).
- 6.3. In coming to a decision about the most appropriate means of enforcement, an authorised officer shall consider the following non-exhaustive relevant factors:
  - The seriousness of the offence;
  - The degree of wilfulness involved;

- Any past history of compliance or non-compliance;
- The probable effectiveness of the various enforcement options;
- The need for deterrence;
- The effect on the community and other people;
- Consistency of approach to similar offences.
- The available evidence to support the decision.

6.4. Where there is a personal relationship or association, or perceived association or relationship, between a Council employee or contractor and any person or other body who may have breached a law an alternate Council employee or contractor will make decisions where possible and the facts about the conflict/relationship will be reported and recorded in accordance with Council's Records Management protocol.

## **7. Approach to Illegal Activities**

Council will adopt the following approach to matters relating to illegal activity:

- Consider and, where appropriate, investigate all customer requests concerning illegal activity within Council's jurisdiction;
- Where appropriate, refer illegal activity to SAPOL, where it falls outside of Council's jurisdiction.
- Decision making in respect of enforcement action will be prioritised according to the degree of risk as assessed by the Council.

A decision to prosecute will be made by Council's Chief Executive Officer, General Manager – Development and Community or Manager – Regulatory Services (and anyone acting in those positions).

## **8. Enforcement Options**

### **8.1. No Action**

Where no breaches of legislation are identified after investigation no further action will be taken.

It may also be appropriate not to take action when:

- The alleged breach is outside of Council's jurisdiction;
- The complaint is vexatious, frivolous, or trivial in nature;
- The complaint is anonymous;
- The person or other body alleged to have breached a law has undertaken to rectify the breach;

- After having regard to the principles of consistency and proportionality outlined in this policy, Council makes a determination that the breach is minor in nature and that action would be an unreasonable use of Council resources; or
- There is insufficient evidence to justify an alleged breach or offence.

## 8.2. Informal Action

Informal action to achieve legislative compliance may include:

- Offering an individual or entity who may have breached a law with verbal or written warning;
- Verbal or written warnings may include requests for remedial action.

Advice from Council will be conveyed clearly and simply and any verbal advice or request for action will be confirmed in writing, as determined by procedures.

The circumstances in which informal action may be appropriate include:

- The breach is not sufficiently serious to warrant formal action
- The known history of the person or other body who has committed the breach indicates voluntary compliance will be secured through informal action
- Any consequence of non-compliance will not result in or pose a significant risk or nuisance to other persons or property
- Council's confidence in the individual or entity is high
- Where informal action may achieve a more effective result than formal action

## 8.3. Formal Action

### 8.3.1. *Service of Orders*

Formal orders may be issued by Council or a relevant court of competent jurisdiction, in line with the nature of the breach and relevant legislation. An order shall only be sought from a court to address alleged breaches when:

- The breach is of such a serious nature that immediate action is required
- An order is required to prevent further illegal activity
- There is a threat to life or immediate threat to the safety or health of the public as a result of the breach
- Informal action has failed to achieve compliance

A decision to seek an order from a court will only be made by those staff members who have appropriate delegation.

In some circumstances a formal order may be issued verbally under applicable legislation. Where this occurs a record of such order will be made in line with Council's Records Management Policy and procedures. The order will also be confirmed in writing within the timeframe required by legislation.

A person or other body to whom an order is given will ordinarily have a right of appeal to an appropriate court, in accordance with applicable legislation. Where such right of appeal exists Council will include written notification of the right of appeal and the relevant legal provisions with the order at the time it is served.

Failure to comply with orders will result in further enforcement action being taken.

### 8.3.2. *Expiation Notices*

Expiation notices may be issued under applicable legislation, as an alternate means to prosecution. An expiation notice alleges that an offence has been committed and sets out that a fee may be paid as an alternative to prosecution. Evidence that is sufficient to prove the offence occurred must be obtained before an expiation notice is issued.

Authorised officers of Council may issue expiation notices for a range of offences under various legislation, and will use discretion and apply professional judgement when deciding whether it is appropriate to issue an expiation notice.

A person or other body to whom an expiation notice is issued may, in the first instance, seek an internal review of the notice in accordance with section 8A of the *Expiation of Offences Act 1996*. A person also has a right to elect to be prosecuted for the offence alleged, as an alternate to paying the expiation fee. Payment of an expiation fee is voluntary and is not an admission of civil liability or guilt.

### 8.3.3. *Prosecution*

A decision to prosecute will be made taking into account public interest considerations. Prosecution proceedings may be commenced by Council when:

- A person or other body in receipt of an expiation notice does not expiate the offence by payment or elects to be prosecuted
- The breach is of a serious nature so as to warrant a prosecution in the circumstances

The following factors will be considered in determining whether a prosecution is in the public interest:

- The prevalence of the alleged offence and the need for general and specific deterrence
- Whether the person or body has a history of committing similar offences
- Whether the person or body has shown contrition or remorse
- Whether the alleged offence was premeditated
- The availability, credibility and competence of any witnesses
- The effect of a prosecution on the health, whether physical or mental, of a person, balanced against the seriousness of the alleged offence
- The admissibility of the available evidence
- Any applicable possible defences
- The need to maintain confidence in Council as a prosecuting authority

A prosecution should not be commenced in the absence of a reasonable prospect of success in securing a finding of guilt against the alleged offender.

The length and expense of a prosecution will be a relevant (but not decisive) consideration when making a decision to prosecute. Further, the implications and financial burden on a person or other body will not be a decisive consideration when making a decision to prosecute.

As a matter of practical reality, the proper decision in most cases will be to proceed if there is sufficient evidence available to justify a prosecution. Although there may be mitigating factors present, often the proper decision will be to proceed with a prosecution and for those factors to be put to the sentencing court in mitigation. Nevertheless, where the alleged offence is not as serious as plainly to require prosecution, Council as the prosecuting authority will always apply its mind to whether the public interest requires a prosecution to be pursued.

Council may incur significant costs (legal and / or otherwise) when enforcement action is taken to rectify Illegal Activities. In the interest of reducing the financial burden of pursuing enforcement and compliance matters on ratepayers, where possible, the Council will seek to recover those costs incurred in attempting to rectify the breach through the relevant court.

## **9. Related Documents**

*Complaints Handling Policy*

*Public Interest Disclosure Procedure*

## **10. Records Management**

All documents relating to this Policy will be registered in Council's Record Management System and remain confidential where identified.

## **11. Document Review**

This Policy will be reviewed every two (2) years in accordance with Council's Policy Review Schedule.

## **12. References**

*Local Government Act 1999*

## **13. Further Information**

Members of the public may inspect this Policy free of charge on Council's website at [www.apc.sa.gov.au](http://www.apc.sa.gov.au) or at Council's Principal Office at:

2a Wasleys Rd, Mallala SA 5502

On payment of a fee, a copy of this policy may be obtained. Any queries in relation to this Policy must be in writing and directed to the General Manager Development and Community.