

Enforcement Procedure

Procedure Author	General Manager – City Services
Date of next review	December 2022

1. Purpose

This procedure outlines the decision making principles and strategies that will underpin the Council’s approach to enforcement action, including the making of Orders.

2. References and Supporting Documentation

This Procedure is to be read in conjunction with the Enforcement Policy.

3. Application

Chief Executive Officer	To ensure transparency and to promote consistent enforcement strategies in the best interests of the community.
Relevant Senior Managers and Managers: <ul style="list-style-type: none"> ○ Senior Manager - Health, Environment & Regulatory Services ○ Senior Manager - Development Services ○ Manager - Regulatory Services ○ Manager - Environmental Health & Immunisation ○ Manager - Planning Services ○ Manager - Building & Compliance 	Provide appropriate systems, processes or guidelines for delegated and authorised officers to utilise when making decisions on enforcement activities.
Authorised and Delegated Officers	Council’s authorised and delegated officers are to adhere to the Enforcement Policy and follow this procedure as well as relevant legislation and guidelines.

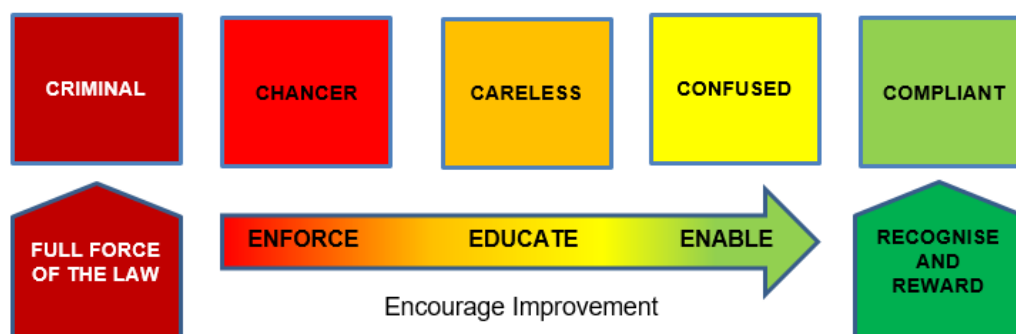
Governance Team	To ensure this Procedure is made available on the Council website and available on request for viewing at Council's Principal Office.
Engagement and Insights Team	To ensure that this Procedure is made available for public consultation following correct public consultation procedures, and ensure this Procedure is made available on the Council website

4. Procedure

4.1 Decision Making

Decision making frameworks will be developed by each relevant team in line with this procedure. How they are developed will be dependent on the intent/spirit of the legislation being administered, and the severity of an offence or risk to the community or environment. The following provides a reference for establishing a decision making framework, and/or work process:

Intent / Motivation	Possible Enforcement Response
Criminal - as defined by the relevant legislation in each case, but generally a behaviour associated with intentional or serious negligence leading to harm or injury.	Prosecution, Referral to appropriate authority (e.g. Police)
Chancer - someone who is reasonably expected to know the laws but is willing to risk it	Notice, Expiation, Prosecution through election or repeated offences
Careless - someone who is reasonably expected to know the laws but has not given sufficient attention or thought to avoiding non-compliance	Education, Warning, Expiation for repeated offences
Confused - someone who has little experience or knowledge of the laws or someone who lacks clear distinction of the elements of the law and has accidentally breached it.	Enable compliance, Education, Warning
Compliant - someone who is reasonably expected to know the laws and displays such knowledge, skills and experience to meet the requirements of laws.	Enable compliance, Positive Compliance reports, Council data and reporting
Champion - someone who understands the laws and displays knowledge, skills and experience, and is willing to educate and demonstrate to others.	Positive Compliance Reports, Recognition of attainment, reward with reduced fees where possible.



While decisions of enforcement require the use of professional judgement and discretion to assess varying circumstances officers will:

- Follow standard operating procedures
- Ensure fair, equitable and non-discriminatory treatment; and
- Record any deviation from standard operating procedures and the reasons.

4.2 Enforcement Options

A number of enforcement options are available to delegated and authorised officers when considering enforcement actions:

4.2.1 No Action

No action may be taken when, after investigation, no breaches of the legislation are discovered, or where the breach is insignificant or inconsequential with regard to community impact.

4.2.2 Mediation

Where appropriate, in exceptional circumstances, Council may make mediation services available.

4.2.3 Informal Action

Education will be a critical component to encouraging and achieving voluntary compliance. Educational tools and strategies may be developed by each team and may include any of the following types:

- a) Offering verbal advice
- b) Provision of information (e.g. guidelines, factsheets, details of other regulatory bodies)
- c) Corrective action requests
- d) Verbal warnings
- e) Written warnings

4.2.4 Formal Action

Council has various powers that it may use to secure legislative compliance. Each team that undertakes enforcement action must therefore develop guidelines and work instructions that accurately set out the prescribed process specific to the legislation they are administering. Formal actions can include:

- a) Issuing of orders/Notices and Directions
- b) Issuing of expiations
- c) Prosecution
- d) Action regarding Default of Order/Notice

4.3.5 Service of Orders/Notices and Directions

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 delegation to issue an

Order/Notice and specific requirements as detailed in the relevant Act that the officer is authorised.

Notwithstanding the provisions of other legislation, Section 254 of the *Local Government Act 1999* gives Council Order Making Powers that allows Authorised Officers to order a person to do, or to refrain from doing, a specified activity. The process of issuing an order under the Order Making Power is defined in Section 255 of the Local Government Act 1999.

4.2.6 **Service of an Expiation Notice**

If an expiation fee is fixed by or under an Act, regulation or By-Law in respect of an offence, an Expiation Notice may be given under the Expiation of Offences Act 1996. A person receiving an Expiation Notice is entitled to (in writing) appeal their expiation informally to Council, or 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. (There must be sufficient prima facie evidence to enable a conclusion to be reached that there is a reasonable prospect of being able to prove an offence). Council Officers will use professional judgement and discretion to assess the variables relating to each matter under consideration. Where an Expiation Notice is issued for noncompliance with an Order, this will include the reasonableness of the actions required by the Order and the timeframe to comply.

4.3.7 **Prosecution**

A prosecution will only proceed where there is a reasonable prospect of a successful outcome being upheld in the relevant court. 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. The final decision to prosecute will be made by the Chief Executive Officer or their delegate

4.3.8 **Action regarding Default of Order/Notice**

Failure to comply with Orders/Notices may incur further enforcement action such as Council taking action on default of the Order or Notice, or the issuing of an Expiation Notice, or the commencement of prosecution proceedings

5. **Feedback**

Your feedback on this procedure is invited and can be directed to the Manager Governance via email to governance@playford.sa.gov.au or by calling the Customer Contact Team on 8256 0333.

Administration use only

ECM document set no.	3936742
Version no.	1
Policy link	Enforcement Policy
Procedure author	General Manager – City Services
Endorsed by	Council

Resolution no.	TBA
Legal requirement	Section 259 - Local Government Act 1999
Review schedule	2 years
Date of current version	N/A
Date of next review	December 2022

Version history

Version no.	Approval date	Approval by	Change
1	TBA	Council	New Procedure
