



**Light
Regional
Council**

Enforcement Policy

Reference Number:
Responsible Department:
Related Policy/Procedure:

Section 4 No. 06
Strategy and Development
4.07 Building Inspections Policy
6.09 Public Consultation Policy
6.12 Complaints Handling Policy
6.20 Council Members Records Management Policy
6.21 Council Employees Records Management Policy
6.31 Unreasonable Complainant Conduct Policy
7.01-7 By-Laws
7.08 Order Making Policy

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Applicable Legislation:

17 April 2001
23 May 2023
OCM-2023/109
Amendment No. 6
Dog and Cat Management Act 1995
Environment Protection Act,
Expiation of Offences Act 1996
Fire and Emergency Service Act 2005
Food Act 2001
Local Government Act 1999,
Local Nuisance and Litter Control Act, 2016
Planning, Development and Infrastructure Act, 2016
Planning and Design Code
Private Parking Areas Act 1986
Road Traffic Act 1961
South Australia Public Health Act 2011
June 2026
Every three (3) years, or as legislation changes occur (whichever is the earlier occurrence).

Next Review Date:
Review Frequency:

1. Introduction and Background

Local Government is charged with legislative responsibilities designed to protect individuals and the community. These include (but are not limited to) responsibilities for the safety and amenity of the community's environment under certain Acts of Parliament.

Potential unlawful activity and local nuisance activities may come to the attention of the Light Regional Council ('Council') through public enquiries or complaints, or through Council officer patrols and inspections. The Council has discretion on acting with respect to any unlawful activity and will do so in accordance with the principles of good governance and administrative practice.

In adopting this Policy, the Council has recognised that when laws are enacted by Parliament it may be difficult to determine all the relevant circumstances that should give rise to enforcement and compliance activities. Consideration needs to be given to each individual situation, while also having regard to its impact on economic, social, environmental and public safety issues. It is therefore recognised that it is appropriate for the Council to apply discretion and a common sense approach in determining when, and when not, to take enforcement action.

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2. Purpose of the Policy

The purpose of this policy is to provide guidance to the Council, its delegates and authorised officers as to how and when enforcement mechanisms should be applied under the relevant legislation, and to inform its community as to how decisions on enforcement matters are made.

This policy will assist Council employees to act promptly, consistently and effectively in responding to allegations of unlawful development activity and enforcement matters relating to managing local nuisances and litter control. It provides workable guidelines for Council employees on:

- how to assess whether allegations of unlawful activity and local nuisance require investigation;
- options for dealing with unlawful activity and local nuisance;
- how to decide whether enforcement action is warranted; and
- enforcement and prosecution action with respect to matters of non-compliance in relation to planning, building, and some general inspectorial and environmental matters.

The framework aims to provide consistency and ensure that any proposed enforcement or compliance action is proportionate to the alleged offence in the circumstances of each individual case.

The Council has a 'Complaints Handling Policy'; however, this does not cover enforcement and compliance with respect to legislation that has its own appeal or statutory processes, such as the:

- Dog and Cat Management Act 1995
- Environment Protection Act, 1993
- Expiation of Offences Act 1996;
- Food Act 2001;
- Local Nuisance and Litter Control Act, 2016;
- Planning, Development and Infrastructure Act, 2016; or
- South Australia Public Health Act 2011.

While there is no legislative requirement for Council to have a policy relating to the enforcement of planning and local nuisance matters, the Council is responsible for ensuring that its community and visitors to its area adhere to the various Acts of Parliament and Council By-laws which regulate and control the actions of individuals to protect the broader community.

Council is committed to the highest professional standards and strives to achieve the most effective and appropriate use of its enforcement powers under the relevant pieces of legislation to achieve the following outcomes:

- the timely rectification of a contravention to the reasonable satisfaction of the Council;
- ensuring that the safety and well-being of the community is not compromised by any contravention;
- avoidance of undue inconvenience to the community arising from contraventions of the relevant Acts;
- responsible and proportionate dedication of resources towards rectifying contraventions.

To this end, this Policy will apply to any action, decision or service of a Council employee in administering any Act of Parliament, inclusive of (but not limited to) the following:

- Dog and Cat Management Act 1995 and Dog and Cat Management Regulations, 2017;
- Environment Protection Act 1993, Environment Protection Regulations, 2009 and Environment Protection (Air Quality) Policy 2016;
- Expiation of Offences Act 1996 and Expiation of Offences Regulations 2011;
- Food Act 2001 and Food Regulations 2002;
- Fire and Emergency Service Act 2005 and Fire and Emergency Services Regulations 2005;
- Local Nuisance and Litter Control Act, 2016 and Local Nuisance and Litter Control Regulations, 2017;
- Planning, Development and Infrastructure Act, 2016 and related Regulations (various);
- Private Parking Areas Act 1986;
- Road Traffic Act 1961; and
- South Australia Public Health Act 2011 and related Regulations (various).

The Council may have the power through its delegations to:

- issue orders, notices and directions to individuals or entities requiring them to make good a breach of a relevant Act;
- commence enforcement action in a court of competent jurisdiction to obtain certain orders;
- commence criminal prosecutions against individuals or entities who have committed an offence under a relevant Act;
- in certain circumstances, issue an expiation notice where an individual or body has committed an offence under a relevant Act.

3. Definitions

Authorised Officer - A person who is authorised to carry out statutory functions or has powers as specified within a particular piece of legislation. The decision to appoint an authorised officer may only be made by Council or a delegate of Council.

CEO - Refers to the Chief Executive Officer (including their delegate) of the Light Regional Council.

Civil Enforcement – The process of instituting civil enforcement proceedings in Court against person or body with the intent to achieve compliance with a provision or an Act, or to make good a breach.

Compliance – The act of adhering to, and demonstrating adherence to, an Act, By-law, Regulation or similar. Compliance may or may not involve the process of enforcement.

Complaints – are matters raised by the public which may, subject to further investigation, be determined to be alleged breaches of relevant legislation. Those complaints which are determined to be about matters that are not Council's responsibility, such as disputes between neighbours, will not be handled under this Policy.

Council – is a comprehensive term and is to be read, as necessary, as a reference to the CEO and/or to employees of the Council and/or to the corporate legal body.

Delegation – An authorised officer's delegated powers are listed in Council's Delegation Register, which can be accessed via Council's website www.light.sa.gov.au/delegations

Enforcement – Enforcement refers to the use of legislative powers to direct a person or body to make good a breach of an Act and / or otherwise penalise a person or body for a breach. Enforcement is a tool to ensure compliance and accountability for illegal conduct or other wrong doing.

The Council adopts a broad definition of 'enforcement', which is intended to combine the provision of advice as well as assisting in compliance with formal action where necessary. This response is intended to encourage higher levels of voluntary compliance with legal requirements by individuals, businesses and other bodies.

Notwithstanding the above, when circumstances warrant, the Council will take immediate action when required (for example to ensure public health and safety or to protect the environment) against those who act unlawfully.

Illegal Activities – A criminal act or activity contrary to legislative obligations contained within an Act.

Order – Formal direction(s) issued by Council or Council delegate, or other body such as Court, to a person or body concerning a breach of a particular piece of legislation.

Prosecution – The process of instituting legal proceedings in a Court against a person or body in relation to a criminal activity, with the intent of penalising the person/body for that criminal activity.

SAPOL – Refers to the South Australia Police.

SPC – Refers to the State Planning Commission

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4. Principles of Good Enforcement

Enforcement actions are taken within the context of both a legal and policy framework. Authorised officers will carry out enforcement related work under delegation with due regard to the following principles:

- Proportionality: a proportionate response means that Council's actions will be scaled to the seriousness of the breach;
- Consistency: the Council will take a similar approach in similar cases to achieve similar outcomes; and
- Transparency: the Council will be open and transparent about the way it undertakes enforcement activities and the laws it enforces.

5. Authorisation of Officers

Only officers who are considered appropriately qualified and/or experienced will be authorised under the relevant legislation to investigate and take enforcement action if required. In undertaking these duties, Authorised Officers will act under the relevant legislation in accordance with this Policy; any delegated authority and any other relevant Council policy and procedure to ensure a consistent approach to their duties. Any decision to act other than in accordance with Council policies must be first approved by the Authorised Officer's relevant Manager, and the reasons for this action recorded in accordance with Council's Records Management protocols.

Authorised Officers are provided with an identification card which must be produced whenever they exercise powers under the relevant legislation.

6. Decision Making

6.1 Is an Investigation Required?

Not all allegations of non-compliance with the various statutory requirements will warrant investigation. The Council will consider a range of factors when deciding whether to investigate. These considerations include, but are not necessarily limited to, the following:

- Is the matter within the jurisdiction of the Council under the various Acts?
- Is the complaint premature, for example, does it relate to some unfinished aspect of building work that is still in progress?
- Is the activity or work permissible with or without consent?
- If the activity is permissible with consent, is there consent in place?
- Is it possible to determine from the information available to the Council whether the activity or work is permissible without consent and/or whether all conditions of consent are being complied with?
- Is the complaint trivial, frivolous or vexatious?
- Has too much time elapsed since the events the subject of the complaint taken place, to allow any meaningful investigation?
- Is there another body that is a more appropriate agency to investigate and deal with the matter? (for example, Safework SA).

- Is the activity, subject of the complaint, having a significant detrimental effect on the environment or does it constitute a risk to public safety?
- Does the complaint indicate the existence of a systemic problem, for example, is the complaint one of a series received by the Council from other sources, could there be a pattern of conduct or a more widespread problem?
- Has the person or body complained of been the subject of previous complaints (i.e., is there a history of non-compliance)?
- Does the complaint have special significance in terms of the Council's existing priorities?
- Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
- Is it in the public interest to investigate the complaint? That is, could it be said that the complaint is trifling, frivolous or vexatious?

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.

6.2 Factors in Considering an Enforcement Strategy

In coming to a decision on the most appropriate means of enforcement (and whether any enforcement is required at all), the Authorised Officer shall apply discretion having regard to the following factors:

- whether the alleged breach or activity has been the subject of an external complaint, and if so, to what extent;
- whether the activity or situation has been associated with any accident;
- the potential impact on the wider community of the activity or situation;
- whether the person or body said to have contravened an Act had, or is, committed to making good the contravention;
- whether the Council can act due to statutory time limitations;
- whether acting may prejudice other investigations;
- having regard to the principles of proportionality and consistency, whether the Council has determined that the contravention is so minor as to be an unreasonable use of Council resources;
- conversely, whether the contravention is serious enough to warrant formal action being taken;
- the history of the person or body who it is alleged has contravened an Act;
- the consequences of non-compliance with informal action and whether that would pose a significant risk or harm or nuisance to other persons or property;
- whether previous informal action taken by the Council against the same person or body has not been successful.

The following factors are not relevant, and are to be ignored, when considering an enforcement strategy:

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- any element of discrimination or bias against the person such as ethnicity, nationality, political association, religion, gender, sexuality or beliefs; and
- possible political advantage or disadvantage to a government, person holding (or a candidate for) public office, or any political group or party.

Where an Authorised Officer has a personal association or relationship, or a perceived association or relationship, with a person or body which may have breached an Act (or with any other person or body involved):

- an alternative Council employee or contractor will make decisions on enforcement action; and
- the facts about any conflict/relationship will be recorded in accordance with Council's Records Management protocols.

Written documentation with regards to any enforcement decision will:

- include all the information necessary to make clear what needs to be done to ensure compliance with legal requirements, the relevant statutory timeframes and if necessary, the reasons for the proposed actions and potential penalties for failing to comply with the request;
- specify the relevant Act contravened, and detail the section/s, and set out the measures necessary to ensure compliance and the consequences of non-compliance; and
- clearly differentiate between legal requirements and recommendations of good practice.

Where a discretion is exercised to not pursue enforcement options, the decision and reasons will be recorded in accordance with Council's Records Management protocols, and the complainant will be advised.

6.3 Options for Compliance

Where, after having undertaken a preliminary investigation and exercising an appropriate level of discretion in accordance with this Policy, it is determined that there exists a prima facie case that non-compliance with a statutory requirement has occurred, Council has various options available to it, to seek or promote compliance. These options include, but are not limited to:

- explaining legal requirements and, where appropriate, the means to achieve compliance with the person or body;
- providing an opportunity to discuss points of issue where appropriate with the person or body and any other affected party;
- allowing reasonable timeframes to achieve compliance and/or waiving or reducing fees;
- facilitating communication between the person or body and affected parties to achieve a resolution;
- issuing a verbal or written warning to the person or body; or

- enforcement actions such as issuing an expiation notice, issuing an order or direction to the person or body, commencing civil enforcement proceedings, or commencing prosecution proceedings.

Enforcement decisions must be fair, consistent, balanced and relate to common standards that ensure the public is adequately protected.

7. Enforcement Actions

Authorised officers have a range of enforcement options available to them, as outlined below. In considering each option, regard should be had to the factors set out in part 6.2 of this Policy.

7.1 No Action

No action will be taken when, after investigation and exercising an appropriate level of discretion, no breaches of any Act 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 statutory authority;
- acting may prejudice other major investigations;
- the factors described in part 6.2 of this Policy do not warrant action being taken.

7.2 Informal Action

Informal action to achieve compliance with an Act may include:

- giving a verbal or written warning to a person or body;
- such verbal or written warnings may include a request for remedial action to be undertaken.

Any advice to a person or body from an authorised officer will be put clearly and simply and will be confirmed in writing or verbally.

The circumstances in which informal action may be appropriate include, but are not necessarily limited to:

- the act or omission is not serious enough to warrant formal action;
- the person or body's history reasonably suggests that informal action will secure compliance;
- confidence in the person or body to ensure compliance in the future is high;
- the consequences of non-compliance will not pose a significant risk to health and/or safety;
- where informal action may prove more effective than a formal approach; or
- the factors described in part 6.2 of this Policy warrant informal action being taken.

Where the relevant legislation does not allow for statutory action to be taken by an authorised officer, but such action would be beneficial in a wider public safety context, then the action will be taken by an authorised officer of the Council, and the reasons recorded in accordance with Council's Records Management protocols. The person or body will be advised that the requested actions are not legally enforceable, but rather, are desirable from a community and good governance perspective.

7.3 Formal Action

7.3.1 *Service of Directions and Orders and Court Orders*

The various statutory regimes provide for several enforcement actions, including but not necessarily limited to:

- legally binding directions or orders (for example, emergency orders or enforcement notices);
- issuing of expiation notices;
- civil enforcement proceedings;
- criminal prosecution proceedings.

Council officers will use professional judgement and discretion to assess the particulars relating to each matter under consideration, including the reasonableness of the actions required by the Council and the timeframe to comply.

Only in circumstances such as a threat to life or imminent threat to public health or safety will a direction or order be made without giving notice of intention to the person or body affected. In these circumstances immediate actions and compliance to resolve a situation can then be required.

In most cases the person or body receiving a direction or order has a right of appeal to an appropriate Court (depending on the circumstances of the alleged breach) if the direction or order is considered unreasonable. If a direction or order is served for which an appeal is possible, the Council will advise the person or body in writing of the right to appeal and the relevant legal provisions at the time of serving the direction or order.

The Council also has powers in certain circumstances to make application with the Court for an order to achieve compliance with a provision of an Act, or requirement to remedy certain matters.

Where there is evidence that an offence has been committed, the Council may issue an expiation notice (where permitted by the relevant legislation) or commence a prosecution in addition to serving any direction or order. This will only be done where it is determined that the conduct of the person or body justifies such an enforcement response.

Factors such as providing Authorised Officers false information, the obstruction of Council employees and the potential for harm or risk caused by the person or body's delay will be relevant considerations in determining whether to escalate enforcement actions.

7.3.2 **Action regarding a Default**

Failure to comply with a direction or order will incur further enforcement action, such as the issuing of an expiation notice or prosecution proceedings.

Where action regarding a default is provided for by the relevant Act, and the necessary work has not been carried out by the person or body in the timeframe allowed without good reason (for example, under section 142 of the *Planning, Development and Infrastructure Act, 2016*), the Council may step in and undertake the required work.

Before carrying out the required work, the Council will consider whether there is a realistic prospect that the person or body responsible will complete the work within a reasonable timeframe. Where work in default is undertaken by the Council, the 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 Chief Executive Officer or their delegate.

7.3.3 **Expiation Notices**

An expiation notice alleges that a person or body has committed an offence and sets out an expiation fee, which can be paid to expiate the offence, rather than the person or body being prosecuted. Payment of an expiation fee is voluntary and is not an admission of guilty or civil liability.

A person or body 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 body has committed the alleged offence. In other words, should the person or body elected to be prosecuted, there must be sufficient evidence available to prove an offence beyond reasonable doubt.

Expiations are available for limited forms of contraventions of certain Acts.

The following circumstances are likely to warrant the issuing of an expiation notice:

- certain breaches of the Acts administered by the Council;
- failure by a person or body to correct an identified problem after having been given reasonable opportunity to do so by an Authorised Officer (through informal enforcement action);
- failure to comply with the requirements of a direction or order;
- confidence in the person or body's likelihood to not re-offend is low; or
- a written warning has previously been given for a similar offence.

7.3.4 **Civil Penalties and Voluntary Undertakings**

Sections 225 and 230 of the Planning, Development and Infrastructure Act 2016 (PDI Act) provide for 'civil penalties' and 'enforceable voluntary undertakings' respectively.

Pursuant to section 225, for certain offences and after having regard to the seriousness of the contravention, previous record of the offender and any other relevant factors, Council (or its delegate) (as a 'designated entity') may, subject to authorisation from the SPC (and after following the required processes), recover by negotiation or via application to the (Environment, Resources and Development) Court, an amount as a civil penalty from a person as an alternative to criminal proceedings.

Separately, subject to authorisation from the SPC, section 230 of the PDI Act provides that Council (or its delegate)(as a 'designated entity') may, before any proceedings are finalised, accept a written undertaking from a person with respect to a contravention or alleged contravention by that person of the PDI Act.

A voluntary undertaking by a person is enforceable under the PDI Act. Where an undertaking is accepted by Council prior to the conclusion of the related proceedings, Council is required to discontinue those proceedings at the earliest opportunity.

These form a part of the Council's enforcement options, noting that they are subject to authorisation from the SPC.

7.3.5 **Prosecution**

Prosecutions cannot be commenced lightly. As a local government authority, Council must only prosecute persons or bodies for offences against Act where this is in the 'public interest' as a matter of law.

In considering whether prosecution is in the public interest, the following additional factors will be considered:

- whether the offence was premeditated;
- whether the person or body has shown remorse or contrition;
- whether the person or body has committed a similar offence in the past;
- the effect on the person or body, or witness's, physical or mental health, balanced against the seriousness of the offence (i.e., would a prosecution be perceived as a disproportionate response given the circumstances);
- the availability and efficacy of any alternatives to prosecution;
- any financial or other benefit the person or body sought to gain by committing the breach;
- the prevalence of the alleged offence and the need for deterrence, both personal and general;

- the availability, competence and credibility of witnesses and their impression on the Court;
- any lines of defence;
- the need to maintain confidence in the Council as a prosecuting authority; and
- the likely length, expense and outcome of a trial.

Before a prosecution is recommended there must be substantial, reliable and admissible evidence that an identifiable person or body has committed the offence.

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 posed by the breach too great, to be dealt with by means of an expiation;
- a failure of the person or body to correct an identified serious problem after having been given reasonable opportunity to do so;
- it is not possible to rectify the breach (for example, demolition or tree-damaging activity);
- a failure to comply with the requirements of a direction or order;
- an established and recorded history of similar offences; and
- an unwillingness, on the part of the person or body, to prevent a recurrence of the problem.

Where circumstances warrant a prosecution, all relevant evidence and information will be considered first to enable a consistent, fair and objective decision to be made.

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

7.3.6 **Cost Recovery**

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

8. Policy Implementation and Review

This Policy will come into effect from the date of the Council resolution.

This Policy shall be reviewed every three (3) years, or as legislation changes occur (whichever is the earlier occurrence).

Policy History:

1. *Policy adopted 17 April 2001(as Order Making Policy), see Council Minutes Reference 10.2.2, Page 2001/97*
2. *Amendment No. 1 – policy originally numbered as Section 7 Policy No. 6 but renumbered to Section 6, Policy No. 2 as considered a Governance role (24 June 2010)*
3. *Amendment No. 2 – adopted Special Meeting of Council 7 September 2010 renumbered to Section 4 Policy No. 6, see Special Council Meeting Minutes Reference 5.3.3, Page 2010/210*
4. *Amendment No. 3 – adopted Council Meeting 19 January 2016, Minutes Reference 12.4.2 page 2016/13.*
5. *Amendment No. 4 adopted by Council on 26 February 2019, refer Council Minute STR9.3.5/2019- page 2019/36.*
6. *Amendment No. 5 adopted by Council on 22 June 2021, Minute Reference STR10.2/2021, Page Reference 2021/138*
7. *Amendment No. 6 adopted by Council on 23 May 2023, Resolution Number OCM-2023/109*