

COMPLIANCE AND ENFORCEMENT

Policy No. 085

1 Purpose

The purpose of this policy is to summarise City of Darwin's general approach to compliance and enforcement. The community has a high expectation that Council will comply with applicable legislation. The policy explains how City of Darwin manages activities to achieve compliance.

Council's role is to uphold its statutory responsibilities for regulatory activities in accordance with legislation. This policy provides the framework for the investigation and enforcement of regulated activities and Council's response to unlawful activities.

The policy also provides a level of confidence that Council's compliance and enforcement practices demonstrate:

- That Council values those who voluntarily comply with the law.
- Proportionality in decision making.
- Transparency in the process of investigation and enforcement.

2 Scope

City of Darwin acknowledges that it has an obligation under Chapter 13 of the *Local Government Act* to ensure the exercise of its regulatory power is carried out with consistency and without bias.

The objectives of this policy are to provide the framework so that Council will:

- Provide consistency in enforcement action.
- Ensure transparency, procedural fairness and natural justice principles are applied.
- Ensure that enforcement action is proportionate to the alleged offence.

3 Policy Statement

This policy relates to the activities undertaken in accordance with legislation or Council policy and includes activities related to the control of animals, parking, environmental protection, advertising signs and other regulatory activities.

Council has established Enforcement Guidelines for the management of Council's regulatory activities and implementation of enforcement actions.

Council Policy No. 085 - COMPLIANCE AND ENFORCEMENT				
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The policy ensures that Council's enforcement practices are lawful, safe, fair, practical, and consistent and that Council discharges its statutory obligations in the investigation and enforcement of unlawful activities.

3.1 Principles

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 Enforcement Guidelines and the following principles –

- Proportionality
- Consistency
- Transparency
- Evidence based decision making

3.2 Working with other Regulators

Council will liaise with other external agencies, for example Northern Territory Police Service, Environmental Protection Authority, Department of Housing and Northern Territory Health, to minimise duplication, avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence.

3.3 Works in default

Under some legislation Council may execute works in default instead of, or as well as, taking legal action. In such cases the expenses of default work may be recovered by Council and can be charged against the land, or in the case of a negotiated cost, met by the defaulter on completion of the works.

Where Council takes such action it will take all reasonable steps to notify the interested parties.

Council may consider exercising its work in default power where it is legally possible, reasonably practicably and/or there is a will on behalf of the defaulter. For example, in the interest of community health, safety, amenity or environmental harm, Council may consider an immediate remedy by agreement, or by seeking compliance without prosecution.

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Where Council takes such action it will notify the interested parties, seek agreement where possible and carry out the works.

3.4 Injunctions

An injunction may be sought where there are sufficient grounds and in particular where the circumstances present a potential and/or immediate threat to community health, safety, amenity, environmental harm or are causing extreme distress. Consideration at this time will be given to the possibility that Council may face a damages claim in the event that the eventual prosecution is not proven.

3.5 Authorised Officers

Council will appoint staff and maintain a register of authorised persons to regulate in accordance with By-Laws, Council Policy, and Enforcement Guidelines. Authorised persons will be provided with the appropriate training and attain qualifications required to perform their role.

The role of the authorised person is to mitigate, guide, educate and enforce in order to uphold community standards and reflect the values and culture of Council.

For serious offences (where the nature of the offence points towards prosecution or seizure), decisions about enforcement action are collaborative.

4 Definitions

Authorised Person means a person who is authorised by an Act, Regulation or By-Law to exercise prescribed powers.

Compliance refers to an agency, corporation, or person meeting or taking steps to comply with relevant laws and regulations or is penalised for non-compliance.

Council means the City of Darwin.

Enforcement means a range of procedures and actions taken by Council to ensure that a person or organisation complies with their statutory obligations.

Proportionality means Council will be considerate of cost, ensuring that any enforcement action is proportionate to the risk. As far as the law allows, Council will take into consideration the circumstances of the concern, behaviours and risk when deciding on an enforcement action.

Prosecution means conduct of legal proceedings against a person, organisation or corporation, for alleged unlawful activity.

Statutory Obligation means an obligation that is created under a law.

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Unlawful Activity means any activity or work that has been or is being carried out:

- contrary to the terms or conditions or in the absence of a licence, permit, registration, approval, permission or other written authorisation from Council
- contrary to a legislative provision regulating a particular activity or work.

Voluntary Compliance generally means a person or business that manages their activity within the law and/or condition of approval, licence or permit.

5 Legislative References

Local Government Act

6 Procedures / Related Documents

City of Darwin Policy No 026 - Complaints Handlings and Review of Decisions

City of Darwin Policy No 033 - Privacy Policy

City of Darwin Policy No 047 - Regulatory – Miscellaneous

City of Darwin Enforcement Guidelines

7 Responsibility / Application

The Council, Chief Executive Officer and General Manager Community and Regulatory Services are responsible for ensuring that this policy is adhered to and understood.

The Executive Manager Leisure and Regulatory Services is accountable for maintaining the currency and accuracy of this policy, associated procedures and guidelines.

Regulatory Services will enforce compliance activities within the Darwin municipality in line with this policy.

This Policy will be reviewed once per term of Council or in response to significant changes in legislation or other circumstances which affect its effectiveness and validity.

8 Document Control

Council Policy			Responsible Officer: General Manager Community and Regulatory Services	
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1	21\4953	25/10/2016	Adopted	25/10/2020
2	22\1050	28/08/2018	Revision adopted, with Enforcement Guidelines as supporting document	28/08/2022
3				

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Enforcement Guidelines



JUNE 2018



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Overview

Local governments have been granted power to administer and enforce a wide range of issues through the Local Government Act, Council's By-laws and associated Legislation. City of Darwin through its Regulatory Services Program is the local authority for the administration of policies, strategies and legislation.

With power comes responsibility. In some cases, particular responsibilities and duties are specified in the relevant provisions granting the power. However, common law also imposes certain duties upon Councils with respect to the exercise of the power to investigate offences and take enforcement action.

Effective complaint management provides clarity as to what individuals or businesses may expect from Council, if subject to enforcement action.

Regulatory Services has established specialist investigation teams, to provide a strong and consistent enforcement response to non-compliance. As such it is important to have a clear guideline for the selection of matters for enforcement. Regulatory Services endeavours to advance a culture of positive action, consultation and co-operation with the community.

The Enforcement Guideline aims are general in nature to provide a broad understanding of how Council will approach enforcement.

To the extent possible in the circumstances, it is the goal of Regulatory Services enforcement responses to:

- Reinforce the legal obligations required;
- Achieve good community outcomes; and
- Deter non-compliant behaviour by others.



Introduction

Council has focused its attention on compliance and is working with the community to achieve good issue management through provision of advice and technical assistance. However, in appropriate cases, Council will pursue enforcement action against those who ignore their legal obligations with respect to their legislated responsibilities.

Consistency and transparency are integral to Council's aim in regulating fairly. These values assist those who are regulated to understand what is expected of them and why Council intends to take enforcement action. In addition, the principles of natural justice are followed in any investigation to ensure a fair decision is reached.

This guideline explains how Regulatory Services determines the enforcement action it will take in any given situation. As far as possible, it provides guidance on what behaviour will result in prosecution or other enforcement action. This Guideline has been developed to ensure that Rangers' enforcement responses are:

- Proportionate to the conduct;
- Consistent with past responses for similar conduct; and
- Timely.

The enforcement pyramid in table 1 demonstrates the path of escalation in the enforcement response that has been adopted by Regulatory Services.

Table 1

If the impact of the conduct is of a minor or trivial nature, enforcement action from lower down the pyramid is more likely. Higher level enforcement action, such as prosecution, may be the preferred option for unlawful conduct.





Table 2 provides examples in triage or rating system for common non-compliance incidents, such as, critical, high, medium and low can be developed to help with prioritising action. This will assist Council with managing people's expectations and allocating resources.

Table 2

RISK CATEGORY			
CRITICAL	HIGH	MEDIUM	LOW
FEATURES OF CATEGORY			
<ul style="list-style-type: none"> Permanent serious damage to health, likely or very likely Large scale impacts Very serious offences Very high priority issue for Council and community 	<ul style="list-style-type: none"> Moderate, major or severe consequences likely or very likely Medium-large scale impacts Serious offences High priority issue for Council and community 	<ul style="list-style-type: none"> Moderate consequences are likely, serious impacts are very unlikely Small-medium scale impacts Moderate offence severity Priority issue for Council or community 	<ul style="list-style-type: none"> Consequences are minor or moderate and are unlikely or very unlikely to occur Small scale, isolated impacts Low level offence severity Priority issue for Council and community
INDICATIVE TIMEFRAME OF INITIAL RESPONSE			
Immediate and urgent response	Response within 24 hours	Response within 5 working days	Response within 10 working days
EXAMPLE REPORT TYPES/ISSUES			
<ul style="list-style-type: none"> Abandoned vehicles in an unsafe location Dog or cat attacks 	<ul style="list-style-type: none"> Roaming dogs or cats Dangerous/restricted dog complaints 	<ul style="list-style-type: none"> Abandoned vehicles Noxious weeds Noise nuisance affecting several people (eg barking dogs) 	<ul style="list-style-type: none"> Minor consent breaches Unauthorised signage Overgrown Aesthetic issues

Enforcement approach

Council advocates firm but fair regulation that provides positive community outcomes. The underlying principles in achieving this objective are outlined in Council's Compliance and Enforcement Policy.

Formal action

Formal action may be required where the criteria for issuing informal actions are not available. Formal actions can include the issue of a;

- Verbal warning; and/or
- Warning/enforcement letter; and/or
- Regulatory notice; and/or
- Prescribed infringement notice.

Council has adopted a triage or rating system for common non-compliance incidents, Table 3 below is to assist with the rating of issues.



Table 3

Severity/ seriousness	Public interest	Aggravating or mitigating factors	Significance of breach
Moderate or high degree of environmental harm	Public interest high due to the breach impacting on the amenity of several residential neighbours and the need to deter against further breaches of this nature	Significant aggravating circumstances due to offender knowingly committing the breach despite likely impacts	CRITICAL
Large magnitude of exceedance; High level of unjust benefit; Low to moderate risk of environmental harm	Public interest moderate due to the need to deter the offender against further breaches of this nature	Aggravating circumstances due to offender knowingly committing the breach for significant financial gain	HIGH
Low environmental harm	Public interest moderate due to the need to deter the offender against further breaches of this nature	Significant aggravating circumstances due to offender submitting false and misleading information about the breach	MEDIUM
High environmental harm	Public interest low due to the low public perception of the breach and unlikelihood of the offender committing further breaches	Significant mitigating circumstances due to offender immediately rectifying the breach and instigating measures to prevent re-occurrence	MEDIUM
Low to moderate environmental harm	Public interest low due to minimal cost to the community and the "one-off" nature of the breach with minimal need for deterrence against further breaches	No significant aggravating factors; Offender co-operated with investigation	LOW
Moderate, short-term loss of amenity; Low environmental harm	Public interest likely to be moderate due to the need to deter the offender from further breaches of this nature but little public perception of the breach	No significant aggravating factors; Offender rectified breach quickly when notified.	LOW

Table 4 below is to assist with the rating of the overall significance of the breach and the level of enforcement that is required.

Table 4

Severity	Aggravating or mitigating factors	Public interest	Significance of Breach
Critical	Critical	Critical	Critical
Critical	Critical	High	Critical
Critical	Critical	Medium	High
Critical	Critical	Low	High
Critical	High	Critical	High
Critical	High	High	High
Critical	High	Medium	High
Critical	High	Low	High
Critical	Medium	Critical	High
Critical	Medium	High	High
Critical	Medium	Medium	High
Critical	Medium	Low	High
Critical	Low	Critical	High
Critical	Low	High	High
Critical	Low	Medium	High
Critical	Low	Low	High
High	Critical	Critical	High
High	Critical	High	High
High	Critical	Medium	High
High	Critical	Low	High
High	High	Critical	High
High	High	High	High
High	High	Medium	Medium
High	High	Low	Medium
High	Medium	Critical	Medium
High	Medium	High	Medium
High	Medium	Medium	Medium
High	Medium	Low	Medium
High	Low	Critical	High
High	Low	High	High

Severity	Aggravating or mitigating factors	Public interest	Significance of Breach
High	Low	Medium	Medium
High	Low	Low	Medium
Medium	Critical	Critical	Medium
Medium	Critical	High	Medium
Medium	Critical	Medium	Medium
Medium	Critical	Low	Medium
Medium	High	Critical	Medium
Medium	High	High	Medium
Medium	High	Medium	Medium
Medium	High	Low	Medium
Medium	Medium	Critical	Medium
Medium	Medium	High	Medium
Medium	Medium	Medium	Medium
Medium	Medium	Low	Medium
Medium	Low	Critical	Medium
Medium	Low	High	Medium
Medium	Low	Medium	Medium
Medium	Low	Low	Medium
Low	Critical	Critical	Medium
Low	Critical	High	Medium
Low	Critical	Medium	Medium
Low	Critical	Low	Medium
Low	High	Critical	Medium
Low	High	High	Medium
Low	High	Medium	Low
Low	High	Low	Low
Low	Medium	Critical	Low
Low	Medium	High	Low
Low	Medium	Medium	Low
Low	Medium	Low	Low
Low	Low	Critical	Low
Low	Low	High	Low
Low	Low	Medium	Low
Low	Low	Low	Low



Table 5 below is to assist with the enforcement action that would be taken for a breach that is high, medium or low.

Table 5

Enforcement Action	Significance of Breach		
	High	Medium	Low
Prosecution	*		
Court Order	*		
Penalty Notice	*	*	
Statutory Notice	*	*	
Letter requesting undertaking	*	*	*
Negotiated outcome		*	*
Warning letter/caution		*	*
Record breach			*



Public interest considerations

Regulatory Services may take into account the following public interest considerations when deciding on an appropriate enforcement response:

- The seriousness, the triviality, or 'technical nature' of the offence
- The harm or potential harm to the environment caused by the offence
- Any mitigating or aggravating circumstances
- The degree of culpability of the alleged offender
- The availability and effectiveness of any alternatives to enforcement action
- Whether the offender has been dealt with previously without enforcement action and, if so, what level of enforcement action
- Whether the breach is a continuing or second offence
- Whether the offence is ongoing
- Whether the administrative action or court orders are necessary to prevent a recurrence of the offence
- The prevalence of the alleged offence and the need for deterrence of the offence
- Whether there are counter-productive features of the proposed enforcement tools

The following are further factors that should be considered specifically in the case of considering prosecution:

- The length and expense of any court hearing
- The likely outcome in the event of a conviction having regard to the sentencing options available to the court
- Any precedent which may be set by not instituting proceedings
- Whether the consequences of a conviction would be unduly harsh or oppressive
- Whether proceedings are to be instituted against others arising out of the same incident
- Whether wider compliance will be achieved if a conviction is obtained.



Council adopts the overriding principle that enforcement tools must not be instituted (or not instituted) for improper purposes. A decision whether or not to use an enforcement tool will not be influenced by:

- Any elements of discrimination against the person, such as ethnicity, nationality, political association, religion, sex or beliefs
- Personal feelings towards one or more of the parties
- Possible political advantage or disadvantage to a government, political group or party
- The possible effect of the enforcement on the personal or professional circumstance of those responsible for the decision.

Principles of Achieving Effective Compliance and Enforcement

Infringement notices

Infringement notices are a way of dealing with common breaches of the law where the impacts are not serious enough for court action. Some of these could be failure to register or control an animal.

An infringement notice is served because it appears an offence has been committed. However, payment of the penalty does not lead to the recording of a criminal conviction. Non-payment of the fine is not dealt with by a jail sentence but is recoverable as a civil debt. On the other hand, if a person elects to have the matter heard, proceedings are commenced in the criminal jurisdiction of the Magistrates Court.

Infringement notices can be issued by authorised officers.

Just as there is discretion to use any other enforcement tool, there is discretion whether to serve an infringement notice. Any discretion by individual officers must take into account the intention of the legislation to penalise those breaches that, in the past, might have gone unpunished.

Infringement notices are designed primarily to deal with one-off breaches that can be remedied easily. They are usually a first response when a breach is discovered. Since serving a notice might be the first notification a person has of an alleged breach, it should be issued promptly out of fairness and courtesy.

Issuing successive infringement notices for multiple statutory breaches is generally inappropriate, unless the breaches are unrelated. In such circumstances, even though each breach might be comparatively minor, there is probably a major and continuing compliance problem.

Such a problem needs to be dealt with through other enforcement measures if a past infringement notice has not motivated the recipient to successfully address the underlying issue.

Conclusion

This Guideline is not intended to have legal status. The matters outlined in this guideline are not legally binding on the City of Darwin and do not confine, restrain or limit the discretion of the City of Darwin to take any action. However, they provide general guidance on how enforcement decision-making is approached. More specific guidance can be obtained by reference to guidelines addressing specific pieces of legislation.



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