

Enforcement guidelines

Guideline No. 7210.001.I.N

1 Overview

Local governments have been granted powers to administer and enforce a wide range of issues through the *Local Government Act 2019* (NT), City of Darwin By-Laws 2023 and associated Legislation. City of Darwin, through its Regulatory Services Program is the local authority for the administration of policies, strategies and legislation.

In some cases, particular responsibilities and duties are specified in the relevant provisions granting the power. However, common law also imposes certain obligations upon City of Darwin 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 City of Darwin, 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 consistent application of enforcement actions. Regulatory Services endeavours to advance a culture of positive action, consultation and co-operation with the community.

The Enforcement Guidelines' aims are general in nature to provide a broad understanding of how City of Darwin 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
- deter non-compliant behaviour.

2 Introduction

City of Darwin has focused its attention on compliance and is working with the community to achieve effective complaint management through provision of advice and technical assistance. However, where appropriate, City of Darwin will pursue enforcement action against those who ignore their legal obligations.

Consistency and transparency are integral to City of Darwin's aim in regulating fairly. These values assist all parties involved to understand what is expected of them and why City of Darwin 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
- timely.

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



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.

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD564/23	26 September 2023	26 September 2026

Responsible Officer: General Manager Community

Electronic version current. Uncontrolled copy valid only at time of printing.

3 Enforcement approach

City of Darwin advocates firm but fair regulation that provides positive community outcomes. The underlying principles in achieving this objective are outlined in City of Darwin'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:

- verbal warning
- warning/enforcement letter
- regulatory notice
- prescribed infringement notice.

City of Darwin has adopted a triage or rating system for common non-compliance incidents, Table 1 below is to assist with the rating of issues.

Table 1

Severity / seriousness	Public interest	Aggravating or mitigating factors	Significance of breach
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
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	HIGH

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

Table 2 and 3 below are to assist with the rating of issues for enforcement action.

Table 2

Severity	H	H	H	H	H	H	H	H	H	M	M	M	M	M	M	M	M	M	M	L	L	L	L	L	L	L	L	L
Public interest	H	H	H	M	M	M	L	L	L	H	H	H	M	M	M	L	L	L	L	H	H	H	M	M	M	L	L	L
Aggravating or mitigating factors	H	M	L	H	M	L	H	M	L	H	M	L	H	M	L	H	M	L	L	H	M	L	H	M	L	H	M	L
Significance of Breach	H	H	H	H	M	M	H	M	M	H	M	M	M	M	M	M	M	M	M	H	H	H	M	M	M	M	L	L

Table 3

Enforcement Action	Significance of breach		
	High	Medium	Low
Prosecution	X		
Court order	X		
Penalty notice	X	X	
Statutory notice	X	X	
Letter requesting undertaking	X	X	X
Negotiated outcome	X	X	X
Warning letter / caution		X	X
Record breach			X

Public interest considerations

Regulatory Services may consider 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

Version:	Decision Number:	Adoption Date:	Next Review Date:
2	ORD564/23	26 September 2023	26 September 2026

Responsible Officer: General Manager Community

Electronic version current. Uncontrolled copy valid only at time of printing.

- whether wider compliance will be achieved if a conviction is obtained.

City of Darwin adopts the overriding principle that enforcement tools must not be used 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.

The table below 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 City of Darwin with managing people’s expectations and allocating resources.

Table 4

Risk category			
Critical	High	Medium	Low
Features of category			
Permanent serious damage to health, likely or very likely Large scale impacts Very serious offences Very high priority issue for City of Darwin and community	Moderate, major or severe consequences likely or very likely Medium-large scale impacts Serious offences High priority issue for City of Darwin and community	Moderate consequences are likely, serious impacts are very unlikely Small-medium scale impacts Moderate offence severity Priority issue for City of Darwin or community	Consequences are minor or moderate and are unlikely or very unlikely to occur Small scale, isolated impacts Low level offence severity Priority issue for City of Darwin 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 type / issues			
Abandoned vehicles in an unsafe location Dog attacks	Roaming dogs Dangerous/restricted dog complaints	Abandoned vehicles Noxious weeds Noise nuisance affecting several people, such as barking dogs	Minor consent breaches Unauthorised signage Overgrown aesthetic issues

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 consider 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.

4 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.