POLICY 6.01
Regulatory Services
Enforcement
Version: 3 **| Next Review:** November 2030

DISTRICT COUNCIL of TUMBY BAY

1. INTRODUCTION

The District Council of Tumby Bay (the Council) has statutory responsibilities to administer and enforce a range of legislation in order to protect public health, safety, the environment and the amenity of the community.

This Enforcement Policy (the Policy) establishes a consistent, fair and transparent framework for how the Council undertakes compliance and enforcement activities. It recognises that while individuals and organisations are responsible for complying with the law, Council has an important role in promoting compliance and responding appropriately to unlawful activity.

The Policy supports a graduated approach to enforcement, prioritising education, cooperation and voluntary compliance wherever possible, and applying formal enforcement action where necessary to protect the community and uphold the law.

It is intended to ensure that enforcement decisions are made in accordance with principles of proportionality, consistency, transparency and procedural fairness, while maintaining public confidence in Council's regulatory role.

2. POLICY OBJECTIVES

This Policy assists Council staff to act promptly, consistently and effectively in response to alleged or detected unlawful activity and non-compliance. It ensures transparency, procedural fairness and natural justice principles are applied and that enforcement action is proportionate to the alleged offence in each case.

3. LEGISLATIVE FRAMEWORK

The *Local Government Act 1999* (the Act) provides the primary legislative framework for the functions, powers and responsibilities of Council, including its role in regulatory enforcement and compliance.

The Act establishes Council's authority to administer and enforce by-laws, issue orders (including under Chapter 12, Part 2), appoint authorised officers (section 259), and delegate functions to ensure efficient decision-making. It also requires that enforcement activities are undertaken in a manner that is transparent, accountable and procedurally fair.

This Policy is intended to operate consistently with the provisions of the Act and to support Council in exercising its enforcement powers in a lawful, reasonable and proportionate manner.

This Policy should be read in conjunction with other relevant policies and procedures of the Council. This Policy applies to all South Australian legislation administered and enforced by Council, including:

- Australian Road Rules
- District Council of Tumby Bay By-laws (as in force from time to time)
- *Dog and Cat Management Act 1995*
- *Environment Protection Act 1993*

- *Expiation of Offences Act 1996*
- *Fire and Emergency Services Act 2005*
- *Food Act 2001*
- *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*

4. DEFINITION OF ENFORCEMENT

Council adopts a broad definition of enforcement, which includes the provision of advice, assisting parties to achieve compliance and ensuring compliance with 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 (including circumstances where it is necessary to ensure public health and safety or protect the environment) and firm action against those who act unlawfully is warranted.

5. PRINCIPLES OF GOOD ENFORCEMENT

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

5.1 Proportionality

Council's actions shall be scaled with regard to the seriousness of the breach(es). It is important to note however that expiation amounts for offences are set by the State Government within each piece of legislation administered; therefore Council does not have the discretion to reduce or set these fees.

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 focused 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 the need to secure future or ongoing compliance. Depending on factors including the continuing nature of a breach or flagrant disregard for the law, Council will enforce the minimum action necessary to secure future compliance.

Prosecution will generally only be commenced for serious offences, continuous offences, offences that pose a severe risk to the community or where an alleged offender elects to be prosecuted.

5.2 Consistency

Council will take a similar approach in similar cases to achieve similar outcomes.

Decisions on enforcement require professional judgement and discretion to be used in varying circumstances. Council staff will follow standard operating procedures where possible, and ensure fair, equitable and non-discriminatory treatment of all persons.

5.3 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, where practicable 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 complainants) may be advised in general terms of actions undertaken in relation to their complaint, subject to considerations such as not compromising the integrity of an investigation.

6. AUTHORISATION OF OFFICERS

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.

Authorised officers are appointed pursuant to section 259 of the *Local Government Act 1999* and will carry identification in accordance with section 260 of the Act that list their authorisations and are required to show these on request or as required by the specific legislation they are administering.

7. DECISION MAKING

7.1 When non-compliance is identified as a result of enforcement activities, any or all of the following options are available to staff to seek or promote compliance:

a) explaining legal requirements and the means to achieve compliance,

b) providing opportunity to discuss points of issue where appropriate,

c) allowing reasonable timeframes to achieve compliance,

d) facilitating mediation between parties,

e) issuing warnings either verbally or in writing, and

f) enforcement action such as issuing an order, direction, expiation or commencing prosecution.

7.2 An enforcement decision will be made by officers will appropriate delegations under section 44 of the *Local Government Act 1999* and the decision made 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).

7.3 In coming to a decision about the most appropriate means of enforcement, an authorised officer shall consider the following non-exhaustive relevant factors:

a) The seriousness of the offence or breach of the specific legislation.

b) The degree of willfulness involved.

c) Any past history of compliance or non-compliance.

d) The consequences of non-compliance.

e) The probable effectiveness of the various enforcement options.

f) The need for deterrence.

g) The effect on the community and other people.

h) Consistency of approach to similar breaches/offences.

i) Is it in the public interest to investigate (trifling considerations).

7.4 Where there is a personal relationship or association, or perceived association or relationship, between a Council staff member or contractor and any person or other body who may have breached a law, staff will ensure:

a) an alternative Council employee or contractor will make decisions where possible,

b) the facts about the conflict/relationship will be reported and recorded in accordance with Council's Records Management protocol, and

c) staff will comply with the requirements of the Code of Conduct.

8. APPROACH TO UNLAWFUL ACTIVITIES

Not all allegations of non-compliance with legislation will warrant investigation. Council will adopt the following approach to matters relating to illegal activity:

- Consider and where appropriate, investigate all customer requests (other than anonymous complaints) concerning illegal activity within Council's jurisdiction, and
- where appropriate, refer illegal activity to SAPOL, where it falls outside of Council's jurisdiction.

9. ENFORCEMENT OPTIONS

A range of enforcement options are available to staff which will depend on the merits of each matter being considered. These options are detailed below:

9.1 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:

a) the alleged breach is outside of Council's jurisdiction,

b) the complaint is vexatious, frivolous, or trivial in nature,

c) the complaint is anonymous,

d) the person or other body alleged to have breached a law has made a formal undertaking to rectify the breach, or

e) 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.

9.2 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, or
- verbal or written warnings may include requests for remedial action.

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

The circumstances in which informal action may be appropriate include:

a) The breach is not sufficiently serious to warrant formal action.

b) The known history of the person or other body who has committed the breach indicates that informal action will secure compliance.

c) Any consequences of non-compliance will not result in or pose a significant risk or nuisance to other persons or property.

d) Council's confidence in the individual or entity is high.

e) Where informal action may achieve a more effective result than formal action.

9.3 Mediation

In some circumstances, Council may suggest mediation to resolve an issue. Mediation is a possible alternative where, after investigation, a staff member determines that the problems being complained of are incapable of resolution through either formal or informal means. The use of mediation services may also be appropriate where an aggrieved individual has no wish to pursue action to resolve a complaint by legal means.

9.4 Formal Action

a) <u>Service of Orders</u>

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 specific legislative provisions. 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 the specific legislative provision.

A person or other body to whom an order is given will ordinarily have a right of appeal to an appropriate court or tribunal, in accordance with the relevant 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.

b) Action in regard to a default

Failure to comply with Orders or Directions will incur further enforcement action which may include prosecution.

Where action in regard to a default is provided for by the relevant legislation and the necessary work has not been carried out in the time allowed without good reason, Council may undertake the required work. Before doing the work Council will consider whether there is a realistic prospect that the person responsible will complete the work within a reasonable time. Where work in default is undertaken 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 delegate.

c) Expiation Notices

Expiation notices may be issued as an alternate means to prosecution. An expiation notice may allege that up to three offences have been committed and set out that a fee may be paid as an alternative to prosecution. Evidence that is sufficient to prove the offence/s 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 has a right to elect to be prosecuted for the alleged offence/s, 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. If the recipient of an expiation notice does not wish to be prosecuted, but fails to pay the expiation fee, further charges and enforcement consequences may apply.

d) Prosecution

A decision to prosecute shall be made in the public interest. 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 conduct of the alleged offender justifies taking such steps.

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, on a person, balanced against the seriousness of the alleged offence.
- The admissibility of the available evidence.
- Any applicable defenses.
- The need to maintain confidence in Council as a prosecuting authority.

Factors such as giving false information, the obstruction of Council staff and the harm or risk of harm caused will be considered in determining additional enforcement actions.

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

turn 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 unlawful activity. 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 or legislative process.

10. RECORDS MANAGEMENT

All documents relating to this Policy will be registered in Council's Record Management System and remain confidential where identified in accordance with the *State Records Act 1997*.

11. POLICY REVIEW & EVALUATION

This Policy will be reviewed at least every four (4) years or as required by legislative change.

Council Members and Council staff of the District Council of Tumby Bay are expected to demonstrate standards of conduct and behaviour that are consistent with relevant legislation, regulations and policies.

12. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.tumbybay.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's schedule of fees and charges.

13. FURTHER INFORMATION

File reference	R26/11708
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Applicable Legislation	Australian Road Rules District Council of Tumby Bay By-laws (as in force from time to time) *Dog and Cat Management Act 1995* *Environment Protection Act 1993* *Expiation of Offences Act 1996* *Fire and Emergency Services Act 2005* *Food Act 2001* *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*
Related Policies	
Related Documentation	

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SIGNED:

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Responsible Officer