



City of Albany  
Policy & Guideline

# Regulatory Compliance

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## 1. Objective

This policy provides guidance to:

- Ensure there is a consistent approach in the undertaking of compliance and enforcement action.
- Ensure transparency, procedural fairness and that the principles of natural justice are enacted.

## 2. Policy Statements

- 2.1 The City shall administer its statutory responsibilities under the applicable legislation in a fair, unbiased and equitable manner in the interest of public health, safety, order, and amenity.
- 2.2 The City of Albany recognises the need for the separation of powers in respect of the adoption of regulation and the enforcement thereof.
- 2.3 The City acknowledges that the enforcement of regulations is an administrative function for which statutory responsibility rests with the Chief Executive Officer.
- 2.4 Each compliance investigation undertaken by the City will be assessed case by case on its merits.
- 2.5 Complaints will be prioritised for investigation based upon the seriousness of the alleged breach or offence when assessed against criteria established in the Compliance and Prosecution Guidelines.
- 2.6 Assessment of the priority of the matter, prior to prosecution, will include a public interest test as described in the Compliance and Prosecution Guidelines.
- 2.7 Authorised City staff may undertake compliance checks on a random or routine basis. Evidence of a breach of legislation identified may result in an investigation and subsequent compliance action.
- 2.8 City of Albany staff, volunteers, and Councillors will be bound by the City of Albany Code of Conduct Policy when undertaking the investigation and resolution of compliance issues.
- 2.9 The City's communications with members of the public will be in accordance with the Customer Service Commitment and Complaints Resolution policy.
- 2.10 The City of Albany is unable to condone the continuation of a breach or offence once it has been brought to the City's notice. The City's compliance efforts will be applied in accordance with the Compliance and Prosecution Guidelines and within available resources. Accordingly, the investigation of relatively minor instances of non-compliance may be deferred or not pursued.
- 2.11 The City may refuse to investigate a complaint where the City has formed the opinion that the compliance issue is either minor or unreasonable as described in the Ombudsman Western Australia Managing unreasonable complainant conduct: Practice Manual.
- 2.12 The enforcement measures applied will be those considered by the CEO or delegate to be most appropriate to achieve compliance with the law and serves the public interest.
- 2.13 Enforcement action will be commensurate with the seriousness of the alleged breach or offence assessed against criteria established in the Compliance and Prosecution Guidelines and consistent with legal requirements.

### 3. Scope

- 3.1 This policy applies to any City officer with responsibilities under delegated authority for ensuring compliance with WA state legislation and City of Albany local laws.
- 3.2 This policy primarily applies to the investigation and resolution of:
- offences against, or breaches of legislation for which the City of Albany (the City) is administratively responsible; and
  - failure to comply with lawful directions.
- 3.3 It also applies to any appeals arising out of proceedings brought by the City.
- 3.4 This policy will apply to all relevant State and local laws, including but not limited to the *Planning and Development Act 2005*, the *Public Health Act 016*, the *Building Act 2011*, *Dog Act 1976*, *Cat Act 2011* and the *Bush Fires Act 1954*.

### 4. Review Position and Date

This policy and procedure is to be reviewed by the document owner every two years.

### 5. Associated Documents

Strategies, procedures, references, guidelines or other documents that have a bearing on this policy and that may be useful reference material for users of this policy:

- Compliance & Enforcement Guideline
- Internal Review Guideline

### 6. Definitions

Key terms and acronyms used in the policy, and their definitions:

- **Amenity** means the same as defined in Local Planning Scheme No 1.
- **City** means the City of Albany
- **Infringement Notice** means a notice issued under a written law, other than this Act, to a person alleging the commission of an offence and offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have the matter dealt with out of court.
- **Officer** means an employee of the City of Albany
- **Public safety** means the welfare and protection of the general public.
- **Proactive compliance** means the commencement of compliance investigations into an activity without a written complaint.
- **Unreasonable complaint** has the meaning given in the Ombudsman Western Australia Managing unreasonable complainant conduct: Practice Manual.
- **Warning** means verbal or written notice given to an individual or business that an offence has allegedly been committed. The warning advises of the nature of the breach or non-compliance, appropriate remedial action and the potential consequences of further non-compliance.

## COMPLIANCE & ENFORCEMENT GUIDELINE

### PURPOSE

To provide guidance to City of Albany authorised officers who have a compliance and enforcement role to ensure:

- there is a consistent approach in the undertaking of compliance and enforcement action; and
- that transparency, procedural fairness and the principles of natural justice are applied.

### SCOPE

This policy applies to any City officer with responsibilities under delegated authority for ensuring compliance with WA state legislation and City of Albany local laws.

This policy primarily applies to the investigation and resolution of:

- offences against, or breaches of legislation for which the City of Albany (the City) is administratively responsible;
- failure to comply with lawful directions; and
- any appeals arising out of proceedings brought by the City.

### COMPLIANCE

Where a complaint relates to a breach of statute or local law for which the City is responsible for administering, the City may request those complaints to be made in writing and should include:

- name, address and phone number or email address of the complainant;
- address of the property to which the complaint relates;
- details of the alleged breach or offence; and
- details of how the matter is affecting the complainant.

The City of Albany is unable to condone the continuation of a breach or offence once it has been brought to the City's notice. The City's compliance efforts will be applied in accordance with enforcement criteria listed in sections 9 and 10 of this Guideline and within available resources.

Accordingly the investigation of relatively minor instances of non-compliance may be deferred or not pursued.

Complaints will be prioritised for investigation based upon the seriousness of the alleged breach or offence when assessed against the criteria prescribed in clause 12 of this Guideline.

## ENFORCEMENT

Enforcement options may only be exercised by officers with relevant delegated authority or authorisation relating to enforcement action or otherwise by Council resolution.

The City of Albany may, where appropriate, favour education over other enforcement options but only where this is in the public interest and appears likely to achieve compliance.

At the conclusion of an investigation, authorised officers shall pursue the most appropriate action which may include one or more of the following enforcement options, listed below:

- acknowledge, with no further action;
- granting of public amnesty;
- informal action (including education);
- formal warning;
- cancellation of permits;
- infringement notice;
- statutory notice and/or direction notice;
- prosecution; or
- injunction.

Decisions on enforcement action may have regard to any or all of the following considerations:

- whether there has been a failure to comply with any written law, any formal request, lawful direction or notice given by the City;
- the length of time since the occurrence of the incident;
- whether the breach or offence was committed deliberately or accidentally;
- any mitigating or aggravating circumstances;
- any demonstrated history of non-compliance;
- the potential short and long term consequences of non-compliance;
- the need for deterrence of further breach or offences; or
- precedent which may be set by any failure to take enforcement action.

Enforcement action will be commensurate with the seriousness of the alleged breach or offence and consistent with legal requirements.

In determining the seriousness of an alleged breach or offence resulting from a complaint or proactive compliance action, the City will have regard to:

- the penalty prescribed in the relevant legislation for the alleged breach or offence;
- the nature or relative seriousness of the breach;
- the potential harm caused by, or effect of, the breach/offence on public health and safety, environment (built and natural), or the amenity of the district; and
- whether or not it is in the public interest for the City to take action.

## PROSECUTION

Prosecution is an enforcement option that may be used when there are reasonable grounds for suspecting that an offence has been committed contrary to an Act, regulation, or local law. The objects of prosecution include but are not limited to:

- enforcing legislation;
- protecting the public from loss, harm, injury, or damage;
- satisfying the public interest that legislation is properly enforced; and
- act as a deterrent to others who might consider committing the same or similar offences.

For the purpose of this Guideline, a prosecution is commenced when a prosecution notice is lodged with the court.

The City may also become involved in prosecution proceedings if:

- at the election of the alleged offender;
- escalation following a court decision; or
- escalation following a State Administrative Tribunal (SAT) decision.

Prosecution will only be initiated following consideration of all the available information and circumstances of the individual case. Determining if prosecution is an appropriate option involves two identifiable steps:

- the establishment of a prima facie case with reasonable prospects of success, and
- establishing that a prosecution is in the “public interest”.

### Prima facie case:

- A prosecution should not be instituted or continued unless there is sufficient admissible, evidence to address the burden of proof that an offence has been committed by the alleged offender. The existence (or otherwise) of a prima facie case should be determined as early as possible in the prosecution process. However, the existence of a prima facie case does not of itself justify prosecution of a matter.
- Consideration should also be given to the prospects of conviction. Prosecution should not ordinarily proceed if there is no reasonable prospect of a conviction being secured.

### Public Interest:

- The public interest dictates that prosecutions are initiated, or continued, only in circumstances where it is apparent that the offence, or the circumstances of its commission, are of such a nature that a prosecution is in the public interest.
- The factors to be taken into account when deciding whether or not the public interest requires prosecution will vary from case to case. The following factors, which should be considered at all stages of the process, may be relevant in determining whether the public interest supports prosecution of a matter:
  - The seriousness or triviality of the alleged offence or technical non-compliance.
  - Any mitigating or aggravating circumstances.

- The age, mental ability, physical health, mental health, or special infirmity of the alleged offender or a witness.
- The alleged offender's previous history in relation to relevant compliance activity.
- The degree of culpability of the alleged offender in connection with the offence.
- The effect on public order.
- Whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute.
- The availability and efficacy of any alternatives to prosecution.
- The prevalence of the alleged offence and the need for deterrence (including the likely deterrent value of the prosecution).
- Whether the alleged offence is of considerable public/environmental concern.
- Any entitlement of the City or other person/body to compensation, reparation, or forfeiture if a prosecution is secured.
- The likely length and expense of a trial (if disproportionate to the seriousness of the offence).
- Whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so.
- The likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court.
- The necessity to maintain public confidence in the City and the courts.
- The potential financial benefit the alleged offender stands to make from the illegal activity.
- The relevance and weight of these factors will vary depending upon the particular circumstances of the case.
- **A decision whether or not to prosecute must not be influenced by:**
  - The race, religion, gender, national origin, political associations, activities or beliefs of the alleged offender or any other person involved.
  - Personal feelings concerning the alleged offender or their legal representative.
  - Possible political advantage or disadvantage to any individual, Council or any political group or party.
  - The possible effect of the decision on the personal or professional circumstances of those responsible for the decision.
- **A prosecution should only to be discontinued if:**
  - The prosecution complaint is wrong at law or there is an error in the charges.
  - The prosecution involves a mistake of fact.
  - The alleged offender be deceased, cannot be located, or is declared bankrupt.
  - Upon legal advice.
  - Where the age, state of physical health and/or mental health of the alleged offender is a determining factor.
  - In consultation with or following comments made by the court.
- After consultation with the legal representative of the defendant or personally with the defendant if the defendant is unrepresented.

- The complainant withdraws the matter prior to first mention in court.
- The decision to discontinue a prosecution shall be made by the CEO or delegate.
- If, following the commencement, but prior to the conclusion of prosecution action, an alleged offender complies with any prior order that gave rise to the prosecution, or submits any application for approval, the City will not discontinue the prosecution.

### **Injunctions:**

- In instances of serious non-compliance with legislation and where efforts to resolve that non-compliance have proven ineffective, the City may seek an injunction requiring a person not to breach, or to cease breaching, a statute.
- Decisions on whether to seek an injunction shall be made in accordance with the Chief Executive Officer's statutory responsibilities in relation to legal proceedings

### **Recovery of Legal Costs & Penalties:**

- The City will seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the Court.
- The City is unable to assist third parties in the recovery of legal costs.

### **Disclosure of Information:**

- Requests for information relating to compliance or enforcement matters made pursuant to the Freedom of Information Act 1992 (FOI Act) and will be handled in accordance with the processes set out in the FOI Act. Any decision to release or refuse to release information will be considered on a case-by-case basis in accordance with the provisions of the FOI Act.
- Officers shall not release information on specific compliance and enforcement activities, such as active investigations, to the public. The City may provide a press statement if it is absolutely necessary or required through the investigative process. Information may be shared with co-regulators and police.

### **Legislative and Strategic Context**

The *Local Government Act 1995*, s3.1(1) identifies that one of the general functions of Local Government is the "good government of persons in its district".

The *Local Government Act 1995* s3.18(1) provides that: "a local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act".

The *Local Government Act 1995* s2.7 identifies the role of council as:

- "(1) The council —*
- (a) governs the local government's affairs; and*
  - (b) is responsible for the performance of the local government's functions.*
- (2) Without limiting subsection (1), the council is to —*
- (a) oversee the allocation of the local government's finances and resources; and*
  - (b) determine the local government's policies."*

This policy is guided by the Statement of Prosecution Policy and Guidelines 2005 issued under the *Director of Public Prosecutions Act 1991*.

### **Review Position and Date**

This guideline is to be reviewed by the document owner every two years.

### **Associated Documents**

- Council Policy – Compliance & Prosecutions.

### **Definitions**

The key terms and acronyms used in the guideline, and their definitions are detailed in the Council Policy – Compliance & Prosecutions.