



## Compliance and Enforcement Policy

<b>Policy Type:</b> Council Policy	<b>Policy No.</b> CP-114
<b>Policy Owner:</b> Manager Governance and Property	<b>Last Review Date:</b> XXXXX21 July 2020

### Policy Objectives

This policy provides guidance to:

- Ensure there is a consistent, efficient and proportionate approach in the undertaking of compliance and enforcement action by the City.
- Ensure transparency, procedural fairness and that the principles of natural justice are preserved.
- Use compliance and enforcement strategies in such a way as to best achieve legislated objectives and provide for the good government of the Melville community.

### Policy Scope

1. This policy applies to all compliance and enforcement actions by any City officer with responsibilities under statutory or delegated authority for ensuring compliance with WA state legislation and City of Melville local laws.
2. This policy applies to the investigation of and response to:
  - offences against, or other breaches of, legislation for which the City of Melville is administratively responsible within its district; and
  - failure to comply with lawful directions or statutory orders.
3. This policy will apply to the City's compliance responsibilities under all relevant State and local laws and regulations, including but not limited to the:

*Local Government Act 1995;*  
*Building Act 2011;*  
*Bush Fires Act 1954;*  
*Cat Act 2011;*  
*Dog Act 1976;*  
*Environmental Protection Act 1986;*  
*Food Act 2008;*  
*Graffiti Vandalism Act 2016;*  
*Health (Miscellaneous Provisions) Act 1911;*  
*Litter Act 1979;*  
*Planning and Development Act 2005;*  
*Public Health Act 2016,*  
and subsidiary legislation made under those Acts.

4. This policy is intended to complement and are not a substitute for the:



- Compliance and Enforcement Guideline for Enforcement Agencies published by the Western Australian Department of Health for compliance and enforcement of the *Food Act 2008*, *Food Regulations 2009* and *Australia New Zealand Food Standards Code*,
- Compliance and Enforcement Policy published by the Department of Water and Environmental Regulation applicable to the *Environmental Protection Act 1986*, *Litter Act 1979* and related legislation.

## Definitions / Abbreviations Used In Policy

- **Amenity** has the same meaning as in Local Planning Scheme No 6.
- **Authorised prosecutor** means a person or a member of a class of persons who have statutory (including delegated) power or who are otherwise authorised to commence and carry on legal proceedings relating to an offence, as provided in the relevant legislation.
- **City** means the City of Melville.
- **Complaint** means a formal report of non-compliance with a law.
- **Compliance** means acting in accordance with relevant legislation and lawful directions.
- **Enforcement** relates to the function of responding to non-compliance with the measures provided for in the relevant legislation.
- **Investigation** means the process of establishing and analysing facts and applying fair and reasonable interpretations to determine whether non-compliance or an offence have occurred and the person most likely responsible.
- **Non-compliance** means to do something prohibited by legislation or a lawful direction, or to fail to do something that legislation or a lawful direction requires a person to do.
- **Offence** means a form of non-compliance that is classified as an offence in legislation.
- **Public health and safety** means the welfare and protection of the general public.

## Policy Statements

1. The City is responsible for the local administration of a wide variety of legislation providing for the safety, health and amenity of the community, environmental protection and the legitimate interests of local business, consumers, workers and residents.
2. Compliance with the law is not an option: it is an obligation. The primary purpose of the City of Melville's compliance and enforcement function is to achieve regulatory compliance and prevent offences through education and incentives, including formal action where necessary.
3. The City undertakes enforcement actions on behalf of and in the interests of the community as a whole, not in pursuit of the interests or benefit of any individual or group.
4. The City of Melville recognises the need for the separation of powers between:
  - a. the adoption of legislation by elected representatives and its enforcement by administrative personnel; and
  - b. the investigation function and the decision whether to prosecute.
5. The City will undertake its statutory compliance and enforcement responsibilities under the applicable legislation in accordance with the following principles:



- a. **Consistent, fair, unbiased and equitable** compliance and enforcement action will be taken in the interests of public health, safety, order, and amenity.
  - b. **Graduated and proportionate** enforcement responses will be commensurate with the seriousness of the alleged non-compliance assessed against public interest criteria established in the Compliance and Enforcement Guidelines, and will be consistent with legal requirements and the responsible use of available resources.
  - c. **Transparent and accountable** processes will be used in dealing with non-compliance, ensuring that warnings, notices and directions explain why an action is non-compliant, identify remedial action required where appropriate, allow reasonable timeframes for achieving compliance and provide for review.
  - d. **Natural justice** will be respected by considering all available evidence, allowing alleged offenders to have their arguments heard, and advising people affected by compliance and enforcement action of the options open to them, including objection and review mechanisms.
  - e. **Outcome-focused** enforcement action will be based on risk management and the efficient use of public resources. Accordingly, the pursuit of minor instances of non-compliance with negligible consequences may be deferred or discontinued.
6. Investigation, including entry on to land by notice or warrant, and subsequent compliance or enforcement action may result from:
- a. Proactive compliance checks by authorised City officers on a random or routine basis.
  - b. Reactive compliance checks in response to a formal complaint about alleged non-compliance.
7. Complaints about alleged non-compliance with laws which the City administers will be investigated except in cases where on the basis of the information available to it, the City has formed the opinion that:
- a. the alleged non-compliance is trivial and inconsequential.
  - b. the complaint is frivolous, vexatious or unreasonable as described in the Ombudsman Western Australia Managing Unreasonable Complainant Conduct: Practice Manual.
  - c. the complaint is unsubstantiated or contains insufficient verifiable evidence to enable an investigation to be undertaken.
  - d. the complaint is part of a series of complaints made in the course of a known ongoing neighbourhood dispute where the previous complaints have been unsubstantiated, and another investigation may be perceived as harassment of the subject of the complaint.
  - e. the City is not the appropriate authority to investigate the matter.
8. Complaints will be prioritised for investigation based upon the seriousness of the alleged non-compliance when assessed against public interest criteria provided in the Enforcement and Compliance Guidelines.
9. Where investigation indicates an offence outside the City's authority, the matter will be referred to the appropriate State agency, and information shared with that agency according to legislative requirements and existing protocols.



10. When an investigation has determined that sufficient evidence exists to establish non-compliance, the City will consider the following matters when deciding the most appropriate enforcement action within the City's authority:
  - a. The seriousness of the matter having regard to the actual or potential impact on the health, safety and amenity of others or on the environment;
  - b. The accessibility and adequacy of public information concerning the relevant compliance requirements;
  - c. The length of time since the occurrence of the incident and any statutory time limits;
  - d. Whether the breach or offence was committed deliberately or inadvertently
  - e. The previous compliance history of the offender with respect to similar types of offences, **and whether the alleged offender has been educated, requested to comply, issued warnings or notices to comply and has failed to do so without reasonable excuse;**
  - f. The cooperation of the offender with the City in rectifying or committing to rectify the non-compliance when advised of it;
  - g. Whether the offender belongs to a recognised category of vulnerable persons with limited legal capacity or communication difficulties;
  - h. Any aggravating or mitigating circumstances;
  - i. The likelihood that the enforcement action will provide an adequate incentive to remedy the non-compliance and deter subsequent non-compliance, considering the level of financial or other benefit that the alleged offender could expect to derive from the non-compliance;
  - j. Other issues of public concern, including precedents regarding similar non-compliance within the City and the precedent that may be set by any perceived failure of the City to take appropriate enforcement action.
11. In general, officers will favour the minimum level and type of enforcement action consistent with addressing the matters above and with the City's authority under the relevant legislation.
12. Prior deciding whether to commence prosecution: the authorised prosecutor will consider the information provided by the investigating officer, the presence of a *prima facie* case, the likelihood of securing a conviction and deterrent penalty, and other matters of public interest as described in the Compliance and Enforcement Guidelines.
13. Attempts by any person to improperly influence the compliance and enforcement process will not be condoned.
14. In addition to enforcement action provided by law and the prosecution of statutory offences, the City may, where legislation authorises it to do so:
  - a. undertake works on private property where the owner, occupier or other responsible person has failed to undertake remedial works specified in a written notice or order, and recover the reasonable costs of such work;
  - b. take legal action to seek restitution from the offender for the fair value of any public property damaged as a result of regulatory non-compliance, and any remediation costs incurred by the City to the extent that the law allows;
  - c. refer unpaid fines to the Fines Enforcement Registry.



15. Where the City has resolved to initiate further action against an alleged offender, the City will, where and as soon as practicable, and where the proposed action against the alleged offender is consequent on an initial complaint:
- (a) Advise the complainant of the nature of the initial further actions e.g. planning/building orders and/or prosecution, to be taken, and
  - (b) Advise the complainant of the first date upon which the action in (a) above results in an attendance of the matter before a Court, Tribunal or external body or agency, where applicable.

#### References that may be applicable to this Policy

##### Legislative Requirements:

*Local Government Act 1995*  
*Building Act 2011*  
*Bush Fires Act 1954*  
*Caravan Parks and Camping Grounds Act 1995*  
*Cat Act 2011*  
*Control of Vehicles (Off-road Areas) Act 1978*  
*Criminal Procedure Act 2004*  
*Dog Act 1976*  
*Environmental Protection Act 1986*  
*Food Act 2008*  
*Graffiti Vandalism Act 2016*  
*Health (Miscellaneous Provisions) Act 1911*  
*Litter Act 1979*  
*Planning and Development Act 2005*  
*Public Health Act 2016*  
and subsidiary legislation including local laws

##### Procedures, Process Maps, Work Instructions:

Directorate Procedure – Planning Compliance  
Work Instruction – Planning Compliance

##### Other Plans, Frameworks, Documents Applicable to Policy:

Compliance and Enforcement Guideline  
Complaints Management Policy  
City of Melville Codes of Conduct  
Customer Service Charter  
Managing Unreasonable Conduct Guideline

##### External references:

Compliance and Enforcement Guideline for Enforcement Agencies published by the Western Australian Department of Health,  
Compliance and Enforcement Policy published by the Department of Water and Environmental Regulation.  
Statement of Prosecution Policy and Guidelines 2018 published by the WA Director of Public Prosecutions.  
Managing Unreasonable Complainant Conduct: Practice Manual published by the Ombudsman Western Australia.

---

#### ORIGIN/AUTHORITY

Ordinary Meeting of Council

21 July 2020

#### Item No.

M20/5754

#### Reviews