

Enforcement Process

1. Document control

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Document Owner:	Director Development and Community Services	Document Author:	Manager Health Services and Community Services
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2. Purpose

- 2.1. This Process outlines Council, and its Officers, in addressing matters of non-compliance within the community and the subsequent decision-making process.
- 2.2. It aims to provide consistency and ensures that any action is proportionate to the circumstances and situation being investigated. It ensures that transparency and procedural fairness principles are applied.

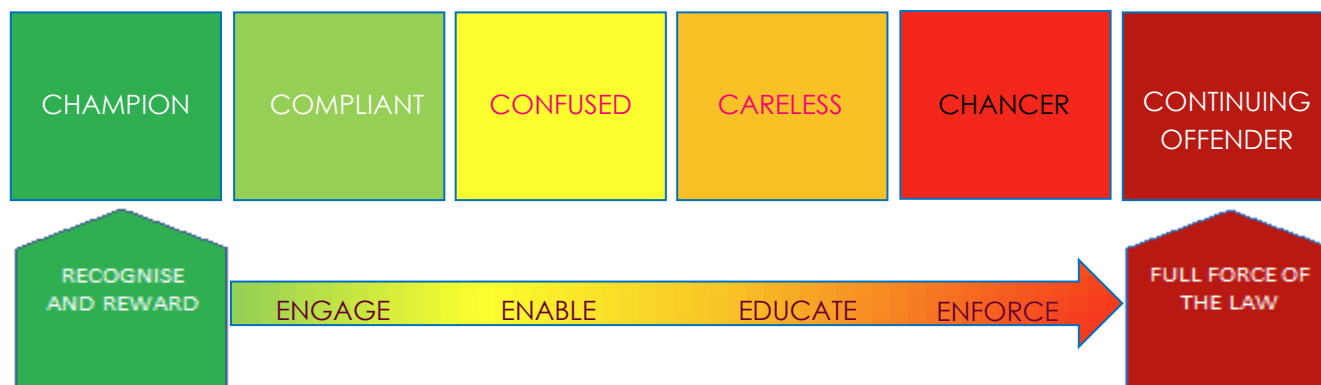
3. Scope

- 3.1. This Process will outline the steps when Enforcement decisions need to be determined. These steps will include but are not limited to the decision-making process/options, enforcement options, the servicing of expiation notices, serving of orders/notices and directions, prosecutions, action regarding default or order/notice.

4. Process

Decision Making

- 4.1. Each team will develop frameworks that will be in line with this Process. How each team will develop these frameworks will be dependent on the intent/spirit of the legislation being administered, and the severity of an offence or risk to the community or environment.
- 4.2. The following provides a reference for establishing a decision-making framework, and/or work process:



Intent / Motivation	Possible Enforcement Response
Champion - someone who understands the laws and displays knowledge, skills and experience, and is willing to educate and demonstrate to others.	Positive Compliance Reports, Recognition for compliance.
Compliant - someone who is reasonably expected to know the laws and displays such knowledge, skills and experience to meet the requirements of laws.	Enable compliance, Positive Compliance reports, Council data and reporting
Confused - someone who has little experience or knowledge of the laws, or someone who lacks clear distinction of the elements of the law and has accidentally breached it.	Enable compliance, Education, Warning
Careless - someone who is reasonably expected to know the laws but has not given sufficient attention or thought to avoiding non-compliance.	Education, Warning, Notice, Expiation for repeated offences
Chancer - someone who is reasonably expected to know the laws but is willing to risk it.	Notice, Expiation, Prosecution through election or repeated offences
Continuing Offender - as defined by the relevant legislation in each case, but generally a behaviour associated with intentional or serious negligence leading to harm or injury.	Prosecution, Referral to appropriate authority (e.g. Police)

4.3. While decisions of enforcement require the use of professional judgement and discretion to assess varying circumstances officers will:

- 4.3.1. Follow standard operating procedures / works instruction;
- 4.3.2. Ensure fair, equitable and non-discriminatory treatment; and
- 4.3.3. Record any deviation from standard operating procedures / Works Instructions, and the reasons.

Authorised Officers

4.4. Only Officers who have the required training, qualification and/or experience will be authorised by Council or its delegate to take enforcement action. Officers will also have sufficient training and understanding of Council's policies and processes to ensure a consistent approach to their duties.

No Action

4.5. No action is an option and will be considered when, after investigation, no breaches of the legislation are discovered, no best practice options can be determined, or the matter is outside of Council's area of jurisdiction or authority.

4.6. It may also be appropriate to take no action when:

- 4.6.1. The complaint is frivolous, vexatious or trivial in nature; or
- 4.6.2. Taking action may prejudice other major investigations.

- 4.7. Following an investigation of a matter, where a decision is made not to take enforcement action, the decision and reasons will be recorded in accordance with Council's Knowledge Management Framework.
- 4.8. Advice from Authorised Officers will be clear and confirmed in writing where deemed necessary.
- 4.9. Education will be a critical component to encouraging and achieving voluntary compliance. Educational tools and strategies may be developed by each team and may include any of the following types:
 - 4.9.1. Offering verbal advice
 - 4.9.2. Provision of information (e.g. guidelines, factsheets, details of other regulatory bodies)
 - 4.9.3. Corrective action requests
 - 4.9.4. Verbal warnings
 - 4.9.5. Written warnings

Mediation

- 4.10. Mediation is a possible alternative where, after investigation, Council Officers consider that the matter is unlikely to be easily resolved 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; or where Council has no legal authority to act.
- 4.11. If deemed appropriate by the relevant officer, Council will provide guidance and information on suitable mediation services, if both parties agree.
- 4.12. Council will not contribute to the costs of mediation, any costs associated with mediation services is the responsibility of both parties.

Formal Action

- 4.13. Where informal actions have failed to achieve the desired outcome, Council has various powers that it may use to secure legislative compliance. The formal action needs to be proportionate to the situation.

Service of Orders/Notices and Directions

- 4.14. An Order or Notice is a written direction of Council requiring specific action to be taken to secure legislative compliance. A range of legislation administered across the organisation provides Authorised Officers with the delegation to issue an Order or Notice and specific requirements as detailed in the relevant Act that the Officer is Authorised.
- 4.15. Notwithstanding the provisions of other legislation, Section 254 of the *Local Government Act 1999* gives Council Order Making Powers that allows Authorised Officers to order a person to do, or to refrain from doing, a specified activity. The process of issuing an order under the Order Making Power is defined in Section 255 of the *Local Government Act 1999*.
 - 4.15.1. Authorised Officers will use professional judgement and discretion to assess the variables relating to each matter under consideration, including the reasonableness of the actions required by an Order or Direction and the timeframe to comply.
 - 4.15.2. In circumstances such as a threat to life or immediate or impending threat to public health or safety, Formal action may commence without giving notice of intention to expedite a matter. In these circumstances the action must be supported by relevant legislation.

- 4.15.3. In most cases the person receiving the Order or Notice has a right of appeal to the appropriate Court or Tribunal. If an Order or Notice is served for which an appeal is possible, Council will include information detailing the right to appeal and the relevant legal provisions at the time of serving the Order.
- 4.15.4. Where there is evidence that an offence has been committed, Council may issue an Expiation Notice or commence a prosecution in addition to serving an Order or Notice. This will only be done where it is determined by an Authorised Officer that the conduct of the recipient justifies taking both steps. Where legislation provides, Council may also apply to the Court for an Order to be made.

Action in Regard to a Default of Order/Notice

- 4.16. Failure to comply with Orders or Notices may incur further enforcement action and/or prosecution.
- 4.17. Where legislation provides, Council may undertake further action following non-compliance or default in relation to an Order, Notice or Direction and may proceed to undertake the work contemplated by the Order or Notice and seek to recover the costs of that work.
- 4.18. The decision to carry out action in default will be made by an Authorised Officer of Council with appropriate delegated authority.
- 4.19. Before entering into a contract to undertake the work, Council will consider whether there is a realistic prospect that the person responsible will complete the work within a reasonable time. Where Council determines to undertake the work in default, Council will seek to recover all reasonable costs in accordance with legislation. A decision not to recover costs will be made by staff with appropriate authority to do so, or Council.
- 4.20. Where an Order, Notice or Direction has not been complied with and where legislation allows, Council may issue an Expiation Notice or launch a prosecution in addition to taking action to fulfil an Order. This will only be done where the conduct of the recipient justifies taking such steps.

Expiation Notices

- 4.21. Various Acts allow councils to issue expiation notices for a range of matters. Council will avoid using expiation notices as a means of securing compliance in the first instance, unless:
 - 4.21.1. There has been a failure to correct an identified breach of a similar nature after informal or formal action, or
 - 4.21.2. There is evidence of systemic, regular or ongoing breaches of legislation, by an individual or by a range of individuals and informal action is unlikely to achieve the desired outcome effectively or efficiently, or
 - 4.21.3. The breach creates a significant risk to the community, or
 - 4.21.4. There is a desire to provide appropriate disincentive for the behaviour or breach.
- 4.22. A person receiving an Expiation Notice is entitled to elect to be prosecuted for the alleged offence, as such Council officers must have sufficient and admissible evidence to prove the offence beyond reasonable doubt as if the matter was proceeding to court.
- 4.23. Council will ensure that its officers are fully trained in all aspects of conducting investigations, evidence gathering, statement taking, carry out interviews with alleged offenders, and issuing of expiation notices.

Prosecution

- 4.24. A prosecution will only proceed where there is a reasonable prospect of a successful outcome being upheld in the relevant court. Where circumstances warrant a prosecution all relevant evidence and information will be considered to enable a consistent, fair and objective decision to be made. Before a prosecution is recommended there must be substantial, reliable, and admissible evidence that an identifiable person or organisation has committed the offence. The final decision to prosecute will be made by the Chief Executive Officer or their delegate.

Cost Recovery

- 4.25. Council may incur significant costs (legal and/or otherwise) when enforcement action is taken to rectify illegal activities. In the interest of reducing the financial burden of pursuing enforcement and compliance matters on ratepayers, Council will seek to recover costs incurred where possible.

5. Responsibilities

Chief Executive Officer

- 5.1. Ensuring that all Authorised Officers are suitably qualified and trained to receive the relevant delegated Authorities.

Managers and Supervisors

- 5.2. Ensuring that all Authorised Officers are suitably qualified and trained.
- 5.3. All relevant Policies and Processes are made available and known to the Authorised Officers.
- 5.4. Allowing Authorised Officers to attend required accreditation and industry training.

Employees

- 5.5. Authorised Officers are required to be aware and have all required qualifications and relevant training to receive their Authorisations to carry-out their role.

6. Legislation and References

- Part 11 of the *Development Act 1993*
- Part 3 of the *Dog and Cat Management Act 1995*
- *Expiation of Offences Act 1996*
- Chapter 12 of the *Local Government Act 1999*
- Part 9 of the *Food Act 2001*
- Part 4A of the *Fire and Emergency Services Act 2005*
- Part 3 of the *South Australian Public Health Act 2011*
- Part 3 of the *Local Nuisance and Litter Control Act 2016*
- Part 18 of the *Planning, Development and Infrastructure Act 2016*
- The Barossa Council By-Laws

7. Definitions

Authorised Officer	a person who is authorised to carry out statutory functions or powers as specified within a particular piece of legislation. The decision to appoint an Authorised Officer may only be made by Council or a delegate of Council.
Council	The Barossa Council in its entirety as an organisation.
Enforcement	combination of the provision of advice and assisting compliance with formal action where necessary. This is intended to encourage higher levels of voluntary compliance with legal requirements by individuals, businesses and other bodies.

8. Version History

This Process will be reviewed by the Policy Author in consultation with the relevant stakeholders, within four years or more frequently if legislation or Council's need changes.

Version No.	Date	Summary of Change/s
1	19/05/2026	New Process

9. Further Information

This Process is available on Council's website at www.barossa.sa.gov.au. It can also be viewed electronically at Council's principal office at 43-51 Tanunda Road, Nuriootpa during ordinary business hours. A printed copy of this Process can be obtained upon payment of a fixed fee.

Feedback regarding this Process or its application can be made to the Customer Service Team on 8563 8444 or barossa@barossa.sa.gov.au in first instance, who will refer you to the most appropriate officer.