

Moira Shire Council

Compliance and Enforcement Policy

Policy Owner:	Council
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Responsible Director:	Director Sustainable Development
Responsible Officer:	Manager Regulatory and Emergency Services
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This policy will be reviewed four years from the date of adoption, or sooner if required.

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Administrative changes do not materially alter this document (such as spelling /typographical errors, change to the name of a Council department, a change to the name of a Federal or State Government department). Administrative updates can be made in accordance with the Policy Framework Guidelines.

1. PREAMBLE

The Victorian Government has conferred upon Moira Shire Council (Council) legislative responsibilities to protect individuals, the community, property, assets and the environment. Council serves both those upon whom the law places duties and those whom the law protects. While ultimate responsibility for legal compliance rests with individuals and organisations, Council officers are required to administer and enforce legislation to obtain compliance.

This policy establishes Council's comprehensive enforcement framework, outlining Council's approach to the administration and enforcement of regulatory matters and providing Council officers with clear direction regarding the conduct of enforcement activities.

In addition to enforcement, Council undertakes various activities to ensure legislative compliance, including education, community engagement, media releases, and other programs designed to encourage voluntary compliance. Specific policies and procedures governing these activities may apply in addition to this policy.

Enforcement activities include:

- Patrolling streets and public places
- Inspecting premises
- Responding to enquiries and complaints
- Issuing warning letters, notices, infringements and/or prosecution.

2. PURPOSE OF THE POLICY

The purpose of this policy is to:

- Promote education as an effective tool to obtain voluntary compliance
- Provide consistency in enforcement action for matters arising from non-compliance with legislation
- Ensure transparency and procedural fairness in enforcement processes
- Ensure enforcement action is proportionate to the alleged offence in each case

3. DEFINING ENFORCEMENT

Council adopts a broad definition of "enforcement" that encompasses the provision of advice, assistance with compliance, and formal legislative actions where necessary. This approach is designed to encourage higher levels of voluntary compliance with legal requirements by individuals, businesses, and other entities.

Notwithstanding this graduated approach, Council will take immediate action when required (for example, to ensure public health and safety or to protect the environment) and will take firm action against those who act unlawfully when circumstances warrant.

4. PRINCIPLES OF ENFORCEMENT

Enforcement actions are undertaken within both legal and policy frameworks. Council officers will conduct their enforcement-related work with due regard to the following principles:

4.1 Proportionality

A proportionate response ensures that Council's actions reflect the seriousness of the breach. Council recognises that there is a spectrum of reasons for non-compliance and a corresponding spectrum of harm arising from non-compliance. Any enforcement action should be proportionate to:

- The seriousness of the contravention
- The level of harm arising from the contravention
- The persistence or deliberate nature of the non-compliance

More serious or persistent levels of non-compliance warrant more significant enforcement action. Specific guidelines or policies may apply to matters that Council administers and enforces.

4.2 Consistency

Council will adopt similar approaches in similar cases to achieve consistent outcomes. While enforcement decisions require professional judgement and discretion to assess varying circumstances, Council officers will:

- Follow Council's guidelines, operating procedures, and directions wherever possible
- Ensure fair, equitable, and non-discriminatory treatment
- Ensure any deviation from Council's guidelines, operating procedures, or directions is reasonable and justified in the specific circumstances

4.3 Transparency

Council will be open and transparent about its enforcement activities and the laws it enforces. In accordance with the Local Government Act 2020 (LGA 2020), Council will:

- Consult on and provide ready access to published standards and service levels
- Be clear about expectations for duty holders
- Make legal requirements clear when educating the community and dealing with duty holders
- Discuss the objectives to be achieved through compliance action

When remedial action is required, Council will explain clearly and in plain language why the action is necessary. Where practicable, Council will provide notice of its intent to commence formal action, specify required actions for compliance, establish reasonable timeframes, and provide information about review and appeal processes where available.

Where it is not practicable to provide notice, the reasons will be documented in accordance with Council's Records Management protocols.

Complainants will be advised of Council's response to complaints in accordance with requirements under the LGA 2020 and privacy legislation.

5. AUTHORISATION OF OFFICERS

Council may authorise members of Council staff and, in some cases, contractors to administer and enforce legislation. Council will ensure that authorised officers are competent through appropriate training, qualifications, and/or experience.

Officers will receive sufficient training and understanding of Council's policies and procedures to ensure consistent application of their duties. Council acknowledges that circumstances may occasionally justify decisions that differ from Council's policies, guidelines, or directions, provided such decisions are justifiable.

Officers are required to produce their authorisations upon demand or when exercising powers as required under the LGA 2020 or other specific legislation.

6. DECISION MAKING

Where non-compliance is identified through enforcement activities, options available to Council to obtain compliance include:

- Explaining legal requirements and means to achieve compliance
- Providing opportunities to discuss issues where appropriate
- Allowing reasonable timeframes to achieve compliance
- Facilitating mediation between affected parties
- Issuing verbal or written warnings
- Issuing and serving infringement notices
- Commencing prosecution proceedings
- Commencing administrative enforcement actions
- Advising that the matters are best settled privately or best managed by an alternative authority or agency.

Enforcement decisions must be fair, consistent, balanced, and relate to common standards that ensure adequate public protection. Where a decision is made not to investigate a complaint, the decision and reasons will be documented in accordance with Council's Records Management protocols, and the complainant will be advised.

When determining enforcement tools, authorised officers are expected to maximise outcomes and apply the law in a procedurally fair manner that serves community interests.

Decisions will be guided by factors including:

- The seriousness of the offence

- The seriousness of actual or potential harm to regulatory outcomes, particularly where conduct is ongoing
- Whether conduct was inadvertent (resulting from ignorance, lack of competence, or accident) or wilful, reckless, or negligent
- The foreseeability of harm, practicability of control, and available controls
- Whether conduct is widespread, involves emerging issues, or significantly impacts the regulatory framework
- Whether enforcement action is likely to have worthwhile educative or deterrent effects
- Appropriate compliance and enforcement options to address the alleged conduct
- Current Council priorities and plans

In determining the most appropriate enforcement means, officers shall consider relevant factors including:

- The seriousness of the offence
- The degree of wilfulness involved
- Past compliance history
- Consequences of non-compliance
- Likely effectiveness of various enforcement options
- Deterrent effect
- Impact on the community and other persons
- Consistency of approach to similar breaches/offences

The following factors must be ignored when choosing an enforcement option:

- Any element of discrimination or bias based on ethnicity, nationality, political association, religion, gender, sexuality, or beliefs
- Possible political advantage or disadvantage to any government, public office holder, candidate, or political group or party

Where personal associations or relationships with alleged offenders or other involved persons exist:

- An alternative person will make decisions where possible
- Facts about any conflict/relationship will be documented in accordance with Council's Conflict of Interest Policies and Records Management protocols

Written documentation will:

- Include all information necessary to clarify compliance requirements, timeframes, reasons for actions, and potential penalties for non-compliance
- Specify contravened legislation, measures necessary for compliance, and consequences of non-compliance
- Clearly differentiate between legal requirements and recommendations of good practice

6.1 Risk-Based Approach

When determining responses to non-compliance, Council will consider:

- The level of risk non-compliance poses to community health, safety, and amenity
- Whether Council is best placed to address the risk or non-compliance
- The most effective use of available regulatory resources

This approach recognises that it is neither practical nor appropriate for Council to take compliance or enforcement action in response to every alleged or suspected breach. Instead, Council's efforts will be directed toward areas where there is the greatest risk to health, safety, and amenity.

The below table illustrates how Council will assess risk based on both the likelihood of harm, and the consequence.

		Severity				
		Negligible	Minor	Moderate	Significant	Severe
Likelihood	Very Likely	Low Med	Medium	Med Hi	High	High
	Likely	Low	Low Med	Medium	Med Hi	High
	Possible	Low	Low Med	Medium	Med Hi	Med Hi
	Unlikely	Low	Low Med	Low Med	Medium	Med Hi
	Very Unlikely	Low	Low	Low Med	Medium	Medium

7. ENFORCEMENT OPTIONS

7.1 Enforcement Approach Assessment

Before determining appropriate enforcement tools, authorised officers assess each matter using the enforcement matrix below, which synthesises risk-based assessment principles, proportional and graduated responses, and decision-making factors outlined above.

Enforcement Response Matrix:

Likelihood or consequence of non-compliance	Insignificant No impact to the wider community or environment	Minor May have a minor impact on the wider community or environment. Harm abated and some remedial works required.	Moderate Has a moderate impact on the wider community or environment. Non-compliance for a short duration (days). Harm abated and remedied.	Major Has a major impact on the wider community or environment.
• Repeated non-compliance. • Past enforcement activity or breaches of related law and no remedial works undertaken	Medium/High	Medium/High	High	High
• Requirements are apparent (e.g. signage in place) • Previous enforcement activity or breaches of related law	Medium	Medium/High	Medium/High	High
• Non-compliance of medium duration (weeks). • Harm abated and some remedial works undertaken.	Low Low/Medium	Medium	Medium/High	High
• No history of non-compliance • Non-compliance of short duration (days). • Harm abated and remedied.	Low Low/Medium	Low Low/Medium	Medium	Medium/High

The following table expands further on the above matrix and details enforcement options that may be appropriate given the level of risk, the seriousness of the confirmed breach and the need for deterrence.

Enforcement Action Options:

Enforcement response level	Possible enforcement options
Low Low/Medium	No Action / Record Only may be a suitable course of action after preliminary assessment or investigation of the matter where the following circumstances apply: • There is insufficient evidence to substantiate breaches of legislation have occurred or are occurring • The report is from an anonymous source and details provided are insufficient to locate the alleged offending or warrant investigation • The concerns raised are frivolous, vexatious or trivial in nature • The alleged offence is outside Council's area of authority or jurisdiction (referral to other agencies may be appropriate) • Taking action may prejudice other major investigations • A matter falls into the category of civil dispute that is more appropriately dealt with through dispute resolution or other civil remedies (e.g. fence boundary disputes) • A matter has already been rectified or resolved through voluntary compliance Informal Action may be a more suitable course of action when the above circumstances do not apply and the risk level is deemed to be low. Informal action may include the following: • Providing information or advice about requirements and how to be compliant, which may be verbal and/or in writing • Negotiating with the person to obtain voluntary undertakings or an agreement to adequately address the issues of concern • Issuing a letter for work to be done, an activity to cease, or to obtain required permits instead of more formal action or notices • Issuing a verbal or written warning Low level actions may also be more appropriate than more formal actions where there is a low prospect of prosecution success if the matter were proceeded with.
Medium	Medium Action may include the following: • Issuing a notice to comply or other legal direction to remedy a breach of legislation • Issuing an official warning and possible penalty infringement notice that carries a low level monetary fine • Seizure or impound of items or animals on public land or on private land at the request of the landowner/occupier • Issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate
Medium/High	Medium/High action may include: • Issuing a penalty infringement notice and/or multiple notices where appropriate that carries a high level monetary fine • Council carrying out the works specified in a notice to comply or other legal direction after a person's failure to comply with the direction (at the cost of the person served with the direction) • Executing warrants or other court issued orders to search for and/or seize things, animals, or prevent access to a premises • Commence formal administrative proceedings (e.g. dangerous or menacing dog declarations) • Formal undertakings / agreements with Council
High	High action may include: • Seeking an injunction through the courts to prevent future or continuing unlawful activity • Executing court orders to conduct works or remove a person from a premises • Commence prosecution or other legal proceedings for an offence against the relevant Act or Regulation. • Monitoring orders of the court to ensure ongoing compliance

7.2 No Action

No action will be taken when, after investigation, no legislative breaches are discovered. It may also be appropriate when:

- Complaints are frivolous, vexatious, or trivial
- Alleged offences are outside Council's authority
- Action may prejudice other major investigations

7.3 Informal Action

Informal action to achieve legislative compliance may include:

- Offering verbal or written advice
- Verbal warnings and requests for action
- Written warnings

Officer advice will be clear, simple, and confirmed in writing where appropriate.

Circumstances where informal action may be appropriate include:

- The act or omission is not serious enough to warrant formal action
- The duty holder's history suggests informal action will secure compliance
- Confidence in the individual/entity is high
- Consequences of non-compliance will not pose significant risk
- Informal action may prove more effective than formal approaches

Where statutory action is not possible but would benefit public safety, such action will be authorised by a senior Council officer with reasons documented according to Council's Records Management protocols. Recipients will be advised that requested actions are not legally enforceable.

7.4 Mediation

Where an investigation determines that complaints cannot be resolved through other formal or informal means, and Council lacks power to resolve issues, officers should clearly communicate the inability to act. If circumstances are appropriate, officers may suggest mediation services to resolve complaints.

7.5 Formal Action

7.5.1 Service of Directions and Notices to Comply

Various legislation provides for issuing and serving directions or notices to comply. Where legislation specifies procedures, these must be followed precisely. Where necessary, natural justice provisions should include:

- Advising of intention to issue direction or notice
- Inviting submissions regarding the matter
- Considering circumstances and responses
- Issuing direction or notice if appropriate

Council officers will exercise professional judgement and discretion to assess variables relating to each matter, including reasonableness of required actions and compliance timeframes.

Only in circumstances involving threats to life or immediate threats to public health, safety, or the environment will directions, notices, or self-help actions be carried out without notice of intention.

If directions or notices are served for which appeals are possible, Council will advise recipients in writing of appeal rights and relevant legal provisions at the time of service. Where evidence exists that offences have been committed, Council may issue infringement notices or commence prosecutions in addition to serving directions or notices, but only where the recipient's conduct justifies both steps.

7.5.2 Failure to Comply with Notices

Failure to comply with orders, notices, or directions will result in further enforcement action, such as prosecution.

Where legislation provides default remedies and required work has not been completed within allowed time without good reason, Council may undertake required work pursuant to the LGA 2020. Before undertaking default work, Council will consider whether there is realistic prospect that the responsible person will complete work within reasonable time. Where default work is undertaken, Council will seek to recover all costs over fair periods using all available statutory means.

Where offences have been committed, Council may issue infringement notices or commence prosecutions in addition to fulfilling notice requirements, but only where recipient conduct justifies such steps. Factors such as providing false information, obstructing Council staff, and harm or risk of harm caused by delays will be considered in determining additional enforcement actions.

7.5.3 Service of Infringement Notices

Persons receiving infringement notices are entitled to elect prosecution for alleged offences. Therefore, there must be substantial, reliable, and admissible evidence that identifiable persons have committed alleged offences. In other words, there must be sufficient evidence to enable reasonable conclusions that there are reasonable prospects of proving offences beyond reasonable doubt.

Circumstances likely to warrant infringement notices include:

- Certain breaches of Council-administered legislation
- Failure to correct identified problems after reasonable opportunity
- Failure to comply with order requirements

- Low confidence in individuals/entities
- Previous written warnings for similar offences

7.5.4 Prosecution

Council recognises that not every contravention requires prosecution. Every officer must exercise prosecutorial discretion to determine whether prosecutions should be commenced. Officers must ensure:

- There are reasonable prospects that offences can be proved beyond reasonable doubt
- Prosecutions are in the public interest

Circumstances likely to warrant prosecution include:

- Flagrant law breaches putting public health, safety, and welfare at risk
- Alleged breaches too serious, or risks too great for infringement notice resolution
- Failure to correct identified serious problems after reasonable opportunity
- Failure to comply with order requirements
- Established and recorded histories of similar offences
- Unwillingness to prevent problem recurrence
- Recovery of investigation costs, remedial work costs, or financial compensation required by Council or aggrieved parties

Where circumstances warrant prosecution, all relevant evidence and information will be considered to enable consistent, fair, and objective decisions.

Before recommending prosecution, there must be substantial, reliable, and admissible evidence that identifiable persons or organisations have committed offences.

Prosecution decisions must be in the public interest. In considering public interest, additional factors include:

- Whether offences were premeditated
- Need to influence offender future behaviour
- Effects on offender or witness physical or mental health, balanced against offence seriousness
- Availability and efficacy of prosecution alternatives
- Prevalence of alleged offences and need for deterrence (both personal and general)
- Likely length, expense, and outcome of trials

8. COLLABORATION WITH OTHER AGENCIES

Council recognises that effective compliance and enforcement often requires coordination with external regulators and agencies. To ensure consistent and efficient outcomes, Council will:

- Work in Partnership and engage with agencies such as EPA Victoria, Victoria Police, Victorian Building Authority (VBA), Department of Energy, Environment and Climate Action (DEECA), and other relevant bodies when matters fall under shared or overlapping jurisdiction.
- Information Sharing: Exchange relevant information in accordance with legislative provisions and privacy requirements to support investigations and enforcement actions.
- Avoid Duplication: Clarify roles and responsibilities early in the process to prevent duplication of effort and ensure timely resolution.
- Joint Operations: Participate in joint inspections or enforcement activities where appropriate to address complex or high-risk issues.
- Referral Protocols: Where Council lacks jurisdiction, promptly refer matters to the appropriate authority and inform the complainant of the referral.
- Formal Agreements: Establish Memoranda of Understanding (MOUs) or protocols with key agencies to guide collaboration and communication.

This approach strengthens compliance outcomes, reduces regulatory gaps, and promotes community confidence in coordinated enforcement.

9. POLICY IMPLEMENTATION AND REPORTING

9.1 Implementation

The Chief Executive Officer will oversee the rollout of this policy.

All enforcement actions will be recorded in Council's compliance register to ensure transparency, accountability, and timely follow-up.

Instruments of Delegation and Authorisation will be reviewed to ensure officers have appropriate powers to act under this policy.

Authorised officers will receive induction and refresher training on compliance processes, enforcement tools, and procedural fairness requirements.

9.2 Reporting

Quarterly reports on compliance activities, trends, and significant enforcement actions will be provided to the Chief Executive Officer.