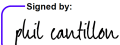




# Compliance and Enforcement Protocol

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July 2025	1.0	Final version of new protocol following legal and internal stakeholder reviews

## 1. Purpose

To ensure that Council’s compliance and enforcement activities are carried out in accordance with legislation and with regard to the Compliance and Enforcement Policy and the Prosecution Protocol. This Protocol establishes a framework for assessment and decision-making, acknowledging that officers are required to use discretion when undertaking compliance and enforcement activities.

## 2. Scope

This Protocol applies to all compliance and enforcement activities, including planning, building, public health, local laws, environment protection, domestic animals and litter, undertaken by Authorised Officers of Council.

This Protocol does not apply to parking and traffic matters, which are managed in accordance with the *Road Safety Act 1986* and are outside the scope of this Protocol.

## 3. Compliance and enforcement principles

Compliance and enforcement procedures and practice will align with the following principles:

### 3.1. Proportionality

Council’s actions will be proportional to the seriousness of the breach.

A range of options exist for responding to reports of breaches, ranging from no action to prosecution.

Council recognises that most individuals want to comply with the law and will assist compliance by being open and helpful. It can be appropriate for officers to offer informal advice and an opportunity to discuss the compliance matters.

Enforcement will be focussed on activities that give rise to the most serious risks, or where potential hazards are least well controlled. The type of enforcement response will accord with the seriousness of the breach. Council will endeavour to minimise costs and other burden to alleged offenders by enforcing the minimum action necessary, in a timely manner, to achieve compliance.

Prosecution will be used where there is a reasonable prospect that an offence can be proved beyond reasonable doubt. There must be substantial, reliable and admissible evidence that an identifiable person or organisation has committed the offence.

### **3.2. Consistency**

Council will take a consistent approach in similar cases to achieve similar outcomes and ensure everyone is treated equally and fairly.

The following is applied to assess varying circumstances:

- follow standard operating procedures
- ensure fair, equitable and non-discriminatory treatment
- make a record of variations from standard operating procedures and the reasons
- seek manager approval for any variations

### **3.3. Impartiality**

**3.3.1.** An impartial approach will be taken by officers for all enforcement matters which will consider the reliability of information and ensure there are reasonable grounds for enforcement action in accordance with legislative requirements and Council's Compliance and Enforcement Policy.

**3.3.2.** Officers are required to adhere to the Employee Code of Conduct when undertaking enforcement action on behalf of Council.

**3.3.3.** Officers are also required to understand their obligations in managing conflicts of interest. An officer has a conflict of interest if they, or a person or entity they are close to, could benefit or be seen to benefit from a decision or action they could take in their official capacity. Council's Conflict of Interest Policy and processes must be followed.

### 3.4. Transparency and privacy

- 3.4.1. Council will be open and transparent about enforcement procedures and legislative powers. Officers will be responsible for complying with accountability measures in enabling acts and exercising powers and authority responsibly and lawfully.
- 3.4.2. Officers will provide clear information about the obligations the law places on individuals and companies. When remedial action is required, officers will explain clearly and in plain language why the action is necessary. Where practicable, Council will give notice of intent to commence formal action. Council will explain what action is required to achieve compliance and the timeframe for undertaking that action. Advice will be provided on statutory review rights.
- 3.4.3. Officers will collect information and evidence in a transparent manner whenever possible. Some law enforcement activities however require collection of information about individuals without providing notice to the person. Although privacy laws allow for agencies to be less transparent, if required, when undertaking law enforcement work, officers will comply with privacy principles associated with notice, consent and the right to access information as far as possible. Council will make routine documents available to people subject to enforcement action administratively where possible, for example copies of recorded interviews and photos.
- 3.4.4. People who report breaches or alleged offences to Council will be advised generally of the action taken in response and the reasons for the action. Confidential information about investigations and personal information about others will not be routinely provided.
- 3.4.5. While some compliance and enforcement matters may be of general interest to the community, Council is unable to make confidential and personal information public, unless necessary for a law enforcement purpose. General information will be made public about compliance matters if required for education or to respond to community concern.

## 4. Initial assessment and triage

### 4.1. Assessment and prioritisation

- 4.1.1. Council conducts an initial assessment and triages all customer requests and alleged offences or breaches. Customer requests will be prioritised as follows:
  - 4.1.1.1. **High:** Matters that have the potential to impact on community safety and/or which involve risk of serious environmental harm will be actioned as a priority.
  - 4.1.1.2. **Medium:** Matters of general compliance will be dealt with on a priority basis having regard to the relative seriousness of the matter.
  - 4.1.1.3. **Low:** Matters of minor non-compliance in which there are no likely immediate safety or environmental impacts, and/or matters of technical non-compliance with legislation.

**4.1.2.** It may be determined that no action is required for some customer requests, including where:

- there is insufficient information and further information cannot be obtained
- the matter has already been resolved or finalised
- there is no municipal jurisdiction
- the activity is deemed lawful
- the statutory time limit has expired
- an exemption, exception or defence available under relevant legislation is clearly applicable in the circumstances
- the matter is the responsibility of another agency (e.g. police)
- the complaint is frivolous, vexatious or trivial in nature
- there is no or minimal impact to the community

#### **4.2. Timeframes**

Council procedures set out timeframes for acknowledging, assessing and responding to reports. Timeframes will be consistent with relevant legislative requirements. Some investigations and responses will be lengthy and not all matters will be concluded within the relevant timeframe.

## **5. Investigation**

### **5.1. Authority to investigate**

- 5.1.1.** Officer authorisations and delegations are limited and relate to specific duties and powers performed under the *Local Government Act* and other enabling legislation.
- 5.1.2.** Council delegates powers, duties and functions to staff under section 47 of the *Local Government Act 2020*. Additionally, relevant staff are appointed as Authorised Officers under section 224 of the *Local Government Act 1989*.
- 5.1.3.** Documentation for the appointment of Authorised Officers is prepared by the Governance team and approved by the CEO. Appointments made under the *Planning and Environment Act 1987* are approved by Council.
- 5.1.4.** Officers can only enforce the matters set out in their own Instrument of Appointment and Authorisation and must not exceed what is reasonably required in all the circumstances.
- 5.1.5.** Authorised Officers must carry photographic identification at all times whilst performing their role. Identity cards must be produced when requested and prior to cautioning an alleged offender.
- 5.1.6.** An Authorised Officer has the power to carry out investigations of alleged offences, enter private property and take necessary action according to relevant legislation.

- 5.1.7.** Officers may conduct inspections, interviews and gather evidence to perform their roles, limited by what is necessary and authorised by law.
- 5.1.8.** Authorised Officers have discretion in enforcement matters, within legislated authority, as the full circumstances and facts of each case need to be considered and a decision made in the specific context. Authorised Officers are required to follow this Protocol and internal procedures to ensure that enforcement action is applied consistently across a variety of circumstances.

## **6. Enforcement action**

### **6.1. Determining the appropriate enforcement action**

- 6.1.1.** In assessing the most appropriate enforcement action, officers take the following into account:
- 6.1.1.1. Risk:** Potential for physical, financial, environmental, Council reputation or other harm and the likely consequences.
  - 6.1.1.2. Cost:** Value of time and resources to obtain a positive and beneficial outcome.
  - 6.1.1.3. Evidence:** The prospects of any enforcement action succeeding including:
    - Nature and reliability of evidence available; and
    - Level of engagement of the person reporting the alleged breach or offence in any enforcement action.
  - 6.1.1.4. Circumstances:** Any mitigating circumstances, including factors surrounding a situation or event that should be kept in mind when making a decision.
  - 6.1.1.5. Community and environmental impact:** The benefits offered to the entire community as a whole, or to a group or individuals within the community.
  - 6.1.1.6. Other avenues:** Whether there are other more suitable avenues to address the community and environmental impacts.
- 6.1.2.** Any enforcement matters that have a potential reputational risk for Council will require notification to the Manager Community Relations.

### **6.2. Assessing the Community and Environmental Impact**

Council will consider a range of factors in assessing community impact and the particular circumstances, including but not limited to the following:

- the seriousness of the alleged offence or breach and its likely impact on the environment and the community
- the foreseeability of the alleged offence or breach and the circumstances surrounding it
- the intent of the accused person or company

- measures taken by the accused person, or company, to prevent or minimise the alleged offence or breach from reoccurring
- history of previous compliance
- history of offending/breaches
- the effectiveness and deterrent effect of enforcement action other than prosecution
- any failure to supply requested information without reasonable excuse
- knowingly supplying false information
- any failure to comply with lawful directions of Authorised Officers
- any obstruction of officers
- the deterrent effect of a prosecution on the accused person and others
- mitigating circumstances (special personal circumstances – age, whether the alleged offender is a child, remorse)
- aggravating circumstances (i.e. recidivism)
- the potential for remedial action, restitution or compensation
- the trivial or technical nature of the alleged offence

### **6.3. Enforcement approach assessment tools**

See Appendix 1 for tools to assist officers assess and determine the appropriate enforcement approach.

### **6.4. Types of Enforcement**

Council's enforcement decision may be any of the following scaled to the seriousness of the breach:

#### **6.4.1. No action**

Decision not to take any enforcement action against an alleged offender.

#### **6.4.2. Informal action - Verbal Warning as part of education**

Minor breaches and offending conduct should be dealt with by informal action to educate the alleged offender

#### **6.4.3. Written Warning - Caution**

The *Infringements Act 2006* specifically provides that Council can issue an official warning in relation to less serious offences where there are exceptional circumstances (e.g. first offender or age of offender). This provides an alternative for Council to issue a formal warning notice in certain situations rather than issuing an infringement notice or proceeding to prosecution.

#### 6.4.4. Notice to Comply - Statutory Direction

A Notice to Comply or Statutory Direction is a written notice/direction that requires certain actions be taken or ceased within a specified period. Legislation prescribes the prerequisites to be satisfied prior to issuing a Notice to Comply or Statutory Direction.

It is an offence to fail to comply with a Notice to Comply and further enforcement action may be taken by the Authorised Officer as a result.

#### 6.4.5. Undergo Works

Under some legislation Council may execute works in default, instead of, or as well as, taking legal action. In such cases the expenses of default work may be recovered by Council and can be charged against the property, or in the case of a negotiated cost, met by the defaulter on completion of the works.

#### 6.4.6. Penalty Infringement Notice (PIN)

A penalty infringement notice (PIN) is a written allegation that an accused person has committed an offence (alleged offence) which requires them to pay a monetary penalty (fine). Infringement notices offer an alternative method for dealing with minor offences, giving the person to whom the notice is issued, the option of paying a fixed penalty rather than proceeding to a court hearing.

A PIN should be issued promptly as there are statutes of limitations attached to each offence according to the applicable legislation.

The table below outlines the most common statutes of limitations:

Legislation/Local Law	Limitation	Explanation
<i>Summary Offences Act 1966</i>	1 year	A charge & summons must be issued at court, or a PIN issued, prior to the expiration of 12 months from the date of the offence.
Local Laws under the <i>Local Government Act 2020</i>	3 years	A charge & summons must be issued at court, or a PIN issued, prior to the expiration of 3 years from the date of the offence. This includes all local law offences contained in <i>Community Local Law 2020</i> , <i>Tree Protection Local Law 2016 - No.22</i> , and the <i>Short Stay Rental Accommodation Local Law 2020</i> .

#### 6.5. Prosecution

Prosecution activities will be undertaken in accordance with Council's Prosecution Protocol.



## 7. Statutory review and complaints

### 7.1. Statutory review/appeal rights

**7.1.1.** Where a right to statutory review applies, the person will be advised of the appeal mechanisms.

**7.1.2.** Dissatisfied recipients of infringements or other enforcement action will be referred to statutory review appeal mechanisms. For dispute of a fine, an internal review is conducted by a person independent of the area that issued the fine. Only one internal review will be conducted. A response will be provided in 90 days. The infringement will be put on hold until the outcome of the review which will be provided in writing by email and/or mail. Infringement notices outline the statutory appeal mechanisms available.

### 7.2. Complaints

**7.2.1.** Complaints about Council decisions or the actions of Authorised Officers will be actioned in accordance with Council's Complaints Policy.

If the complaint is about a decision or action subject to a statutory process, Council will be limited to Tier 1 resolution due to the statutory appeal rights. The complainant may be entitled to refer the complaint to an external authority or appeal body for review.

## 8. Roles and responsibilities

Role	Responsibility
Chief Executive Officer and Directors	<ul style="list-style-type: none"> <li>• Authorisation and delegation to Officers under the Local Government and other relevant Acts</li> <li>• Ensuring that the roles and responsibilities of Councillors and officers are clear for compliance and enforcement</li> <li>• Ensuring accurate and reliable information is applied to decision-making</li> <li>• Ensuring no undue influence is applied to decision making</li> <li>• Ensuring implementation of compliance and enforcement functions are fair, consistent, without bias and in accordance with legislation</li> <li>• Alerting the Audit and Risk Committee to any significant issue or injustice with Council processes of enforcement</li> <li>• Ensuring Councillors are aware of their legal obligations</li> </ul>
Managers and Coordinators	<ul style="list-style-type: none"> <li>• Ensuring Officers are duly qualified and authorised</li> <li>• Responding to enquiries and complaints promptly, consistently and effectively</li> <li>• Assessing enforcement matters without apprehended bias and with an impartial approach</li> </ul>



	<ul style="list-style-type: none"> <li>• Referring complaints in accordance with statutory review and appeal mechanisms to the appropriate authority or appeal body</li> <li>• Giving priority to compliance enforcement where there is an imminent threat to health, life or property</li> <li>• Applying good enforcement principles</li> <li>• Encouraging higher levels of compliance through education and advice to discourage future breaches</li> <li>• Administering and regularly reviewing existing practices, procedures and systems</li> <li>• Demonstrating the requirements of Frankston City Council Policies and Procedures and the Code of Conduct in the undertaking enforcement matters</li> <li>• Keeping the Community informed about compliance and enforcement</li> </ul>
Authorised Officers	<ul style="list-style-type: none"> <li>• Responding to enquiries and reports of breaches promptly, consistently and effectively</li> <li>• Assessing enforcement matters without apprehended bias and with an impartial approach</li> <li>• Referring complaints in accordance with statutory review and appeal mechanisms to the appropriate authority or appeal body</li> <li>• Giving priority to compliance enforcement where there is an imminent threat to health, life or property</li> <li>• Issuing and serving infringement notices for offences in accordance with statutory processes</li> <li>• Applying good enforcement principles when assessing or investigating an enforcement action</li> <li>• Encouraging higher levels of compliance through education and advice to discourage future breaches</li> <li>• Progressing enforcement in accordance with approved Procedures and Guidelines</li> <li>• Administering current practices, procedures and systems</li> <li>• Demonstrating the requirements of Council Policies and Procedures and the Employee Code of Conduct in the undertaking enforcement matters</li> <li>• Keeping the Community informed about compliance and enforcement</li> </ul>

## 9. Definitions

Term	Definition
<i>Accused person</i>	means a person charged with an offence
<i>Accused company</i>	means a company charged with an offence
<i>Authorised Officer</i>	means a person who is authorised by the Council under an Act, regulation or local law to exercise appropriate powers under an Act, regulation or local law
<i>Child</i>	means a person under the age of 18.
<i>Community impact</i>	means the impacts on the interests of the community as a whole, or a group within the community or individuals.
<i>Compliance</i>	refers to an agency, corporation, or person meeting or taking steps to comply with relevant laws and regulations.
<i>Council</i>	means Frankston City Council.
<i>Offence</i>	means an act, default or conduct prejudicial to the community, the commission of which by law renders the person responsible liable to punishment by fine or imprisonment.
<i>Prosecution</i>	means the institution and conduct of legal proceedings against a person, organisation or corporation for an alleged offence(s).

## 10. Related documents

### 10.1. Legislation

- *Building Act 1993*
- *Building Amendment Act 2017*
- *Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- *Country Fire Authority Act 1958*
- *Domestic Animals Act 1994*
- *Environment Protection Act 2017*
- *Food Act 1984*
- *Frankston City Council Community Local Law 2020*
- *Health Records Act 2001*
- *Impounding of Livestock Act 1994*

- *Infringements Act 2006*
- *Local Government Act 1989*
- *Local Government Act 2020*
- *Model Councillor Code of Conduct*
- *Occupational Health and Safety Act 2004*
- *Planning and Environment Act 1987*
- *Privacy and Data Protection Act 2014*
- *Public Health and Wellbeing Act 2008*
- *Residential Tenancies Act 1997*
- *Road Management Act 2004*
- *Road Safety Act 1986*
- *Road Safety Road Rules 2017*
- *Summary Offences Act 1966*
- Associated regulations

## **10.2. Documents and resources**

- Authorised Officer Fact Sheet A3545996
- Building and Works Code of Practice
- Community Safety Procedures QA354002
- Community Safety - Prosecution Protocol A5498973
- Complaints Policy
- Compliance and Enforcement Policy
- Councillor and Staff Interaction Policy
- Enforcement approach assessment tools (Appendix 1)
- Records Management Policy A3944034
- Privacy Policy

## Appendix 1: Enforcement Approach Assessment

Authorised Officers may carry out an assessment of each matter using the tools set out in Tables 1 and 2 below. These tools guide Authorised Officers in prioritising and targeting compliance actions, and for determining appropriate enforcement options for the situation or issue being actioned.

Table 3 provides guidance to Authorised Officers in determining an appropriate response in line with departmental procedures.

**Table1: Likelihood of Non-Compliance Ratings**

Likelihood of non-compliance	Description
Almost Certain	<ul style="list-style-type: none"> <li>Repeated non-compliance;</li> <li>Past legal action taken for similar or related breaches;</li> <li>Failure to undertake remedial works as directed;</li> <li>Refusal or failure to comply with direction or furnish information required;</li> <li>Provides false or misleading information;</li> <li>Obstructs Authorised Officers.</li> </ul>
Likely	<ul style="list-style-type: none"> <li>Willful or deliberate non-compliance;</li> <li>Previous enforcement activity for similar or related breaches;</li> <li>Requirements were apparent when breach occurred (e.g. signs in place, permit conditions);</li> <li>Serious negligence leading to breach;</li> <li>Little or no demonstrated assurance or capacity to meet regulatory requirements;</li> <li>Insufficient steps or works undertaken to remedy risks/damage/breach.</li> </ul>
Possible	<ul style="list-style-type: none"> <li>Previous reports or occurrence of non-compliance;</li> <li>May have little or no awareness of regulatory requirements;</li> <li>Negligence leading to breach;</li> <li>Has not demonstrated adequate efforts to fully comply with requirements/instructions;</li> <li>Harm/risks abated, and some remedial works or actions undertaken;</li> <li>Demonstrates a willingness and capacity to comply.</li> </ul>
Unlikely	<ul style="list-style-type: none"> <li>No history of non-compliance;</li> <li>May have little or no awareness of regulatory requirements;</li> <li>Cooperative attitude;</li> <li>Demonstrates strong willingness and capacity to comply;</li> <li>Prompt action taken to sufficiently remedy breach;</li> <li>Carry out remedial works and abate any harm/risks.</li> </ul>

**Table 2: Impact/Consequence of Non-Compliance Descriptors**

Consequence	Description
Major	<ul style="list-style-type: none"> <li>Has a major impact on community or environment.</li> <li>Imminent or serious threat/risk to safety, health, amenity or environment (even if harm has not yet occurred).</li> <li>Significant public interest in issue, specific and/or general deterrence required.</li> </ul>
Moderate	<ul style="list-style-type: none"> <li>Has a moderate impact on community or environment.</li> <li>High level threat/risk to safety, health, amenity or environment (even if no harm has occurred).</li> <li>High level public interest in issue, high need for specific or general deterrence.</li> </ul>
Minor	<ul style="list-style-type: none"> <li>May have a minor impact on the wider community or environment.</li> <li>Low-medium level risk to safety, health, amenity or environment but harm/risk can be easily/promptly abated.</li> <li>Some remedial works or actions required.</li> <li>Medium level public interest in issue, some need for general deterrence.</li> </ul>
Negligible	<ul style="list-style-type: none"> <li>Little to no impact on safety, health, amenity, or environment. Low potential for broader community concern.</li> <li>Unsubstantiated or vexatious reports without basis. Does not fall within Council's jurisdiction.</li> </ul>

**Table 3: Enforcement Response Matrix**

Likelihood of non-compliance	Impact / Consequence of Non-Compliance			
	Negligible	Minor	Moderate	Major
Almost Certain	Elevated	Elevated	Significant	Significant
Likely	General	Elevated	Elevated	Significant
Possible	Low	General	Elevated	Significant
Unlikely	Low	Low	General	Elevated