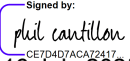




Compliance and Enforcement Policy

REM REFERENCE	A5549473	
POLICY TYPE	Administrative: under authority of the CEO	
APPROVAL	Chief Executive Officer	
AUTHORISATION	<small>Signed by:</small>  <small>CE7D4D7ACAZ2417</small>	
DATE APPROVED	16 July 2025 17:22 AEST	
DIRECTORATE	Communities	
POLICY OWNER	Manager Safer Communities	
NEXT REVIEW	July 2029	
REVISION RECORD	VERSION	REVISION DESCRIPTION
11/07/2025	No. 1	Final revised version following legal preparation and reviews and internal stakeholder reviews of the document.

1. Purpose

The purpose of this policy is to inform the community, at a general level, why, when and how Council may perform its functions of compliance and enforcement under various enabling Acts made by the Victorian Parliament.

The policy is not binding on Council and does not fetter, restrict or limit the lawful functions and exercise of powers pursuant to legislation.

2. Scope

This policy is relevant to a broad range of compliance and enforcement activities undertaken by Council's Authorised Officers and its authorised contractors for and on behalf of Council within the municipality.

Authorised Officers and authorised contractors are not limited by this Policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits.

This Policy does not apply to parking and traffic matters which are managed in accordance with the *Road Safety Act 1986*.

3. Governance Principles and Council Plan Alignment

3.1. Governance Principles

Principle (a) Council decisions are to be made and actions taken in accordance with the relevant law;

3.2. Council Plan Alignment

Outcome 1: Healthy and safe communities - Health, safety and wellbeing of the community is improved through the reduction of harms and opportunities for individuals and families to adopt healthy lifestyles

4. Policy

4.1. Frankston City Council's Constitution, Capacity, Functions, Duties and Powers

- 4.1.1. Frankston City Council (Council) is a tier of Government consisting of democratically elected Councillors.¹
- 4.1.2. Council must appoint a Chief Executive Officer whose function is to support the Councillors in the performance of their roles, and to ensure the effective and efficient management of the operations of the Council.²
- 4.1.3. The Council, by instrument of delegation, may delegate powers, duties or functions of the Council to the Chief Executive Officer.
- 4.1.4. The Chief Executive Officer appoints staff to perform the Council's functions, and by instrument of delegation may delegate functions, duties or powers to its staff.
- 4.1.5. Council's role is to perform the functions and exercise the powers conferred by the Victorian Parliament that are necessary to ensure the peace, order and good governance of its municipal district³ and for the benefit and wellbeing of the municipal community.⁴
- 4.1.6. Council provides good governance by performing its role in accordance with the overarching governance principles and supporting principles⁵ and taking these into account in the performance of its functions.

The overarching governance principles⁶ include, amongst other matters, that Council will:

- (a) make decisions and take actions in accordance with the law;
- (b) give priority to achieving the best outcomes for the municipal community, including future generations;

- (c) promote the economic, social and environmental sustainability of the municipality, including mitigating and planning for climate change risks;
 - (d) pursue innovation and continuous improvement;
 - (e) collaborate with other councils, governments and statutory bodies;
 - (f) will ensure its ongoing financial viability; and
 - (g) ensure the transparency of its decisions, actions and information.
- 4.1.7. Supporting principles include the public transparency principles, community engagement principles, strategic planning principles, financial management principles and service performance principles.
- In performing its role, Council may:⁷
- (a) perform any duties or functions or exercise any powers conferred under the *Local Government Act 1989* and *Local Government Act 2020 (Local Government Acts)* and other enabling Acts; and
 - (b) perform any other function necessary to enable the performance of its role.
- 4.1.8. The Victorian Parliament through enabling Acts has conferred a broad range of functions on Council spanning the following when occurring within the municipality:
- building
 - planning
 - public health
 - waste and litter
 - environment protection
 - domestic animals
 - road management
- 4.1.9. Council has the power to do all things necessary or convenient to be done in connection with the performance of its role, subject to any limitation or restrictions of any enabling act.⁸ Enabling Acts provide powers for the purpose of that legislation, which operate together with the Council's general power.

4.2. How Functions Are Performed

- 4.2.1. Council performs its functions under the Local Government Acts and other Acts by the Council making decisions at Council meetings, or delegates (e.g. staff) making decisions within the scope of powers delegated to them.

- 4.2.2. Enabling Acts allow the Council to appoint Council staff as Authorised Officers, and other various appointed positions. Most enabling Acts provide for an Authorised Officer to exercise powers for the purpose of investigation, compliance and enforcement. Enabling Acts also provide for appointment of a person to file enforcement proceedings in a court and for a person to prosecute the case.
- 4.2.3. Delegated staff of the Council then carry out and perform the functions and duties and exercise the powers of the Council under the legislation, including as Authorised Officers, informants and prosecutors.
- 4.2.4. In each instance, the enabling Act identifies its purposes and, in many instances, principles, in the administration of the enabling Act to which the decision-maker must have regard. The enabling Act confers the powers that may be exercised by the Council, the criteria that must be satisfied before the power is exercised and the matters relevant to the exercise of the discretionary power.
- 4.2.5. Prior to performing any function and exercising any power, Council will identify its role and responsibility provided by the enabling Act. Identification of any role and responsibility then informs the basis for the Council exercising its discretion to perform a function, and exercise any power, under the enabling Act. Council's role and responsibility will be determined by the enabling Act and the Local Government Acts. Where appropriate, consultation with identified bodies under the enabling Act will occur.

For example, Council has a role under the *Road Management Act 2004* for the management and control of road reserves for local roads identified in the public roads register maintained by it. This role and responsibility, determined by an examination of the *Road Management Act 2004* and the public roads register, would be disclosed to the Head, Transport for Victoria where the proposed performance of the function, or exercise of powers, may involve or affect the Head, Transport for Victoria.

- 4.2.6. The enabling Act may also identify other statutory bodies, government departments or entities ("public sector bodies") that may also perform the functions and exercise the powers where there are overlapping jurisdictions of multiple public sector bodies. In these circumstances Council will consult the public sector bodies to ensure a fair, just and efficient administration of justice is achieved.
- 4.2.7. In each instance, Council:
 - (a) prior to performing any function and exercising any power, identify its role and responsibility under the enabling Act;

- (b) at its discretion, notify any relevant public sector body under the enabling Act that Council may perform its function, and exercise its powers, in relation to the matter;
 - (c) will ensure the person carrying out any investigation is delegated to perform that function and to exercise the power;
 - (d) will ensure its staff is appropriately qualified and has completed contemporary training in the performance of those functions, and exercise of those powers;
 - (e) will facilitate and provide a governance framework to ensure its staff are delegated, qualified and trained for the purpose of the enabling Act, which framework is periodically reviewed and audited;
 - (f) will ensure its staff act in a manner that:
 - i. promotes the purpose of the enabling Act;
 - ii. achieves any objectives of the enabling Act;
 - iii. has regard to any principles governing administration of the enabling Act;
 - iv. complies with the enabling Act and the law in Victoria; and
 - v. is fair, proportionate and consistent with the good governance of the municipality;
 - (g) will ensure no conflict of interest arises from the Council performing the function, and exercising powers, under the legislation; and
 - (h) will avoid any perception of bias arising from the facts and circumstances of the investigation that the Council ought reasonably to have known at that time.
- 4.2.8. Where a conflict of interest arises, Council will refer the matter to any other public sector body responsible for administration of the enabling Act, and where the Council is the public sector body responsible for the administration and enforcement of enabling Act (e.g. *Planning and Environment Act 1987* and the Frankston Planning Scheme) inform Local Government Victoria and the Minister for Local Government.
- 4.2.9. Where a reasonable apprehension of bias arises, Council will implement a proportionate response, providing an arrangement for the independent and objective performance of the function, and exercise of the power. For example, this may occur where an accused makes a complaint regarding the conduct of an Authorised Officer involved in the performance of the function, and the exercise of any power. Any arrangement is to be determined by the Director Communities and implemented by the Manager Safer Communities of Council.

- 4.2.10. In performing a function under an enabling Act, Council will consider exercising, and where appropriate, proceed to exercise, the powers under the enabling Act to fulfil that function. For example, where an enabling Act provides for the Authorised Officer to issue a notice, direction or other instrument to a person to produce information or documents for the purpose of an investigation, the Authorised Officer will exercise that power where appropriate, or determine that it is not appropriate in consideration of the facts and circumstances. All available powers will be considered, and either be exercised or not exercised depending on what is appropriate or necessary in the circumstances.
- 4.2.11. Before concluding an investigation, Council may invite an accused to participate in a recorded interview or otherwise ask that the accused show cause why enforcement should not be commenced. Any communication for this purpose will be in writing and identify the alleged offence with adequate particulars such that the accused may properly inform themselves of the allegation and the relevant facts.
- 4.2.12. An Authorised Officer or Council may consider the requirements of the *Crimes Act 1958* when a person is in the company of the Authorised Officer and is being questioned or to be questioned or otherwise being investigated to determine their involvement, if any, in the commission of an offence. Broadly, those obligations provide that:
- (a) the Authorised Officer must caution the person in their company that they are not obliged to say or do anything and anything they do say or do may be given in evidence;⁹
 - (b) inform the person of their right to communicate with a friend or relative and legal practitioner;¹⁰
 - (c) inform the person of their right to an interpreter;¹¹
 - (d) if under 18 years of age, inform the person of their right to have a parent, guardian or independent person present;¹²
 - (e) if the person is not an Australian citizen or permanent resident of Australia, inform the person of their right to communicate with or attempt to communicate with the consular office of the country of which the person is a citizen;¹³
 - (f) if the person is an Aboriginal person or Torres Strait Islander, within an hour of person being in the company of the Authorised Officer must notify the Victorian Aboriginal Legal Service Co-operative Limited and inform the person of that notification; and
 - (g) an Authorised Officer must establish the voluntariness of any admission or confession, and inform the person of the right to remain silent other than any information required to be disclosed by the enabling act

- 4.2.13. Where the offence being investigated by Council is an indictable offence¹⁴ under the enabling Act, any questioning of the person in the company of the Authorised Officer must be recorded (audio or audiovisual), and any recording made must be verified and given to the person as soon as practicable and within seven days.¹⁵
- 4.2.14. On conclusion of an investigation, the Authorised Officer may collate a brief of evidence and prepare a report to the delegate of the Council for decision. The enabling Act will provide the options for enforcement, which may include criminal sanctions or civil remedies.
- 4.2.15. Council will ensure the performance of its functions, and the exercise of its powers, comply with, as appropriate, the:
- (a) enabling Act;
 - (b) Local Government Acts;
 - (c) *Criminal Procedure Act 2009*;
 - (d) *Infringements Act 2006*;
 - (e) *Civil Procedure Act 2010*; and
 - (f) Victorian Government, *Model Litigant Guidelines* (2nd ed, 2011).¹⁶
- 4.2.16. Where the legislation identified above provides for internal review, alternative dispute resolution or review of the decision before a tribunal or court, Council will inform the accused of those rights when it communicates its decision.

5. Roles and Responsibilities

Role	Responsibility
Councillors	<p>Responsible for:</p> <ul style="list-style-type: none"> • Setting the strategic objectives of Frankston City Council through Council Plans, policies, budgets and the adoption of Local Laws. Councillors may also play a role in advocating for change and improvement to State legislation administered by Council. <p>Councillors can assist enforcement by:</p> <ul style="list-style-type: none"> • supporting the organisational requirements to carry out enforcement action • developing policy that supports legislation • advocating for the importance of legislation and compliance to the community.

	<p>Councillors can help individuals who raise concerns by referring them to Council's Administration to investigate and/or respond to those concerns.</p> <p>Decision-making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised council officer or the Council itself. Any such matters referred to Councillors by the community should be referred to the respective Council officer.</p>
<p>Chief Executive Officer/Directors</p>	<p>Responsible for:</p> <ul style="list-style-type: none"> • Authorisation and delegation to Officers under the Local Government and other relevant Acts • Ensuring that the Codes of Conduct encompasses the requirements of Councillors and officers in the undertaking of enforcement functions • To ensure accurate and reliable information is applied to decision-making • To ensure no undue influence is applied to decision making • To ensure implementation of compliance and enforcement functions are fair, consistent, without bias and in accordance with Legislation • To alert the Audit and Risk Committee to any major problem or injustice with Council processes of enforcement • To ensure Councillors are aware of their legal obligations
<p>Manager/Officers</p>	<p>Responsible for:</p> <ul style="list-style-type: none"> • To ensure Officers are duly qualified and authorised • To respond to enquiries and complaints promptly, consistently and effectively • To review complaints to Council without fear, favour or bias • To give priority to complaints where there is an imminent threat to health, life or property • To issue and serve Infringement notices for offences in accordance with legislation • To use discretion wisely with regard to how an investigation and enforcement action will be undertaken and give consideration to the level of risk to the community

	<ul style="list-style-type: none"> • To encourage higher levels of compliance through education and advice to discourage future breaches • To progress enforcement in accordance with individual Procedures and Guidelines • To administer and regularly review existing practices, procedures and systems • To ensure that Council Officers demonstrate the requirements of Frankston City Council Policies and Procedures and the Code of Conduct in the undertaking of enforcement and infringement duties • To advise the Community of the approach that Council will take in investigating, enforcing and infringing complaints made to the Council
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6. Policy non-compliance

Non-compliance with this Policy has the potential to see:

- A decline in social order and amenity
- A decline in perceptions of safety
- A reduction in economic activity
- An increase in maintenance and security costs
- Harm to the reputation of the municipality

Failure to comply with the Policy by Councillors or Council staff will result in disciplinary action under the Councillor or Council Staff Code of Conduct.

7. Definitions

Term	Definition
<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>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>Enforcement</i>	means a range of procedures and actions taken by Council to ensure that a person or organisation complies with their statutory obligations.
<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.

8. Related documents

8.1. Legislation

¹ *Local Government Act 2020*, s 12.

² *Local Government Act 2020*, s 44.

³ *Constitution Act 1975*, s 74A(1); *Local Government Act 2020*, s 1.

⁴ *Local Government Act 2020*, s 8(1).

⁵ *Local Government Act 2020*, ss 8(2)(a) and 9.

⁶ *Local Government Act 2020*, s 9 (2).

⁷ *Local Government Act 2020*, s 8(3).

⁸ *Local Government Act 2020*, s 10(1).

⁹ *Crimes Act 1958*, s 464A(3).

¹⁰ *Crimes Act 1958*, s 464C.

¹¹ *Crimes Act 1958*, s 464D.

¹² *Crimes Act 1958*, s 464E.

¹³ *Crimes Act 1958*, s 464F.

¹⁴ *Sentencing Act 1991*, s 112.

¹⁵ *Crimes Act 1958*, ss 464AA, 464G and 464H.

¹⁶ www.justice.vic.gov.au/justice-system/laws-and-regulation/victorian-model-litigant-guidelines

8.2. Documents and resources

- Compliance and Enforcement Protocol – July 2025
- Prosecutions Protocol – July 2025
- Records Management Policy A3944034

9. Implementation of the Policy

This Policy will be published on Council's website and intranet so that it can be referred to by the community and employees of Council, including contractors and agency and/or labour hire staff engaged by Council, Audit and Risk Committee Members, and Councillors.