



HUME CITY ENFORCEMENT AND COMPLIANCE POLICY

Policy Reference No.
File No.
Strategic Objective

POL/307
HCC15/190
3.2 Deliver responsible and transparent governance, services and sustainable assets that respond to community needs

Adopted by Council
Date for Review
Responsible Officer
Department

9 October 2023
October 2025
Manager City Safety
City Safety

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1. Introduction

1.1. Overview and purpose

Council is responsible for promoting and ensuring compliance under an extensive number of Acts, regulations, and laws. This legislation works together to deliver positive health, safety, and amenity outcomes within the community.

The Hume City Enforcement and Compliance Policy outlines how Council will apply laws for which it is responsible, and how authorised Council officers will exercise judgement and discretion when delivering compliance and enforcement activities. The Policy describes how Council intends to:

- encourage voluntary compliance with the law;
- makes use of its range of compliance and enforcement tools; and,
- take account of culpability and harm in its enforcement and compliance approach.

This policy has been developed for Hume City community members, Council authorised officers, other Council staff and Councillors. In addition to providing transparency about Council's enforcement and compliance-related approach and decision-making, the policy seeks to ensure that these activities are delivered a way that is consistent, practical, proportional, credible and fair.

1.2. Scope

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

This includes, but is not limited to, the following legislation administered by Council:

- Building Act 1993
- Country Fire Authority Act 1958
- Domestic Animals Act 1994
- Domestic Animals Regulations 2015
- Environment Protection Act 1970
- Fire Rescue Victoria Act 1958
- Food Act 1984
- Impounding of Livestock Act 1994
- Infringements Act 2006
- Infringements Regulations 2016
- Local Government Act 1989
- Local Government Act 2020
- Planning and Environment Act 1987
- Public Health and Wellbeing Act 2008
- Public Health & Wellbeing Regulations 2009
- Tobacco Act 1987
- Road Safety Act 1986
- Road Safety Road Rules 2017
- Road Management Act 2004
- Summary Offences Act 1966

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- All Local Laws of Hume City Council
- Prevention of Cruelty to Animals Act 1986 (POCTA)
- Prevention of Cruelty to Animals Regulations 2008

This policy does not seek to limit the discretion and exercise of official functions of Council’s authorised officers. It is also recognised that in some cases, legislation may prescribe specific actions authorised officers are expected to take when responding to non-compliance. Authorised officers are expected to assess the full circumstances and facts of each case, to make decisions based on merits, and in line with any legislative requirements.

2. Guiding principles

Council will undertake its compliance and enforcement work in line with the principles outlined below:

2.1. Outcomes-focussed

The various Acts, regulations and laws administered by Council seek to protect and deliver broad health, safety and amenity outcomes for Hume City residents, businesses, and visitors.

Council authorised officers have at their disposal a range of tools to ensure accountability and compliance with these Acts, regulations, and laws, described later in this policy. When selecting and using these tools, authorised officers are expected to remain focussed on addressing the reported or observed problem, and delivering a desirable outcome.

Council will review and refine its enforcement and compliance focus and approaches on an ongoing basis, based on assessment of risks, evidence, and impacts.

2.2. Risk-based

When determining its response to non-compliance, Council will consider:

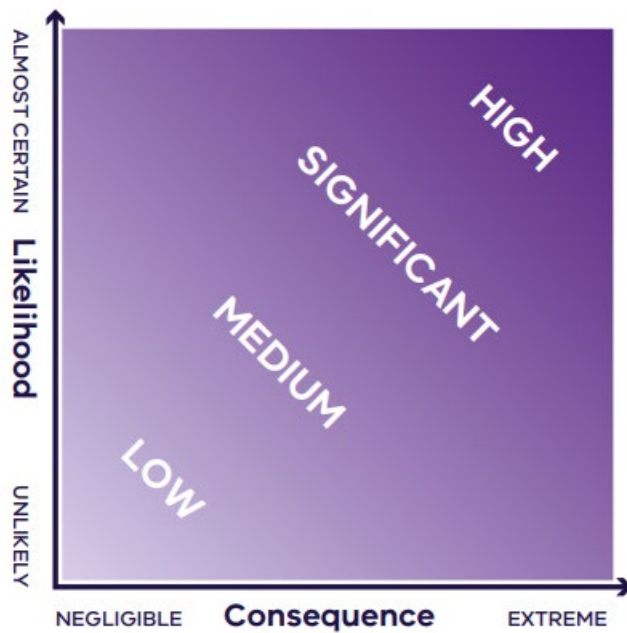
- The level of risk the non-compliance poses to community health, safety and amenity
- Whether Council is best placed to address the risk or non-compliance; and
- The most effective use of regulatory resources available to Council.

This approach recognises it is not practical or 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 those areas where is the greatest risk to health, safety, and amenity.

Figure 1 below illustrates how Council will assess risk based on both the likelihood of harm, and the consequence.

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Figure 1 Risk assessment framework



2.3. Proportionate and graduated

Council seeks to maximise compliance with the laws for which it is responsible, while also reducing harm and providing benefits to the community.

Council’s activities to promote compliance or respond non-compliance will be proportionate to the risk or harm caused, and will take into account the circumstances and attitudes of those who are required to comply. That is, the greatest harms and intentional non-compliance will be met with Council’s strongest enforcement responses.

Council will seek to understand and consider whether the person is both intending and willing to do the right thing, but needs further support to do so, or whether they are recklessly or deliberately failing to meet their legal obligations.

Council compliance activities and responses to non-compliance will build upon and be informed by its past actions. This includes considering previous communications and actions it may have taken against a person or entity, and on specific issue or matter.

Figure 2 illustrates Council’s approach to determining proportionate and graduated compliance activities, or when and how Council will enforce the law.

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Figure 2 Factors which influence our regulatory response



2.4. Collaborative

Council is committed to collaborating across internal enforcement departments, with the community, stakeholders and other regulatory agencies to deliver effective, efficient and holistic responses to non-compliance in the Hume City community.

In instances where Council receives a report of non-compliance that falls outside its legislative powers or jurisdiction, attempts will be made to determine the agency best positioned to respond. Where appropriate, Council may refer the reported non-compliance directly to this agency, or to assist the individual who has made the report to direct their enquiry to the correct agency.

Council will use a number of avenues to inform, engage, consult and collaborate with community members and stakeholders. These will include through:

- Providing community members and stakeholders with opportunities to comment on Council’s enforcement and compliance activities and approach
- Providing opportunities for community members and stakeholders to meet with Council authorised officers
- Convening or participating in meetings on critical community issues or concerns, or in multi-agency responses/operations
- Providing convenient ways for community members to report non-compliance

2.5. Transparent

Council is committed to genuinely engaging with community, stakeholders and people/parties who are subject to laws for which Council is responsible for. This includes being open and transparent about Council’s enforcement and compliance activities and approaches, as well as the limitations and constraints on what action Council can take.

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Council will publicly share information about its broad regulatory roles, responsibilities, and purpose. Council will also make it clear where regulated parties have a right to review of regulatory decisions, and where feedback and complaints can be made in relation to Council’s actions.

2.6. Safe

Council is committed to protecting the safety and wellbeing of its authorised officers. Council will actively support the physical and mental wellbeing of these staff, and will promote a healthy workplace by maintaining safe systems of work.

Investigations and enforcement activities carried out by Council authorised officers can involve considerable risks. Authorised officers are often required to work in a variety of environments, including investigating and enforcing the laws:

- In isolated locations and in areas with difficult terrain;
- Outside of ordinary work hours;
- In situations involving uncontrolled animals;
- In areas with possible health hazards; and
- In situations where they are exposed to aggressive and threatening members of the public who may inflict harm.

Council will provide its staff with appropriate training, equipment, policies and processes to ensure compliance and enforcement activities are undertaken in the safest possible manner. Council will proactively address and pursue instances where authorised officers have been verbally threatened, abused or physically assaulted in the course of their duties.

3. Council’s approach to compliance and enforcement

Council will make use of a range of approaches to encourage and ensure compliance under the laws for which it is responsible.

Council’s resources will be appropriately allocated to support and deliver a mix of:

- Preventative work, such as raising awareness of regulatory requirements and how to comply to support compliance with the law
- Monitoring and assessing compliance with regulatory requirements, approvals and directions such as through regular and routine inspections, audits and targeted patrols
- Responding to harmful events as they arise.

These activities are outlined in further detail below.

3.1. Supporting compliance with the law

Council acknowledges that most people and entities want to be compliant with the law. Council will deliver a range of activities to support voluntary compliance including:

- providing clear information and education to community members and entities about their laws in place and their requirements;
- providing practical, constructive and specific advice to individuals and/or entities to assist them in achieving compliance with the law; and.
- ensuring compliance processes/requirements are as easy as possible for people and entities to achieve (e.g. permits, applications, licenses)

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3.2. Monitoring compliance

In addition to responding to and investigating reports of non-compliance or unlawful activity made by members of the public or other agencies, Council uses ongoing monitoring activities to identify non-compliance, and to maintain a credible threat of detection for individuals or agencies subject to laws.

These activities include:

- Surveillance, such as the use of CCTV in identified hot-spots
- Audit programs, including inspections of businesses and other entities to ensure compliance with standards, permit/licence terms and conditions and codes of practice
- Proactive inspections and patrols

In some instances, legislation requires Council to deliver monitoring activities on a prescribed frequency or basis. Outside of these activities, Council will use a range of information to inform and direct its monitoring activities including community information, service request data and trends, and intelligence and data shared with Council from other agencies.

3.3. Assessing and investigating non-compliance

Council will assess alleged or suspected contraventions of the law, including those reported by the community, other enforcement agencies and those identified through Council's own activities. These reports will be assessed by Council to determine the level of risk, and the priority given to the matter.

Anonymous reports of non-compliance or unlawful activity will be recorded and assessed by Council based on the information available. In these instances, it may be more difficult for Council to fully evaluate these reports without the ability to seek further information from the reporting party. This may result in limited response options and/or compliance or enforcement actions taken by Council.

Before commencing a formal investigation, Council may make further preliminary enquiries including (but not limited to) reviewing other intelligence, desktop assessments, field inspections and making enquiries with others to ensure the contravention is allocated to the agency or area best positioned to address the non-compliance.

During an investigation, authorised officers may collect evidence from a range of sources including:

- site inspections (including inspections conducted under a monitoring warrant, or search warrant);
- conducting interviews;
- seeking expert assessments;
- requesting information (including under statutory notices); and,
- Collecting passive and active surveillance data.

The time taken to investigate will vary depending on the complexity of the issue, including the evidence required. In all cases, Council will maintain records of its assessments, investigations and enforcement actions (if any) so that the information collected can be used to inform future decisions.

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3.4. Enforcement action

Following an investigation, if a breach of law has been detected, authorised officers will assess and determine whether enforcement action is appropriate and, if it is, take the most appropriate form of action. Enforcement action may include both remediation and/or sanctions.

A range of tools or enforcement actions are available to authorised officers, including but not limited to:

- Verbal advice
- Advisory or education letters
- Voluntary rectification or cooperative compliance plans
- Formal notices or directions
- Infringements or official warnings
- The insertion of conditions in approvals, permissions, or authorisations
- Referrals to other regulatory, agency or professional bodies
- Suspension, revocation or cancellation of permissions or authorisations
- Court imposed injunctions or enforceable undertakings
- Prosecution

When making decisions about enforcement tools, authorised officers are expected to seek to maximise outcomes, and to apply the law in a way that is procedurally fair and maximises the interests of the Hume City community. Decisions made by authorised officers will be guided by a range of factors, including:

- The seriousness of the offence
- The seriousness of the harm or potential harm to our regulatory outcomes, and particularly where this conduct is ongoing
- Whether the conduct was inadvertent and the result of ignorance, a lack of competence or an accident or whether it was wilful, reckless or negligent
- How foreseeable the harm was, how practicable it was to control and what controls were available
- Whether the conduct is widespread or involves a new or emerging issue or has a significant impact on the regulatory framework
- Whether enforcement action is likely to have a worthwhile educative or deterrent effect
- What compliance and enforcement options are appropriate to address the alleged conduct
- The focus of current Council priorities and plans.

3.5. Enforcement approach assessment

Before determining an appropriate enforcement tool, authorised officers assess each individual matter using the enforcement matrix tool below.

This matrix synthesises the principles of risk-based assessment, and proportional and graduated responses introduced earlier in this policy, and factors for decision making outlined above.

Figure 3: Enforcement Response Matrix:

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Likelihood or consequence of non-compliance	<u>Insignificant</u> No impact to community or environment	<u>Minor</u> May have a minor impact on the wider community or environment. Harm abated and some remedial works required.	<u>Moderate</u> Has a moderate impact on community or environment. Non-compliance for a short duration (days). Harm abated and remedied.	<u>Major</u> Has a major impact on community or environment.
<ul style="list-style-type: none"> Repeated non-compliance. Past enforcement activity or breaches of related law and no remedial works undertaken 	Elevated	Elevated	Significant	Significant
<ul style="list-style-type: none"> Requirements are apparent (e.g. signage in place) Previous enforcement activity or breaches of related law 	General	Elevated	Elevated	Significant
<ul style="list-style-type: none"> Non-compliance of medium duration (weeks). Harm abated and some remedial works undertaken. 	Low	General	Elevated	Si
<ul style="list-style-type: none"> No history of non-compliance Non-compliance of short duration (days). 	Low	Low	General	Elevated

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<ul style="list-style-type: none"> Harm abated and remedied. 				
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The table below 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.

Table 1: Enforcement action options

Enforcement response level	Possible enforcement options
Low	<p>No Action / Record Only may be a suitable course of action after preliminary assessment or investigation of the matter where the following circumstances apply:</p> <ul style="list-style-type: none"> 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. <p>Informal action may include the following:</p> <ul style="list-style-type: none"> 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 Informal <p>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.</p>
General	<p>General Action may include the following:</p> <ul style="list-style-type: none"> Issuing a notice to comply or other legal direction to remedy a breach of legislation

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	<ul style="list-style-type: none"> • 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 land owner/occupier • Issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate
Elevated	<p>Elevated action may include:</p> <ul style="list-style-type: none"> • 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
Significant	<p>Significant action may include:</p> <ul style="list-style-type: none"> • 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

4. Communicating Council's enforcement and compliance activities

4.1. Communicating with people/agencies who have made a report of non-compliance

Where possible, Council will seek to close the information loop with people or agencies who have made allegations of non-compliance or unlawful activity.

There are a range of factors that limit the amount of information Council can share about its compliance and enforcement activities with those who have made a report, other interested parties and the community more broadly including:

- Fairness to those being investigated for alleged noncompliance
- In the case of proceedings, respecting the court or tribunal's processes to ensure a fair hearing of the issues in contention
- Legislative restrictions (certain material cannot be disclosed)
- The need to safeguard confidential or sensitive information (such as commercial-in-confidence)

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- The potential to jeopardise current or future investigations and court proceedings through the untimely release of information
- How release of information may impinge upon the privacy or safety of others involved (such as complainants, witnesses and suspects).

In most cases, those who have made a report of non-compliance can expect as a minimum:

- An acknowledgement of their report
- An update when their report is 'in progress' – e.g. when the matter has been assigned to an authorised officer for investigation
- An update when an compliance or enforcement action has been determined/taken by Council.

4.2. Public reporting:

Council recognises the importance of communicating and sharing information with the community about its enforcement and compliance activities in order to:

- Promote confidence and trust in the community that the Acts, regulations and laws for which Council is responsible are being actively and consistently enforced
- Deter others who may otherwise seek to break laws by demonstrating that there are repercussions for doing so
- Promote compliance by informing the community about standards required by law, and the consequences of failing to meet those standards.

When making decisions about whether to share information about Council's compliance and enforcement activities with the public, officers consider and determine:

- The intent, purpose and benefit of sharing this information; and
- Legislative, legal process or information privacy considerations that may apply.

Council may make use of a range of channels to promote its compliance and enforcement activities, including:

- Council's webpage
- Publications
- Social media
- Targeted promotions to hot spot areas/regulated businesses
- Media

5. Role of Councillors in enforcement and compliance

Councillors have a key role in setting the strategic objectives of Hume 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.

Councillors assists enforcement and compliance activities undertaken by authorised officers by:

- Supporting organisational requirements and resources needed to carry out enforcement and compliance activities
- Contributing to policies that guide the execution of enforcement and compliance activities performed by authorised officers

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- Advocating the importance laws in place, and for compliance within the community.

5.1. Reports of non-compliance or unlawful activities made to Councillors

Councillors may assist individuals who raise concerns about non-compliance or unlawful activities with them directly by providing community members with guidance about where to find information about legislation enforced by Council, policies of Council related to their concerns, and how to report matters to Council for authorised officer action.

All reports of non-compliance or unlawful activities made directly to Councillors should be referred to an authorised officer for consideration and response. Decision-making relating to the prioritisation and investigation of these reports is the responsibility of appropriately authorised officers and/or the Hume City Council organisation itself. Reports made directly with Councillors will be treated the same as any other reports, and will not receive a higher priority by virtue of them being raised with a Councillor.

5.2. Councillor involvement in enforcement decisions and outcomes

Authorised officers are delegated to take action and make enforcement and compliance related decisions on behalf of Council. This includes decisions to take no action, or to impose remedies and/or sanctions. Councillors are not able to influence officers in exercising these delegations, nor can they intervene once Council has initiated enforcement action.

In cases where a Councillor is contacted by an individual who is unsatisfied with an enforcement response, decision or outcome, they are strongly encouraged to direct the individual to directly contact Hume City Council through the following channels:

- Email: contactus@hume.vic.gov.au
- Phone: 9205 2200

Should a Councillor choose to do so, they may refer the matter raised with them to an authorised officer for consideration and response. The authorised officer will then communicate directly with the concerned individual. While Councillors may assist and guide individuals to raise their concern, the primary responsibility for initiating and seeing a complaint through to resolution rests with the individual.

6. Appeals and review

6.1. Appeals and review

Where a person does not agree with a decision or an enforcement action taken by Council or its authorised officers, there may be a range of options available for review or appeal in accordance with legislative provisions and/or Council policies and procedures. These may include:

- Appealing a permit refusal to Council
- Requesting an internal review of an infringement
- Electing for an infringement to go to the Magistrates Court to be determined
- Appealing through VCAT
- Appealing through the Magistrates' Court
- Making complaint about Council's handling of a matter, or the conduct of an authorised officer to Council or the Victorian Ombudsman

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The appropriate avenue for having a matter reviewed or appealed is, in most cases, determined by legislation. Council will provide accurate information about a persons right to seek a review and appeals of an enforcement action taken by Council, and the appropriate process given the circumstances.

6.2. Review of this policy

It is intended that this policy will be reviewed every two years by Council.

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