

Integrity Spotlight

V1.0 – November 2023

Alert

All enforcement powers require appropriate safeguards to prevent their misuse.

Compliance and enforcement powers in Local Government

What compliance and enforcement functions do councils have?

Councils are responsible for ensuring that residents and businesses comply with various legislation, including that relating to public health and safety, building and construction, land use planning, waste, environmental management, local nuisances, traffic and road safety, and animal management.

Enforcement actions councils can undertake to enforce compliance with legislation include:

- Issuing verbal or written warnings
- Formal action in accordance with relevant legislation, including:
 - Issuing directions, or enforcing directions issued by a court
 - Issuing and enforcing fines, expiation notices and civil pecuniary penalties
- Criminal prosecution

Enforcement powers are entrusted to various council officers including 'Authorised Persons'¹, who work specifically in regulatory roles (for example, animal management officers, parking officers, community rangers). All enforcement powers require safeguards to prevent their misuse.

¹ 'Authorised Persons' can be appointed by councils under a range of legislation including (but not limited to) the *Local Government Act 1999*.

Enforcement powers and potential corruption – what’s the problem?

Given the wide-ranging nature of enforcement powers available to council officers, they are vulnerable to misuse for corrupt purposes. This can include:

- soliciting or accepting a bribe, gift or other benefit, to exercise enforcement powers in a certain way
- failing to declare a conflict of interest
- using enforcement powers to advantage themselves or others.

The Commission recently investigated allegations that encroachments of private properties onto public land were ignored by council compliance officers as a result of inducements provided by property owners. These allegations were unsubstantiated, but they illustrated how corruption could occur.

The risk is greater when council officers have high levels of discretion in how they exercise enforcement powers, and when the use of these powers is not effectively supervised or documented. The misuse of enforcement powers may result in ratepayers losing confidence in the Council’s ability to exercise powers in a fair and transparent manner.

How can councils manage these risks?

Councils require robust controls to guard against the risk that enforcement powers will be misused.

For example, councils should:

- have a clear enforcement policy that is publicly available. Enforcement policies provide a framework to guide council officers in taking enforcement actions.
- ensure that complaints relating to compliance and enforcement functions are appropriately assessed, investigated and resolved, in line with a clear complaints policy and procedure. Officers charged with investigating complaints ought to be appropriately trained and supervised.
- have a procedure for documenting enforcement decisions. Councils should document and have the capacity to access, review and audit records detailing the use of enforcement powers. This is important both for internal review, and in case an enforcement decision is ever disputed. It also promotes consistency.
- ensure conflicts of interest are properly processed. There should be a clear policy and procedure for the identification, disclosure and management of conflicts of interest. Councils should consider whether they should maintain a central register of conflicts of interest.
- ensure that the use of enforcement powers is checked and supervised.
- assess compliance and enforcement activities according to their vulnerability to corruption. High risk activities should be regularly reviewed to ensure robust controls are in place. That means appropriate supervision, role separation, staff compliance with record keeping requirements, and fair and transparent processes for complaints management.

Further resources

The **Local Government Association** has resources available for councils relevant to enforcing compliance with legislation, including a model enforcement policy:

www.lga.sa.gov.au

The **Local Government Authorised Persons Association** promotes professional development for authorised officers working in regulatory roles in councils:

apa.wildapricot.org

Some councils have enforcement policies publicly available. While the Commission does not endorse specific council policies, they may be useful to view as examples:

City of Mitcham: [Enforcement and Compliance Policy](#)

City of West Torrens: [Council Policy: Enforcement](#)

The Commission has produced other publications that may be helpful to councils.

The report *Identify, Disclose and Manage* provides advice on the effective management of conflicts of interest in public administration:

www.icac.sa.gov.au/publications/published-reports/identify-disclose-manage

The Commission's evaluation of the City of Playford made recommendations aimed at improving policies, procedures and record keeping practices. These are relevant for all councils:

www.icac.sa.gov.au/evaluations-and-reviews/city-of-playford


All public officers, including council employees, are obliged to report a reasonable suspicion of corruption to the **Office for Public Integrity**:


www.publicintegrity.sa.gov.au

Public officers are also encouraged to report suspected misconduct and maladministration to the **South Australian Ombudsman**:

www.ombudsman.sa.gov.au

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