

COMPLIANCE POLICY

SCOPE

This policy provides information about Council's position on compliance and enforcement matters in the Banana Shire.

The purpose of this policy is to provide a structure for consistency and transparency in decision making, and to facilitate a balanced approach to compliance and enforcement. It is also intended to assist Council staff to act promptly, effectively, and consistently in response to allegations of unlawful activity.

This policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council will choose and whether to commence legal proceedings.

LEGISLATION

Local Government Act 2009
Right to Information Act 2009
Information Privacy Act 2009
State Penalties Enforcement Act 1999
Human Rights Act 2019

OBJECTIVE

Enable Council to acknowledge its obligation under the *Local Government Act 2009* to ensure that its regulatory powers are carried out in a consistent manner and without bias.

Establish clear guidelines for Council's Authorised Officers in dealing with proactive regulatory action, and for assessing and investigating customer service requests or complaints about unlawful activity.

Provide a proactive position regarding enforcement action regarding Council's regulatory and compliance functions.

Foster responsive and responsible regulation, fairness, consistency, and equity in any action taken by Council in response to allegations of unlawful activity.

Establish operational priorities and the factors to be considered when determining how a complaint should be dealt with by Council.

Make Council's policies and requirements for compliance readily accessible and understandable to the public.

DEFINITIONS

Complaint	A complaint is an expression of dissatisfaction made about an unlawful activity, a Council service, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.
Enforcement	Actions taken in response to contraventions of laws.
Regulation	Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.
Unlawful activity	Means directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense an Act or legislation.

POLICY

Application

This policy applies to all lands contained within the Banana Shire and all regulatory issues within Council's area of responsibility.

Legislation

This policy ensures Banana Shire Council's compliance with the *Local Government Act 2009* and relevant legislation and regulations that Council operates under.

Compliance Process

The Compliance Process establishes the factors that will be considered when determining how a compliance matter will be handled.

Conflict of interest

Potential conflicts of interest in a compliance enforcement or investigation must be declared by officers in accordance with Council's adopted Conflict of Interest Policy and Procedures.

Investigation

It is incumbent upon authorised officers to effectively understand the nature of their powers and responsibilities conferred by legislation to properly address the issues identified. The authorised officer will efficiently conduct relevant enquiries to establish the veracity of any compliance matter referred to them. Each authorised officer will accurately record such material and notes that afford evidence to support or negate a compliance matter.

All compliance investigations will be conducted in accordance with Council Standard Operating Procedures and the provisions of law.

If necessary, and at the discretion of the Chief Executive Officer, an external investigation may replace an investigation by Council officers, with such investigation conducted by suitably authorised investigators under the auspices of the relevant legislation.

Compliance and enforcement

Council will apply a risk-based approach to compliance assurance for both proactive and reactive activities.

This involves identifying, analysing and prioritising non-compliance risks, followed by application of appropriate compliance measures to control the risks. Applying a risk-based approach will enable resources to be targeted to the areas where they are most needed and will prove most effective in protecting the environment and human and public health.

Council's Approach to Compliance Assurance

Council's approach to compliance assurance is based on promoting voluntary compliance and deterring non-compliance. This approach balances actions directed to promoting voluntary compliance (such as the application of workable approval conditions, provision of education and advice on how to comply) with monitoring (verification and detection) and enforcement activities

Councillor involvement

As per the provisions of the *Local Government Act 2009* and the Council's Code of Conduct and Code of Conduct – Councillors Policy, Councillors are not involved during investigations on compliance matters.

If Councillors seek information on or have concerns relating to a matter under investigation, they are to direct these to the Chief Executive Officer.

Confidentiality

Council will respect the privacy and confidentiality of information received in accordance with the *Information Privacy Act 2009*. However due to statutory obligations and other requirements, confidentiality cannot always be guaranteed.

Complaints

All complaints received by Council will be investigated in their entirety. Customers will receive regular updates regarding their complaint, including the final outcome. All complaints will be treated as confidential and no personal information will be released.

Vexatious or anonymous complaints

- a) Vexatious complaints will not be investigated by Council. Vexatious complaints are complaints which are clearly made with the sole intent of annoying a person or complaints which are without substance made frequently by the same individual or entity.

- b) Anonymous complaints will generally be investigated by Council. The nature of the alleged breach may require some level of investigation, however due to anonymity some enforcement actions may be limited.

Fees and fines

Fees are listed in Council's adopted Fees and Charges and will be applied where appropriate.

Penalty amounts are identified in the legislation being enforced and are charged accordingly. Failure to pay fees and fines is an offence and may result in further costs or legal action.


In acknowledgement of fundamental human rights, this Council Policy has been developed and acknowledges a commitment to recognise the importance of the protection of human rights in creating policies that serve to develop overarching frameworks, standards, behaviours or actions that affect the ways in which Council services the community of the Banana Shire Council.

An assessment of this Policy against human rights determined that no human rights are limited or affected by this Policy.

PROCEDURE

Procedures as approved and issued by the Chief Executive Officer, and subject to further revision, amendment and issue under the authority of the Chief Executive Officer.

CERTIFICATION



.....
CHIEF EXECUTIVE OFFICER
BANANA SHIRE COUNCIL

3/2/23

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DATE