

Program: Health & Regulatory Services
 Development Planning & Engineering
Date of Adoption: 16 July 2025
Resolution Number: ORD-2025-185
Review Date: 16 July 2028

Scope

Mackay Regional Council (MRC) has statutory Compliance and Enforcement responsibilities arising under multiple pieces of State legislation and Local Laws. This policy applies to all MRC Compliance and Enforcement activities.

Objective

This policy sets out principles of a general nature. The objective of this policy is:

- to assist MRC in making decisions regarding Compliance and Enforcement relating to legislation that is within its statutory responsibility;
- to foster consistency, efficiency, effectiveness and transparency in the Compliance and Enforcement decision-making process; and
- to educate and provide guidance to individuals and businesses regarding the way in which MRC will discharge its Compliance and Enforcement statutory responsibilities.

This policy is published to promote transparency and to inform the public about MRC’s expectations and Compliance and Enforcement decision-making processes.

Policy Statement

MRC recognises the need for an open and responsive Compliance and Enforcement process. This policy is intended to provide clarity as to what individuals or businesses may expect from MRC if subject to Compliance or Enforcement action and aims to provide a level of confidence in MRC’s Compliance and Enforcement process. Human Rights have been considered when preparing this policy.

MRC considers that to the extent this policy engages and limits, or potentially limits, any human rights, that limitation is reasonable in that it is proportionate and justified.

This process to remain in force until otherwise determined
 by Mackay Regional Council

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1.0 Principles

1.1 Governing Principles

- 1.1.1 MRC discharges its statutory responsibilities in a way which achieves the best community outcomes, by undertaking compliance and enforcement activities in a manner which:
- 1.1.1.1 supports voluntary compliance;
 - 1.1.1.2 is transparent without compromising privacy or safety of individuals
 - 1.1.1.3 is proportionate to the seriousness of the contravention;
 - 1.1.1.4 is impartial, and based on available evidence, and on MRC's strategic objectives; and
 - 1.1.1.5 is consistent with the Model Litigant Principles.
- 1.1.2 Enforcement action must not be taken for an improper purpose. A decision regarding the taking of enforcement action will not be influenced by factors such as:
- 1.1.2.1 gender, ethnicity, nationality, political associations, religion or beliefs;
 - 1.1.2.2 an elected member of Council, or MRC employee's personal feelings regarding the person or business;
 - 1.1.2.3 any perceived or actual political advantage or disadvantage to a political group or party; or
 - 1.1.2.4 the possible effect on the personal or professional circumstances of the MRC employee making the decision.
- 1.1.3 MRC will adopt the 'HELP' framework to ensure a firm, but fair approach is upheld during compliance and endorsement investigations. This includes:
- 1.1.3.1 highlight the compliance or non-compliance with the alleged offender;
 - 1.1.3.2 educate via meaningful interactions how compliance is to be achieved/avoided into the future;
 - 1.1.3.3 levy appropriate statutory notices; or
 - 1.1.3.4 prosecute as a matter of last resort taking into consideration the HELP framework.

2.0 Complaints

Any complaints in relation to a decision or a service relating from this policy will be assessed and managed in accordance with MRC's Administrative Action Complaints Policy, a copy of which can be found on MRC's website.

When an individual feels that they are the subject of MRC's failure to act compatibly with human rights, they can make a complaint directly to MRC. These complaints will be assessed against the Human Rights Act 2019.

Complaints may be made as following:

In writing to
Chief Executive Officer
Mackay Regional Council
PO Box 41
MACKAY QLD 4740

Via email - complaints@mackay.qld.gov.au

In person at the following MRC Client Services Centres:

- MRC Mackay Office – 73 Gordon Street, Mackay
- MRC Sarina Office – 65 Broad Street, Sarina
- MRC Mirani Office – 20 Victoria Street, Mirani

3.0 Definitions

To assist in interpretation the following definitions shall apply:

Authorised Person shall mean a person who is properly authorised by MRC to exercise any powers arising under any legislative act, regulation, local law or planning scheme.

Authority shall mean a government department or agency, or similar entity given administrative power or control over a piece of legislation, or actions regulated by it.

Best community outcomes shall mean one or more of the following outcomes:

- All parties agree and commit to a positive outcome;
- Social networks are enhanced;
- Community health and safety is not compromised;
- The built, social and environmental amenity are enhanced; and
- Harm or nuisance is reduced or abated.

Compliance shall mean the extent to which a person, business or other organisation meets, or is taking steps to meet, their legislative or regulatory obligations.

Council shall mean all elected representatives of Mackay Regional Council.

Enforcement shall mean the range of procedures and actions that may be taken by MRC to:

- ensure that a person, business or other organisation manages their activities in accordance with the law, and any condition of any licence, permit (including a development permit), registration, approval, permission or consent; and/or
- hold a person, business or other organisation to account for their unlawful Activity.

HELP shall mean that contained in item 1.1.3 and applied as per Appendix 3 of the Compliance and Enforcement Corporate Standard.

Human Rights Complaint shall mean a complaint about an alleged contravention of section 58-1 by a public entity in relation to an act or decision of the public entity.

Infringement Notice shall mean an infringement notice as that term is defined in the *State Penalties Enforcement Act 1999*.

Model Litigant Principles shall mean the Model Litigant Principles published by the Queensland Government, Department of Justice and Attorney General on the website: <https://www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles>.

MRC shall mean Mackay Regional Council.

Prosecution shall mean the commencement and conduct of legal proceedings against a person or corporation for one or more offences arising under any legislative act, regulation or local law, from any unlawful Activity.

Public Interest shall mean those considerations generally common to all members of, or a substantial segment of, the community, affecting the good order and functioning of the community.

Unlawful Activity shall mean any activity undertaken, or a failure to undertake any activity, by a person, business or other organisation:

- Without a required licence, permit (including a development permit), registration, approval, permission or consent;
- Contrary to any legislative requirements regulating the activity;
- Contrary to any planning instrument regulating the activity;
- Contrary to the terms or conditions of any licence, permit (including a development permit), registration, approval, permission or consent.

Voluntary compliance shall mean when a person, business or other organisation manages their activities in accordance with the law, and any condition of any approval, licence or permit.

4.0 Review of Policy

This policy will be reviewed when any of the following occur:

- The related documents are amended or replaced.
- Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three (3) years.

5.0 Reference

- *Local Government Act 2009*
- Department of Justice and Attorney General *Model Litigant Principles*.

Version Control:

Version	Reason / Trigger	Change	Adopted	Date
1	New		Council	16.07.2025

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1.0 Scope

This corporate standard applies to all MRC Compliance and Enforcement activities and must be read in conjunction with Council Policy 117 – Compliance and Enforcement.

2.0 Objective

To guide decision making in compliance and/or enforcement action.

3.0 Reference

- *Local Government Act 2009*
- Department of Justice and Attorney General *Model Litigant Principles*

4.0 Definitions

To assist in interpretation the following definitions shall apply:

Authorised Person shall mean a person who is properly authorised by MRC to exercise any powers arising under any legislative Act, Regulation, Local Law or Planning Scheme.

Authority shall mean a government department or agency, or similar entity given administrative power or control over a piece of legislation, or actions regulated by it.

Compliance shall mean the extent to which a person, business or other organisation meets, or is taking steps to meet, their legislative or regulatory obligations.

Council shall mean all elected representatives of Mackay Regional Council.

Enforcement shall mean the range of procedures and actions that may be taken by MRC to:

- Ensure that a person, business or other organisation manages their activities in accordance with the law, and any condition of any licence, permit (including a development permit), registration, approval, permission or consent; and/or
- Hold a person, business or other organisation to account for their Unlawful Activity.

Infringement Notice shall mean an infringement notice as that term is defined in the *State Penalties Enforcement Act 1999*.

Model Litigant Principles shall mean the Model Litigant Principles published by the Queensland Government, Department of Justice and Attorney General on the website:

<https://www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles>.

MRC shall mean Mackay Regional Council.

Prosecution shall mean the commencement and conduct of legal proceedings against a person or corporation for one or more offences arising under any legislative Act, Regulation or Local Law, from any Unlawful Activity.

Unlawful Activity shall mean any activity undertaken, or a failure to undertake any activity, by a person, business or other organisation:

- Without a required licence, permit (including a development permit), registration, approval, permission or consent;
- Contrary to any legislative requirements regulating the activity;
- Contrary to any planning instrument regulating the activity;
- Contrary to the terms or conditions of any licence, permit (including a development permit), registration, approval, permission or consent.

5.0 Standard Statement

5.1 Enforcement Actions

5.1.1 Enforcement actions do not include measures aimed only at educating or informing a person, nor do they include investigations into allegations of Unlawful Activity. An investigation into allegations of Unlawful Activity may result in Enforcement and will generally precede any Enforcement action.

5.1.2 There are a variety of forms of Enforcement actions which MRC may take. Where it is appropriate and proportionate to do so, MRC may take more than one form of Enforcement action or may take successive Enforcement actions. The types of Enforcement actions available to MRC include:

5.1.1.1 *Warnings.*

Warning letters or verbal warnings are generally not provided for in legislation but are an Enforcement response that MRC may take in relation to minor contraventions.

5.1.1.2 *Administrative notices and orders made under legislation.*

Administrative notices and orders are enforcement actions that include the range of notices and orders that MRC may issue under legislation it administers to secure compliance with obligations under that legislation.

5.1.1.3 *Suspension or cancellation of a permit, licence or authority.*

The aim of cancellation or suspension of a permit, licence or authority is not punitive. It is based on the need to protect the

integrity of the legislative regime, the environment, and the community from unsuitable operators.

5.1.2.4 *Infringement notices.*

Infringement notices are a means of dealing with minor contraventions of legislation administered by MRC which warrant some form of sanction, but which are generally not serious enough to warrant a prosecution.

5.1.2.5 *Proceedings to obtain court orders as provided for under legislation.*

Applications for court orders are generally appropriate in circumstances where there has been a major or serious contravention of legislation.

5.1.2.6 *Prosecution.*

Will only be used after careful consideration. If an alternative to prosecution may be more effective in achieving the outcomes of the legislation, then that alternative will be considered.

5.2 More than one Defendant/Respondent

Sometimes there is more than one person who may be responsible for the commission of an offence. MRC recognises that it may not always be appropriate to take Enforcement action against every person who may be liable for an offence. When deciding the appropriate person against whom Enforcement action may be taken, MRC will take the following matters into consideration:

5.2.1 each person's role; and

5.2.2 who was primarily responsible for the Unlawful Activity, i.e.:

5.2.2.1 who committed the act;

5.2.2.2 who formed any necessary intent;

5.2.2.3 who created the material circumstances leading to the alleged Unlawful Activity;

5.2.2.4 who benefitted from the Unlawful Activity.

5.3 Self-notification

When making a decision regarding the taking of enforcement action, MRC will take into consideration any notification of the unlawful activity it has received from the person or company who may be the subject of the enforcement action. In particular, MRC will take into account whether:

- 5.3.1 the self-notification was timely, and made in accordance with any statutory obligation to do so;
- 5.3.2 the information aided in the investigation of the matter, and the extent that it aided the investigation;
- 5.3.3 the self-notification assisted in the control or mitigation of any impacts of the Unlawful Activity; and;
- 5.3.4 MRC, or another regulatory authority, was already aware of the unlawful Activity.

5.4 Corporations

Both corporations and individual employees, agents or officers of a corporation can be liable for offences against legislation.

- 5.4.1 Where employees, agents or officers of a corporation commit an offence whilst acting in the course of their employment, enforcement will usually only be taken against the corporation.
- 5.4.2 Where the Unlawful Activity has occurred because the employee, agent or officer has undertaken the Unlawful Activity of their own volition, outside the scope of their employment or authority, proceedings may be instituted against the employee, agent or officer and not against the corporation.
- 5.4.3 An employee will not avoid liability merely by asserting that they were acting under direction from a supervisor, although that may be a mitigating factor when MRC considers the choice of Enforcement action. The guiding principle when making any decision to take Enforcement action against an employee is the degree of individual culpability or responsibility. Factors MRC will consider when assessing culpability include:
 - 5.4.3.1 any prior Enforcement action by an employee;
 - 5.4.3.2 whether the Employee knew, or should have known, that the activity was, or was likely to be, an Unlawful Activity;
 - 5.4.3.3 the seniority of the employee, and the scope of their duties;
 - 5.4.3.4 whether, having regard to their seniority, the Employee had taken reasonable steps to inform the employer the activity was, or was likely to be, an Unlawful Activity;
 - 5.4.3.5 whether the employee has taken reasonable steps to mitigate the effects of the Unlawful Activity, where it was within their power to do so.
 - 5.4.3.6 another factor which MRC will consider is the existence, and effective implementation, of any relevant training and Compliance programs of the corporation.

5.5 Corporations – Executive Officers

Many of the pieces of legislation within MRC's statutory responsibility contain executive liability provisions which extend liability for offences committed by the corporation to its executive officers.

5.5.1 The guiding principle when making any decision to take Enforcement action against an executive officer under an executive liability provision is the degree of culpability or responsibility the executive officer has in relation to the Unlawful Activity. That is, the degree to which the executive officer had actual control or influence over the conduct of the corporation relevant to the Unlawful Activity.

5.5.2 In general, MRC will take Enforcement action under an executive officer liability provision only where evidence links the person with the corporation's Unlawful Activity. That evidence may, for example, prove the executive officer:

5.5.2.1 intended to engage in the action or omission;

5.5.2.2 was negligent or reckless with respect to the action or omission;

5.5.2.3 intended to deceive MRC;

5.5.2.4 failed to monitor or periodically assess and manage risks associated with the corporation's relevant activities or review supporting systems and programs.

5.5.3 The general legislative exceptions to executive officer liability are that:

5.5.3.1 the executive officer was not able to influence the corporation's conduct; or

5.5.3.2 the officer took all reasonable steps to ensure that the corporation complied with the law.

5.5.4 MRC may accept that reasonable steps were taken to ensure that the corporation complied with the law where there is evidence that the executive officer ensured that:

5.5.4.1 the corporation had an effective risk management system in place which was aimed at ensuring compliance with relevant legislative requirements;

5.5.4.2 all staff were aware of the system;

5.5.4.3 the system had been effectively implemented throughout the corporation;

5.5.4.4 the system was regularly reviewed and was amended when necessary.

5.6 Choice of Enforcement Action

5.6.1 The decision to take Enforcement action, and if so, the choice of Enforcement action to be taken, will be informed by:

5.6.1.1 the seriousness of the Unlawful Activity;

5.6.1.2 the desired outcome sought to be achieved; and

5.6.1.3 the individual facts and circumstances of each matter.

5.6.2 The level of seriousness of the Unlawful Activity will be measured against a mixture of considerations, some of which are particular to the person or company against whom Enforcement Action may be taken, and some of which are of a more general nature. The considerations include:

- the objectives of the relevant legislation, including the nature of the Unlawful Activity and the type of impact the Unlawful Activity is designed to deter or prevent;
- the actual or potential impact of the Unlawful Activity including risks to people, property and environment;
- the risks in the act of doing nothing such as reputational damage or continued/increased non-compliance across the community; and
- the level of culpability of the alleged offender.

5.6.2.1 *Objectives of legislation*

Legislation usually includes an outline of its purpose. It is often useful to consider the intended purpose of the legislation when considering an offence provision.

The maximum penalty will often demonstrate the level of seriousness for an offence. When there is more than one level of offence, or class of offences, this will be relevant to the assessment of seriousness and the exercise of the discretion to take Enforcement action.

5.6.2.2 *Impact*

The level of impact of the Unlawful Activity will be determined by reference to the effect, or consequences, of the Unlawful Activity, as well as by considering the types of acts or omissions that the Enforcement action is intended to prevent.

Five levels of impact have been developed to assist MRC in classifying the level of seriousness of the Unlawful Activity and help inform the choice as to the appropriate level of any Enforcement Actions to be undertaken. Where an Unlawful Activity may satisfy criteria across more than one level of impact, it will generally be categorised against the highest applicable level of impact.

Appendix 1 contains a table summarising the types of considerations for determining the impact of the Unlawful Activity.

5.6.2.3 *Culpability*

This refers to the level of blame or responsibility an individual may have for the Unlawful Activity.

Three levels of culpability have been developed which, along with the levels of impact, will assist MRC in classifying the level of seriousness of the Unlawful Activity and help inform the choice as to the appropriate level of any Enforcement actions to be undertaken. Again, where an Unlawful Activity may satisfy criteria across more than one level of impact, it will generally be categorised against the highest applicable level of impact.

Appendix 2 contains a table summarising the types of considerations for determining the level of culpability of an individual for the Unlawful Activity, and how they may be applied.

5.6.2.4 *Application of objects of legislation, impact and culpability*

MRC will exercise its discretion to take any Enforcement action it considers appropriate in the circumstances, taking into account the seriousness of the Unlawful Activity.

The choice of the enforcement action will be determined by reference to the seriousness of the contravention of legislation and the desired outcome having regard to the facts and circumstances of each matter.

As a guide, warning letters are generally reserved for low or minor contraventions; infringement notices for minor contraventions, administrative notices and orders (with the exception of cancellation of licences or permits) for moderate to serious contraventions; and court orders, prosecutions and cancellations of permits and licences are generally reserved for major or serious contraventions of legislation.

5.7 Enforcement Decisions

Decisions about the appropriate course of Enforcement action are made by Authorised Persons. Decisions are made following consideration of relevant operational manuals, standard operating procedures, professional judgement, legal guidelines and case law, statutory codes of practice and priorities set by MRC.

6.0 **Review of Standard**

This corporate standard will be reviewed when any of the following occur:

1. The related policy documents are amended or replaced.
2. Other circumstances as determined from time to time.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three (3) years.

7.0 Attachments

- Appendix 1 – Considerations for determining the impact of the Unlawful Activity.
- Appendix 2 – Considerations for determining the level of culpability.
- Appendix 3 – Appropriate action using the HELP Framework

Version Control:

Version	Reason / Trigger	Change	Adopted	Date
1	New		Council	16.07.2025

Appendix 1: Considerations for determining the impact of the Unlawful Activity

1 Low-Minor impact or risk of impact	2 Moderate impact or risk of impact	3 Major impact or risk of impact	4 Serious impact or risk of impact
<ul style="list-style-type: none"> • no, transient or potential impact • no public concern or impact to public health and safety, environment and amenity or impact is on, or potentially on, a localised scale, or is of a low intensity • where the Unlawful Activity is of an administrative nature, it could not have been prevented or it has no impact on the legislative scheme or is of an inadvertent nature 	<ul style="list-style-type: none"> • temporary to medium-term impact, or potential impact • impact is on, or potentially on, a localised to medium scale, or is of a low to medium intensity • moderate level of public concern or impact to public health and safety, environment and amenity • where the Unlawful Activity is of an administrative nature, it has a moderate impact on the legislative scheme, or the offender negligently or carelessly fails to comply with administrative requirement 	<ul style="list-style-type: none"> • medium to long-term impact, or potential impact • impact is on or potentially on a medium to wide-scale, or of medium to great intensity • high level of public concern or impact to public health and safety, environment and amenity • where the Unlawful Activity is of an administrative nature, it undermines the legislative scheme or the individual conceals information or seeks to avoid liability for fees or taking necessary actions to prevent Unlawful Activity 	<ul style="list-style-type: none"> • permanent, or potential for permanent, long-term impact • impact is on or potentially on a wide-scale, or of great intensity • widespread or high level of public concern or impact to public health and safety, environment and amenity about the incident • where Unlawful Activity is of an administrative nature, it severely undermines the legislative scheme or the offender provides false or misleading information

Appendix 2: Considerations for determining the level of culpability

1 Low Culpability	2 Moderate Culpability	3 Serious Culpability
<ul style="list-style-type: none"> • inadvertent acts • no prior Unlawful Activity • Unlawful Activity of short-term duration • remediation effective • notification to MRC, or another appropriate Authority, of the Unlawful Activity within reasonable timeframe • did not benefit from the Unlawful Activity • the impact or risk of impact was not foreseeable • the impact or risk of impact was not prevented by high standards of operation (accepted industry standards) • minimal control or awareness over the circumstances leading to the Unlawful Activity 	<ul style="list-style-type: none"> • careless acts • isolated prior Unlawful Activity • Unlawful Activity of a medium duration • genuine attempt at remediation or remediation partially effective • attempt at notification of MRC, or another appropriate Authority, of Unlawful Activity within reasonable timeframe • may not have benefitted from the noncompliance or any benefit is negligible • was aware of the risk of impact or the impact was foreseeable • the impact or risk of impact may have been prevented by following accepted industry standards • moderate control or awareness over the circumstances leading to the Unlawful Activity 	<ul style="list-style-type: none"> • intentional or wilful Unlawful Activity • past Unlawful Activity or convictions involving the same or similar legislative provisions • Unlawful Activity of an ongoing or long duration • no attempt at clean-up or take remedial action • motivated by profit or obtained a material benefit from the Unlawful Activity • involves serious misleading conduct • failure to notify MRC, or another appropriate Authority, effectively or notification outside of reasonable timeframes • wilful ignorance of clear directions, warnings or administrative actions (whether from employees, consultants, MRC, or other government officers) which may have prevented or mitigated the impact • the impact or risk of impact was obvious and/or preventable by implementing or following accepted industry standards • total control or awareness over the circumstances leading to the Unlawful Activity

Appendix 3: Appropriate action using the HELP Framework

		Considerations for determining the impact of the Unlawful Activity			
		1 Low-Minor impact or risk of impact	2 Moderate impact or risk of impact	3 Major impact or risk of impact	4 Serious impact or risk of impact
Considerations for determining the impact of the Unlawful Activity	1 Low Culpability	<ul style="list-style-type: none"> highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation educate the customer to achieve compliance 	<ul style="list-style-type: none"> highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation educate the customer to achieve compliance 	<ul style="list-style-type: none"> highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation educate the customer to achieve compliance levy appropriate statutory notices 	<ul style="list-style-type: none"> highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation educate the customer to achieve compliance levy appropriate statutory notices commence prosecutions
	2 Moderate Culpability	<ul style="list-style-type: none"> highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation educate the customer to achieve compliance levy appropriate statutory notices 	<ul style="list-style-type: none"> highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation educate the customer to achieve compliance levy appropriate statutory notices 	<ul style="list-style-type: none"> highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation levy appropriate statutory notices commence prosecutions 	<ul style="list-style-type: none"> highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation levy appropriate statutory notices commence prosecutions

	3 Serious Culpability	<ul style="list-style-type: none"> • highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation • levy appropriate statutory notices 	<ul style="list-style-type: none"> • highlight the non-compliance via phone, in-person, email and/or letter appropriate to the investigation • levy appropriate statutory notices • commence prosecutions 	<ul style="list-style-type: none"> • levy appropriate statutory notices • commence prosecutions 	<ul style="list-style-type: none"> • levy appropriate statutory notices • commence prosecutions
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