

Governance & Enforcement – Model Policy

Draft Model
**Local Government
Framework Policy**

Governance & Enforcement
Subject Matter Specific

Governance & Enforcement – Model Policy

Governance & Enforcement– Policy

Council Authorised Policy Executor: Chief Executive Officer	Policy No.: 004 Date of Currency: <i>Date to date</i>
<i>For Acknowledgement, Accountability and Inconsistency with this Policy See Policy 001</i>	

Purpose of this Policy

The purpose of this Governance & Enforcement, subject-matter specific, Framework Policy is to:

- Simplify the identification of opportunities for improving good governance.
- Facilitate openness and accountability;
- Clarify, How, When and Where Local Government Public Relations are assimilated with governance and enforcement resulting in District Community enhancement;

Policy Object

The object of this policy is to encourage, entice, facilitate and measure, the willingness of the District Community and its members, to align with and be willing to be guided by, the Laws, instructions, standards and other guidance developed, promulgated and enforced by the Local Government, demonstrating commitment and contribution to betterment of the Local Government District society.

Policy Scope

As a “Framework” or “Principal” Policy, this Policy has universal application across the Local Government’s, interactions, acts, actions and decisions.

Governance & Enforcement – Model Policy

Policy Statements

Enforcement

Except where specifically otherwise prescribed in law; this Principal Policy determines that the Local Government:

1. Requires that for the purpose of Governance and Enforcement, all assessments are to be interpreted to meet the duty of care prescribed and defined by the Local Government Act. 1995, Sub Sections 1.3.(2) and 1.3.(3) and *Policy - 002 Model Public Relations Policy*;
2. Will undertake education and engagement as identified in [*Policy – 003 Model Community Engagement Policy – Resolution of Complaints and Disputation*] as being the initial encouragements for compliance enforcements, given that early investment in such processes is well documented for achieving long term commitment to beneficial community outcomes.
3. Requires oppressive or persecutory enforcements to be reserved as an absolute last resort as these are well documented as generally delivering negative benefits to community outcomes, while simultaneously detriming Public Relations reputations.
4. Requires that Prosecution will only be commenced where:
 1. Evidence of the purported offence supports that it was clearly wilful, and;
 2. Harm had been caused or was likely to be caused, and;
 3. Attempts to prevent the occurrence or reoccurrence or to remediate the harm done through engagement and educative processes had failed, and;
 4. The Community had demonstrated support for prosecution, and;
 5. No other options remained available;
5. Will engage with the Local Community Advocacy Organisation, to establish and appoint Community representation to an Enforcements, Education and Engagement Committee. The role of the Committee is to report to Council in regard to:
 1. Developing for publication to the Local Government website, processes and procedures applicable for educating and engaging persons or parties alleged to be non-conforming to Policies, Codes, Standards and Local Laws under the control of the Local Government;
 2. Engaging with persons identified in point 1, to investigate and analyse the event(s) against the prescribed outcomes given in Sub Sections 1.3.(2) and 1.3.(3) of the Local Government Act. 1995;
 3. Measure and analysis of the efficacy, efficiency and benefit to the Community achieved through the processes and procedures identified in point 1;

Governance & Enforcement – Model Policy

6. Will develop and publish to the Local Government website, processes and procedures the Local Government will apply when enforcing the Local Government Policies, Codes, Standards and Local Laws;
7. Will accept as a valid defence against prosecution, any matter which is shown as being equivalent to a similar relevant example under the control and management of the Local Government;
8. Will develop, apply and publish to the Local Government website a code of conduct for persons authorised to initiate Prosecutions on behalf of the Local Government.

Electronic Communication & Social Media

9. Determines that any person not conforming to the provisions of the Code of Conduct relating to communications, is to be excluded from posting to that platform, forum, medium or other communication means, managed or controllable by the Local Government unless they apply for and accept moderated access only;
10. Determines that measurement of compliance with any relevant Code of Conduct will be a KPI on all contracts, including contracts for employment;
11. Determines the risk for misuse of revenge porn and other non-consensual intimate images communicated, or threats of violence arriving at the Local Government electronic or other communications media is a high security risk for the Local Government and such offensive receipts are to be forwarded to the Police and deleted from the Local Government Record;
 1. A register of such forwarding and deletion shall be kept.

Parking

Planning Policy Applies.

12. Determines that residential parking shall be maintained on site;
13. Will publish on the Local Government webpages, maps or plans for any and all non-residential parking places where the Local Government requires a fee to be paid, or otherwise licences or issues permit parking and places where parking is prohibited;
14. Will develop and publish on the Local Government webpages, the processes followed by the Local Government for the issuing of permits and licenses and the general management of those parking places;
15. Will develop and publish on the Local Government webpages, the processes and procedures followed by the Local Government for managing nuisance and unsafe parking;

Governance & Enforcement – Model Policy

Vandalism & Graffiti

16. Will investigate events of vandalism or graffiti in attempt to determine causation factors and prevention strategies. Investigation includes for “sanctioned” destruction reported from the Community.
17. May seek recompense to the extent of costs incurred for rectification, required or undertaken, and where a party responsible for the damage has been identified

Quasi-Judicial Role

The Local Government:

18. Notes, a local government Council when deciding applications for planning approval, other approvals, licences, consents and permits or managing complaints or disputation, is undertaking a quasi-judicial role, and the granting of approvals, licences, consents and permits is a quasi-judicial function.
19. Will when undertaking quasi-judicial functions, ensure the awareness of and adherence, as much as is practicable, to the Principles of the Rule of Law.
20. Requires Councillors to ensure the information they intend to use for making their Quasi-Judicial decision, is reliable, accurate and complete, to the best of their ability and is information that can be evidenced in justification of that decision.
21. Any person within the scope of these Model Policies and who is found to have failed or refused to apply these policies or any subordinate policy may be open to disciplinary action including but not limited to counselling or termination of office or employment.
22. Note that Local Governments generally, are in the enviable position that it is almost impossible to find a complaint or dispute which a local government cannot resolve or at the very least, have a profound influence on resolving. In the converse, it is a very simple matter that where a local government fails or does not hold the training, skills or knowledge to apply good governance of dispute management, then the outcome is invariably an escalation or prolongation of said disputation.
23. Note that a court decision may end but not resolve a complaint or disagreement and that section 1(3) of the Local Government Act implies an obligation on the Local Government to apply “its best endeavours” to achieve resolution beyond simply achieving a Court decision.

Governance & Enforcement – Model Policy

General Governance and Function Oversight

The Local Government:

24. Will engage with the Local Community Advocacy Organisation, to establish and appoint Community representation to a General Governance, Legislative Compliance and Enforcement Matters Advisory Committee. The role of the Committee is to report to Council in regard to:
 4. Examination and measurement of the Local Government’s enforcement practices to ensure outcomes achieved reflect the outcomes prescribed by Sub Sections 1.3.(2) and 1.3.(3) of the Local Government Act. 1995;
 5. Examination and measurement of the efficiency and benefit to the Community achieved through the Local Government’s business affairs;
 6. Measurement of application of the Local Government Plans, Systems, Processes, and Procedures to identify potential for efficiency improvements or potential Law non-compliances;
 7. Confirm measurement of performance of application, enforcement, and reporting on the impact of relevant components of each policy is a “key performance indicator” in each and every contract or other agreement within the control of the Local government;

Fraud & Corruption

The Local Government:

25. Will ensure that systems and procedures are in place to prevent, detect, report and investigate potential incidents of fraudulent, corrupt or unlawful behaviour or activity;
26. Will ensure that all Officers of the Local Government, whether elected or employed, are trained in fraud and corruption identification techniques and awareness of their responsibilities in respect to prevention, detection, reporting and investigation;
27. Will develop and deliver to all Committee members, awareness training, specialised to the identification and remedying of administrative instruction leading a potential for enabling the occurrence of fraud or corruption;
28. Will develop and publish on the Local Government webpages, the Local Government processes followed by the Local Government for managing Related Party Disclosures as required by the Australian Accounting Standards Board (AASB) for Not-for-Profit Public Sector Entities.

Governance & Enforcement – Model Policy

Election Caretaker Period

29. Will, to all practical extent, cease commencing new Council business at the time of opening of nominations for ordinary Council Elections. I.E. 44 days before the election day;
[Local government Act. 1995, 4.49.(a)]
30. Will, to all practical extent, in readiness for the incoming Council dedicate the 44 days prior to the election day to:
 1. Receiving committee termination reports;
 2. Receiving other review, or non-financial audit, reports;
 3. Preparing reviews of committee structures;
 4. Preparing Policy review reports;

Use of Local Government Intellectual Property (IP)

31. Will develop and publish to the Community on the Local Government website; a guidance note describing the material considered by the Local Government as Intellectual Property, how it may be used and any process required to obtain authority to use that IP.

Policy Advisory, Review, Compliance and Oversight

The Local Government:

32. Will engage with the Local Community Advocacy Organisation, to establish and appoint Community representation to a Policy Advisory, Compliance and Oversight Committee. The role of the Committee is to report to Council in regard to:
 1. Examination of the Local Government's Policies for measuring the extent to which outcomes achieved reflect the outcomes prescribed by Sub Sections 1.3.(2) and 1.3.(3) of the Local Government Act. 1995;
 2. Examination of the Local Government Policies, Standards, and Codes of Behaviour, to identify potential for, contradictions or conflicting prescription, potential Law non-compliances, and efficiency improvements or;
 3. Examination of the Local Government's administration affairs to measure compliance with Policy and other Council directives;
 4. It will therefore remain the City's responsibility to record or ensure all feedback is recorded and managed as appropriate to the classification appropriate to the specific feedback, and do so with a focus directed to develop outcomes which enable benefit to the community;
 5. Where feedback is a dispute, disagreement or other negative communication and has not been or is unlikely to be addressed to mutually agreed resolution, the CEO is to address the Council as to why that matter is not resolved or was unlikely to be resolved;
 6. The Local Government is to publish in its Annual Report the measurement and analysis of compliance and functionality performance of the Local Government's Policies.

Governance & Enforcement – Model Policy

Appendices to this Draft Policy Guidance and Explanatory Notes.

Introducing Governance & Enforcement

This Model Policy was developed to address critical matters either not addressed or inadequately addressed by the suite of Local Government State Laws.

Many of the pre-existing policies reviewed during development of these model Policies were written in an angry class segregation style, promoting aggressive application and oppressive enforcements whose delivered outcome undermined the prescribed intent of the Local Government Act. 1995, which was given as being to benefit the District Community.

A classic example was the use of the phrase “*Compliance with the law is not an option, it is an obligation*”. The use of this kind of phrase expresses an ideology of imposition and not a policy of care or compassion. To the reader that policy writer shows little or no understanding or regard for the fundament purpose of Law which is to guide and protect Society and its members. The offensiveness of such a phrase is compounded when the executor is well documented to be recalcitrant to their own compliance standards.

Compliance with the Law has many interpretations and without measurement against the purpose and intent of the Law in question, prosecution for compliance usually results in an outcome which suits the power of the prosecutor to the detriment of the purpose and intent of that Law.

Angry and aggressive wording discourages compliance and fails the test of a duty of care to the Community and by that defeats the original purpose for seeking compliance.

Governance & Enforcement – Model Policy

The principal purpose of Local Government Administration is to facilitate benefit to the Local Community through Community Engagement to develop and enhance the understanding and acceptance of the Duty of Care purpose of District governance undertaken by the Council.

Although a duty of care was clearly legislated upon Local Government defining a fundamental requirement of Local Government was to go beyond normal business protocols to listen to and engage with its community membership, senior officers of Department of Local Government continue to openly refuse to allow, enable or facilitate legitimate enforcement of this prescription in the Local Government Act. 1995, which is the only available pathway to ensuring integrity in the functions of Local Government.

Local Government is at times, each of, the legislature, the executive, the prosecutor and the judiciary. This places Local Government in a particularly difficult position in democratic law as Local Government is legislatively prevented from meeting democratic society expectations for the separation of powers identified as the primary principle of the Rule of Law. The spectre of “legally” corrupt use of Local Government powers is a very high risk widely exemplified across the plethora of current reports from Ministerial Inquiries into Local Government.

Published as long ago as 1993 and two years before the WA Local Government Act. was proclaimed, Professor Fred Hilmer inquired into matters of competition in Australia and reported organisations which had powers to legislate, who then execute and enforce that same legislation were likely at best, to diminish competitiveness and innovation. Local government is one of the last vestiges of government organisations remaining whose legislative structure facilitates their capability to lawfully acting to the disadvantage of their Communities and to extract payment for doing so.

The legislating of separate codes of behaviour designed and applied, to actively practice discrimination between classes within Local government, and the enforcement of such codes under rules which are prescribed to prevent and deny natural justice, further contribute to prevention of functional efficacy or beneficial outcome to Local Government Communities;

The promotion of reporting of fault in the part of Council by those the Council is legislated to direct, unreservedly undermines the authority of Council causing improper functioning of Local Governments as considerate body corporates. This is an area criminalised in the Commonwealth Corporations Act yet legitimised by Local Government legislation.

The Culture of the Local Government is established through the quality, application and enforcement of its Policies which form the framework directing its corporate roles and activities whether prescribed in legislation or otherwise assumed.

This Policy sets the parameters for the development, implementation and enforcement policy directives ascribing the framework of direction for good governance.

Governance & Enforcement – Model Policy

Table of Contents

Governance & Enforcement– Policy	2
Purpose of this Policy	2
Policy Object	2
Policy Scope	2
Policy Statements	3
Enforcement	3
Electronic Communication & Social Media.....	4
Parking.....	4
Vandalism & Graffiti.....	5
Quasi-Judicial Role	5
General Governance and Function Oversight	6
Fraud & Corruption	6
Election Caretaker Period.....	7
Use of Local Government Intellectual Property (IP)	7
Appendices to this Policy	8
Introducing Governance & Enforcement	8
Definitions	11
Audit, Review and Updating	11
Additional References Applicable to this Policy.....	11
Reference Legislation.....	12
This Policy Incorporates and Replaces the following existing Policies:.....	12

Governance & Enforcement – Model Policy

Definitions

Definitions given in Policy 001 – Model Corporate System Framework Policy apply to this Policy.

For the purpose of this policy the additional following terms are applied to mean;

Audit, Review and Updating

The Audit, Review and Updating of all Policies is addressed in *Policy 001 – Corporate System Framework Policy*

Additional References Applicable to this Policy

MRSC. (2017). *Local Government Policy Making Process*. Municipal Research & Services Centre, Washington, USA. www.MRSC.org

DOH. (2014) *Compliance and Enforcement Guideline for Enforcement Agencies*. W.A. Department of Health.

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DWER. (2020) *Compliance and Enforcement Policy*. Department of Water and Environmental Regulation W.A.

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https://www.wa.gov.au/sites/default/files/2020-11/Compliance_and_Enforcement_Policy.pdf

PSC. (2020) *Integrity Strategy 2020–23 for WA Public Authorities*. W.A. Public Sector Commission.

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<https://audit.wa.gov.au/auditing-in-wa/audit-program/>

Governance & Enforcement – Model Policy

Reference Legislation

In addition to the references listed in Policy 001 Corporate System Framework Policy, the following additional Legislation is referenced.

This Policy Incorporates and Replaces the following existing Policies:

Number	004 Governance and Enforcement Policies	Adopted by Council
CP-041	Code of Conduct – Elected Members	18/03/2014
CP-052	Quasi-Judicial Role	18/10/2016
CP-062	Fraud and Corruption Prevention Policy	18/10/2016
CP-097	Parking Permit Policy	11/12/2018
CP-104	Related Party Disclosure Policy	10/12/2019
CP-105	Election Caretaker Period	15/08/2017
CP-114	Compliance and Enforcement Policy	21/07/2020
OP-002	Use of the City of Melville Name & Logo	
OP-027	Code of Conduct Employee	
OP-031	Mobile Telephone and Tablet Device Overseas Usage Policy	
OP-037	Workplace Surveillance Policy	
OP-38	Mobile Device Management (MDM) on a Personal Smartphone	
	Governance Committee Charter	