

8.5.1 Food Act Compliance and Enforcement Policy

Directorate:	Infrastructure, Assets and Planning
Responsible Manager:	Manager Statutory Services
Review Due:	October 2028
Adoption:	Council
Date Adopted:	17 December 2024

Acknowledgement

Central Goldfields Shire Council acknowledges and extends appreciation for the Dja Dja Wurrung People, the Traditional Owners of the land that we are on.

We pay our respects to leaders and Elders past, present and emerging for they hold the memories, the traditions, the culture, and the hopes of all Dja Dja Wurrung People.

We express our gratitude in the sharing of this land, our sorrow for the personal, spiritual and cultural costs of that sharing and our hope that we may walk forward together in harmony and in the spirit of healing.

1. Purpose

The purpose of this policy is to:

- provide for consistency in outcomes of the enforcement activities;
- be efficient in enforcement approach;
- provide transparency to consumers and the food industry on how Council makes decisions on enforcement action;
- protect consumers from inappropriate and poor food industry practices;
- guide decision making and action by Council Officers in the consistent use of enforcement options proportionate with risk;
- support and inform the strategic use of compliance and enforcement initiatives in such a way as to best achieve legislated objectives and encourage compliance with legislation.

2. Application and Scope

This Policy applies to all Council staff.

This policy seeks to provide the strategic intent of effective food safety compliance and enforcement processes to food businesses registered within the municipality.

3. Introduction

Central Goldfields Shire Council is responsible for administering the objectives of the Victorian Food Act 1984 (the “Act”) within its municipality. The objects of the Act are:

- a) to ensure food for sale is both safe and suitable for human consumption;
- b) to prevent misleading conduct in connection with the sale of food; and
- c) to provide for the applications in Victoria of the Food Standards Code.

This policy provides a compliance and enforcement framework for providing graduated and proportionate options in response to food safety non-compliances.

Council and its delegated/Authorised Officers have a range of specific measures that may be used to enforce the requirements of the Act and to respond to incidents of non-compliance with the legislation.

4. Definitions

Authorised Officer	This has the same meaning as in the <i>Food Act 1984 (Vic)</i> . For the purpose of this policy this will generally be an Environmental Health Officer (EHO).
Assessment	The systematic approach to reviewing a food business in order to confirm compliance with the Food Act including the requirements under the Food Standards Code.
Closure Order	Section 19(3) of the Food Act allows for the temporary closure of food premises, pending the undertaking of remedial action
Compliance	Means adhering to the legislation and includes obtaining the correct registrations and approvals, conducting services, activities and behaviours in accordance with regulatory requirements.
Court	Means the Magistrates Court of Victoria
EHO	Environmental Health Officer
Food Act	<i>Food Act 1984 (Vic)</i>
Food Standards Code	The Food Standards Code (sometimes referred to in this document as ‘the Code’) is comprised of individual food standards relating to the manufacture and sale of food in Australia and New Zealand. In Victorian, the obligations to comply with eh Code is under Section 16 of the Food Act.
Enforcement	Using regulatory options to achieve compliance.
Infringement	Offences for which infringements may be issued. The use of this term refers to infringement offences under listed on Schedule 1 under the <i>Food Act 1984 (Vic)</i> .
Non-compliance	This is associated with the term ‘breach’ and refers to a failure to comply with the requirements of the Food Act including the requirements under the Food Standards Code.

Section 19 Order

Section 19 of the Food Act allows Council to make written orders requiring food businesses to undertake specified remedial actions within a specified timeframe in order to protect public health and safety.

5. General Provisions

5.1. Compliance and Enforcement Policy

It is the policy of Council and its Authorised Officers to approach non-compliance management through the series of steps depicted in Figure 1, below:

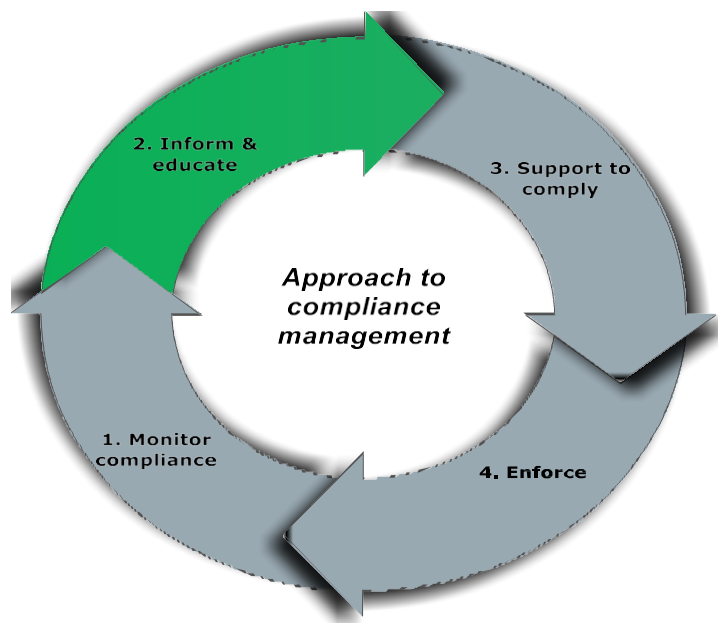


Figure 1

5.2. Step 1 Monitor Compliance

Undertake appropriate systematic monitoring programs and activities within the context of available resources to:

- Determine compliance with the Act and Food Standards Code; and
- Detect non-compliances.

5.3. Step 2 Inform and Educate

Within the context of available resources, undertake active awareness raising and informing activities with food business in regard to legislative responsibilities, Council's role and its compliance management processes, and potential public health impacts of non-compliance.

5.4. Step 3 Support to Comply

Provide appropriate guidance and resource materials to assist food businesses in understanding compliance responsibilities and in complying with the Act and Food Standards Code.

5.5. Step 4 Enforce

Enforcement is concerned with stopping and preventing non-compliance activities through sanctions, and remedying activities that pose a public health risk and/or threat to consumers. Enforcement activities are undertaken in accordance with this policy and supporting procedures.

6. Enforcement Response

This policy sets out the guiding principles Councils Environmental Health Officers (EHO) will apply when conducting regulatory and enforcement activities and include the following:

- A graduated and proportionate approach
- Authorised by law
- Impartial and procedurally fair
- Accountable and transparent
- Promote consistency of enforcement response
- In the public interest
- Allow for the appropriate application of multiple enforcement tools under appropriate circumstances

6.1. Graduated and Proportionate Approach

Within the context of available resources, Councils EHO's will apply a graduated and proportionate approach to the application of enforcement tools upon food businesses. This approach envisages the application of mild enforcement tools to businesses in the first instance, to be followed by more severe tools should the business continue the non-compliant activity.

Mild enforcement tools that may be employed includes inspection reports, official warnings, penalty infringement notices, seizure notices or Section 19 Orders. Examples of more severe tools include closure orders, suspension/cancellation of registration or prosecution in Court.

Council EHO's regularly use mediation and conciliation as preliminary steps in enforcement processes. Mediation and conciliation provide the proprietor of the business with the opportunity to explain mitigating circumstances of the legislative non-compliance. Following this explanation, Council may make a determination on an appropriate course of action.

Through employment of a graduated approach, it is considered that offences may be appropriately managed and allow Council to use its resources effectively and efficiently.

6.2. Proportionate Approach

Notwithstanding the above advice, Council EHO's will select an enforcement response that is proportionate to the identified non-compliance and will drive appropriate behavioural change to the business to return to a state of compliance. For example, identification of a critical non-compliance such as high infestation of pests like mice and cockroaches, may lead to more severe enforcement tools such as, issue of a closure order or prosecution being used in the first instance.

Furthermore, should the circumstances surrounding an offence be considered sufficiently serious (e.g. an imminent risk to public health and safety), the EHO's may elect to employ

multiple enforcement tools at the same time e.g. issuing an infringement notice (penalty) and Section 19 Order (remedial action). This policy should not be interpreted as preventing Council from exercising such powers.

The main factors that will be considered in making decisions concerning the choice of enforcement tool to respond to a particular incident is based on 'Level of Culpability versus Risk to Health/Level of Non-compliance'.

Level of Culpability

- The particular circumstances of the alleged offence and the individual circumstances of the business and persons associated with the business that is subject to enforcement action.
- The compliance history of the business, both in general and with respect to the incident that is the subject of enforcement action.
- The cooperation demonstrated by the alleged offender; both in relation to investigations conducted on the offender's premises relating to the offence and in respect to the cooperation demonstrated by the alleged offender following commencement of enforcement action.
- Any appropriate remedial action implemented by the alleged offender to address the non-compliance that is the subject of enforcement action.
- The degree of care and due diligence exercised by the business to avoid non-compliance.
- The timeframe over which the alleged offence/s were committed.

Risk to Health/Level of Non-compliance

Consideration must be given to the seriousness of the breach as this will assist in determining a proportionate compliance and enforcement response. The seriousness of the breach is categorised as minor non-compliance, serious non-compliance and critical non-compliance as per the Victorian Department of Health Guidelines and is defined as followed:

Minor Non-compliance

Is a low risk situation. May include but is not limited to: -

- broken tiles in the food preparation area;
- build-up of grease underneath the stove;
- packaged goods stored directly on the floor in the cool room/storeroom;
- rubbish bins not clean;
- dirty cool-room door seals.

A number of minor non-compliances, when taken collectively, may lead to the conclusion that there is a major non-compliance or, if together they pose a serious threat to public health at that time, a critical non-compliance. For example, a number of small cleaning issues taken collectively may indicate that cleaning is a serious concern. The decision as to how to classify is within the discretion of the council officer/auditor.

Major Non-compliance

A major non-compliance is defined as a: -

- deficiency or breach that does not in the particular case pose an (immediate) serious threat to public health at the time at which it has been identified, but which may pose such a threat if no remedial action is taken; or
- any other serious breach of the Act (including the Food Standards Code). It does not include a critical non-compliance.

Depending upon the circumstances, an example of a major non-compliance may include but is not limited to:

- damaged or dirty equipment;
- the use of inappropriate material to handle or store food;
- cleaning chemicals and sanitisers not correctly labelled or stored separately from food items;
- the presence of flies and insects within the food preparation area; or hand drying facilities which are inadequate or inappropriate (such as cloth towels for the drying of hands).

In certain cases, a number of major non-compliances may cumulatively result in the outcome of the compliance check being categorised as critical, if when taken together they pose a serious threat to public health. Council officers must exercise judgement about whether to make this decision.

Critical Non-compliance

This is a deficiency or breach that poses a serious threat to public health. This includes situations where there is a serious risk of food being sold that is unsafe to eat.

Typically there is some immediacy about the serious threat. Examples of situations that may tend to amount to critical non-compliances are:

- cross contamination, such as an EHO observing a food premises using the same chopping board to cut up raw food (chicken) and ready to eat food;
- incorrect storage of potentially hazardous food such as chicken soup stored in large storage containers in the cool-room resulting in the core temperature of the soup remaining within the temperature danger zone for a long period of time;
- incorrect labelling of food where the ingredients of the product are not clearly displayed;
- inappropriate hand washing (or lack of handwashing at all);
- inappropriate cooking of potentially hazardous foods;
- inappropriate reheating of potentially hazardous food; and
- not storing hot potentially hazardous food above 60°C.

Environmental Health Officers are suitably trained and experienced to respond appropriately based on the identifiable risks of the non-compliance. In this respect, the graduated and proportionate enforcement approach is generally depicted in Figure 2 below.

6.3. Authorised by Law

Authorised Officers only act within their authority and the legislation. Evidence obtained by Authorised Officers relating to actual or alleged offences should be obtained within the requirements of criminal law and the delegations/authorisations that the Officer holds. Decisions on enforcement action must be supported by evidence that is appropriate in the circumstances. Evidence must be admissible and sufficient to establish that an offence has been committed.

6.4. Impartial and Procedural Fairness

Within the context of available resources, enforcement action will be undertaken in a timely manner and decision making will be based on appropriate evidence and approved policies and procedures. Decisions are not based on any form of discrimination (ethnicity, religion, age, or gender), political advantage, or the personal preferences of the authorised officer or any other staff member of Council involved in the enforcement process.

6.5. Accountability and Transparency

This policy is readily available and accessible to industry and residents, any complaint or appeal process and associated timeframes are advised appropriately to any person that is the affected by an enforcement action, and plain language is used to communicate with industry regulated by the legislation. Officers operate in accordance with the Central Goldfields Shire Public Transparency Policy and Privacy Policy.

6.6. Public Interest

The overall consideration in taking enforcement action should always be the protection of public health and safety in support of the objectives of the Food Act 1984

6.7. Application of Multiple Enforcement Tools

A graduated approach to the application of individual enforcement tools does not preclude the simultaneous application of multiple enforcement tools. For example, there are circumstances, such as a serious hygiene breach, where the concurrent issue of a penalty infringement notice and a Section 19 Order would be appropriate.

Additionally, there may be circumstances where there are multiple non-compliances detected, each of varying significance. In such circumstances, the use of differing enforcement tools may also be warranted. Equally the existence of multiple breaches may indicate system failure which may result in the use of more significant enforcement tools.

7. Human Rights Statement

It is considered that this policy does not impact negatively on any rights identified in the Charter of Human Rights and Responsibilities Act (2006). Central Goldfields Shire Council is committed to consultation and cooperation between management and employees.

8. Gender Equality Act, 2020

It is considered that this policy does not impact negatively on any rights identified in the Gender Equality Act 2020. Central Goldfields Shire Council is committed to consultation and cooperation between management and employees.

9. Review

This Policy must be reviewed every four years.

10. Relevant Legislation and Council Policies

- Guide to the Food Act 1984, Edition 1, Victoria Department of Health. February 2022
- Enforcement guidelines – A guide for councils in selecting enforcement tools under the Victorian Food Act 1984, Victoria Department of Health, November 2021
- Guide to Section 40D of the Food Act 1984, Victoria Department of Health, December 2021
- Food Act 1984
- Public Health & Wellbeing Act 2008
- Tobacco Act 1987
- Central Goldfields Shire Managing Conflicts of Interest Policy
- Central Goldfields Shire Privacy Policy
- Central Goldfields Shire Risk Management Policy
- Central Goldfields Shire Service Charter Policy
- Central Goldfields Shire Public Transparency Policy