



City of Ryde

**PUBLIC HEALTH
INVESTIGATIONS -
ENFORCEMENT POLICY**

ADOPTED ON 8 July 2008

(Effective 1 August 2008)

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1.0 INTRODUCTION

1.1 Background

Council's Environmental Health Unit is responsible for exercising regulatory functions under the following public health legislation:

Public Health Act 1991

Public Health (General) Regulation 2002

Public Health (Skin Penetration) Regulation 2000

Public Health (Swimming Pools and Spa Pools) Regulation 2000

Public Health (Microbial Control) Regulation 2000

Public Health (Disposal of Bodies) Regulation 2002

Local Government Act 1993

Local Government (General) Regulation 2005

Food Act 2003

Food Regulation 2004

In exercising these functions, the Environmental Health Unit carries out the following regulatory activities:

- investigation of complaints concerning public health risks
- inspection of food premises
- inspection of hairdresser's shops, beauty salons and skin penetration premises
- inspection and testing of public swimming pools and spa pools
- registration and inspection of cooling towers
- approval and inspection of on-site sewage management systems
- inspection of undertaker's premises and mortuaries.

This policy is intended to ensure a consistent approach to the way that Council's Environmental Health Officers and other authorised staff monitor and enforce compliance with public health legislation.

The policy is part of a series of Guidelines prepared under Council's Enforcement Policy and should be read in conjunction with that Policy.

This policy will be supported by more detailed operating guidelines where appropriate.

This policy was adopted by the City of Ryde on 8 July 2008 and is effective from 1 August 2008.

1.2 Purpose

The purpose of this policy is to align the way that public health issues are regulated and enforced with the City's Enforcement Policy.

In particular, the policy is intended:

- To ensure that compliance and enforcement activities are carried out in a consistent, fair and transparent manner.
- To create a framework for decisions about what enforcement action should be taken in different situations.

Note: In the event of any contradiction between this policy and the City's "umbrella" Enforcement Policy, the requirements of the City's "umbrella" Enforcement Policy will prevail to the extent of that contradiction.

1.3 Objectives

The objectives of the policy are:

- To inform the public of the principles and measures that Council's Environmental Health Officers and other authorised staff will apply in their compliance and enforcement activities relating to public health;
- To provide guidance to Environmental Health Officers and other authorised staff in the use of enforcement options;
- To provide information about Council's complaints management procedures.

2.0 GENERAL REQUIREMENTS

2.1 Compliance and Enforcement Principles

In carrying out their compliance and enforcement activities, Council's Environmental Health Officers and other authorised staff will:

- act in the public interest;
- act consistently, impartially and fairly according to law;
- not discriminate on the basis of race, religion, sex, national origin or political association;
- ensure that enforcement action is taken against the right person for the right offence;
- ensure that all relevant evidence is placed before courts or appeal tribunals;

- inform those being regulated of their legal obligations and assist with enquiries about legislative requirements;
- discuss specific compliance failures or problems and provide advice on mechanisms that can be used to improve compliance;
- confirm advice in writing when requested and provide written advice in a clear and simple manner, explaining what and why remedial work is to be undertaken, over what time scale and ensuring legal requirements are explained;
- advise those being regulated of their right of appeal where provided by law and
- provide alleged offenders with an opportunity to discuss the circumstances of their case.

2.2 Detecting Potential Public Health Incidents

Council receives information about suspected public health risks and compliance problems from members of the public, other agencies and monitoring activities.

Monitoring activities include routine compliance inspections of:

- food premises
- hairdresser's shops, beauty salons and skin penetration premises
- public swimming pools and spa pools
- cooling towers
- on-site sewage management systems
- undertaker's premises and mortuaries.

2.3 Compliance and Enforcement Approach

Education and warnings will be normally be used to resolve compliance problems in the first instance. This ensures that alleged offenders are made aware of legislative requirements.

For serious or continuing problems, enforcement options will be used to ensure compliance.

2.4 Enforcement Options

Council's Environmental Health Officers and other authorised staff can use a range of enforcement options that escalate according to the severity of the problem. These options include:

- notices and orders
- penalty notices
- seizure

- civil proceedings
- prosecution
- revoking or modifying approvals.

2.5 Factors for Determining Appropriate Responses

The following factors will be considered and balanced in making a decision as to the type of enforcement action, if any, that is taken:

- the seriousness of the harm or potential harm caused by the alleged offence;
- the level of malice or culpability of the suspect - was the offence intentional, reckless, negligent, or a mistake?;
- whether the suspect has a history of prior contraventions;
- the age, physical or mental health or special infirmity of the alleged offender;
- the alleged offender's background, including culture and language ability;
- whether the suspect cooperated with authorities when the offence was detected;
- the likelihood of the offence continuing or being repeated;
- any mitigating or aggravating circumstances;
- the standard of evidence that has been collected;
- the length of time since the alleged offence;
- whether the consequences of any conviction would be unduly harsh or oppressive;
- whether court orders are required to prevent a recurrence of the offence;
- the prevalence of the alleged offence and the need for deterrence, both specifically and generally:
- the cost of the proposed response option compared to the benefits of that option; and
- the likely public perception of the offence and the manner with which it is dealt.

However, the overriding consideration in taking enforcement action will always be the public interest.

3.0 GUIDANCE ON THE USE OF ENFORCEMENT OPTIONS

3.1 Verbal and Written Warnings

Verbal warnings should normally only be given for trivial offences or where there is insufficient evidence to justify a warning letter.

Where there is evidence that minor offences have occurred warning letters may be issued at the discretion of the investigating officer.

Warning letters are generally inappropriate where a large number of minor offences have been committed on one occasion or where a series of minor offences have been committed within a relatively short period of time. In these circumstances, the totality of the offences needs to be taken into account and, where significant non-compliance is evident other enforcement action should be considered.

Warning letters should detail the exact nature of the alleged contravention, the clauses of the legislation and maximum penalty applicable, the remedial action required, and the intention of Council to enforce the legislation.

Warning letters should be followed-up within 3 months to ensure the required actions have been undertaken.

Further written warnings should not be issued for a subsequent similar offence except in exceptional circumstances.

3.2 Notices and Orders

A notice or order may impose requirements on the addressee which may lead to prosecution if they fail to comply. Therefore, before deciding to issue a notice or order, it is important to consider whether the circumstances merit this course of action or whether it would be more appropriate to make an informal request.

An informal request may be appropriate if:

- the person appears cooperative or past experience indicates that they would be willing to comply with an informal request;
- the problem can be rectified easily;
- time is a factor – it may be quicker to use an informal approach; and
- prosecution is unlikely if the person fails to comply.

A notice should be used if:

- there has been an unsatisfactory response to an informal request; or
- the person is uncooperative or past experience indicates that they are unlikely to comply unless a formal notice is issued; or

To be valid all notices and orders must:

- be addressed to the correct legal entity (this must be an individual or a corporation);
- state clearly what the notice or order requires;
- give the addressee reasonable time to comply; and

- be signed by a person who has delegated authority to issue the notice or order on behalf of Council or is an authorised officer under the relevant Act or regulation.

Reasons must also be given if required by the relevant Act. The reasons given must be sufficient to justify the issue of the notice or order.

Notices and orders may be served personally, by post or fax. Personal service is the most effective method as there is direct evidence of receipt. However, in most cases postal service would be sufficient. Usually, service by post is ineffective only if it is shown that delivery did not occur (ie. the notice or order is returned undelivered).

If serving a notice by post, Section 76 of the *Interpretation Act 1987* deems service to be effected by properly addressing, prepaying and posting the document as a letter. Service is also deemed to have been effected on the fourth working day after the letter was posted.

In all cases, a written record should be made as evidence that the notice or order was served in accordance with the relevant Act.

Where representations are received in relation to a proposed notice or order, the matter must be referred to the Unit Manager for consideration and determination. The Unit Manager should make a written record of the decision and a letter should be sent to respondent informing them of the outcome.

All requests for extensions should be in writing and include the reason why the notice or order cannot be complied with by the due date, and a suitable alternative date by which the notice or order can be complied with. The request for the extension must be received before the period for compliance lapses and the alternative date should be reasonably close to the original compliance date.

All requests for extensions should be responded to in writing. The letter should acknowledge receipt of the request and formally advise the addressee of the outcome.

3.3 Penalty Notices

A penalty notice may be served on a person if it appears to an authorised officer that the person has committed a penalty notice offence.

A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay the specified amount for the offence within a specified time.

A penalty notice may be served personally or by post.

If the penalty is paid within the time specified, the person is not liable to any further proceedings for the alleged offence.

If the penalty is not paid and the person does not elect to go to court, a penalty reminder notice is forwarded to the offender by the Infringement Processing Bureau. If the person does not pay the penalty within 28 days, the State Debt Recovery Office (SDRO) will issue an enforcement order and additional fees will also be payable. If the amount remains unpaid after 28 days the SDRO will direct the RTA to impose licence sanctions.

Penalty notices are designed primarily to deal with minor breaches that can be remedied easily.

Before issuing a penalty notice the authorised officer must be satisfied that there is sufficient evidence for a conviction if the matter is heard in a court.

Penalty notices should not be used where the penalty is clearly inadequate for the offence or where the penalty is unlikely to have an impact on the offender.

Also, it is generally inappropriate to issue multiple penalty notices for numerous simultaneous offences or successive penalty notices for continuing breaches. In such instances, there is obviously a major compliance problem, even though each breach in itself may be comparatively minor, and the matter should be dealt with by a court.

Penalty notices should not be issued if more than 14 days has elapsed since the alleged breach.

3.4 Seizure

Under Section 38 of the *Food Act 2003*, an authorised officer under that Act may seize food, vehicles, equipment, labelling or advertising materials that the authorised officer reasonably believes do not comply with the Act or Regulations or are evidence of an offence.

If the seized items consist of food that is filthy, decomposed or putrid, or pose an immediate risk to health or property, the authorised officer may cause them to be destroyed.

Seized items that are not destroyed may be detained on the premises where they were found or be removed to another place and detained there. If they are detained on the premises the items must be marked to indicate that they have been seized under the Act.

The person from whom the items were seized must be given written notification of the seizure including a description of the items seized, the reason for the seizure, and the address where the items will be held. The person must also be informed of their right to appeal to the Local Court for an order disallowing the seizure.

If it becomes evident that there has been no contravention of the Act or regulations in relation to the seized items, they should be returned as soon as possible to the person from whom they were seized.

Seized items are forfeited to the Crown after the appeal period has lapsed, if no application has been made for an order disallowing the seizure, and may be destroyed, sold or otherwise disposed with the approval of the NSW Food Authority.

Compensation may be payable if there has been no contravention in relation to the seized items, and the items cannot be returned or have depreciated in value as a consequence of the seizure.

All seizures must be approved by the Team Leader - Environmental Health or Unit Manager.

3.5 Civil Proceedings

Civil proceedings may be brought in the Land and Environment Court to remedy or restrain serious breaches of the *Local Government Act 1993*.

Such proceedings are instituted by Council's solicitors acting on the instructions of the General Manager or other officer with delegated authority to initiate such proceedings.

Preliminary advice should be obtained from Council's General Counsel before initiating any proceedings.

3.6 Prosecution

Criminal proceedings may be commenced where there is sufficient evidence to prove beyond reasonable doubt that a serious offence has been committed.

If the investigating officer considers prosecution to be the most appropriate course of action preliminary advice should be sought from Council's General Counsel and, if sufficient evidence has been gathered, a report should be prepared and submitted to the General Manager.

The final decision on whether or not to prosecute rests with the General Manager, and the primary factor in making this decision is whether or not the prosecution is in the public interest.

Where prosecution has been selected as the appropriate option, Council will not necessarily proceed against all those who may be potentially liable under the legislation.

The general principles that will be applied are that proceedings will be instituted against those who are primarily responsible for the offence and where offences are committed by employees, agents or officers of a corporation in the course of their employment, proceedings will usually be instituted against the corporation.

In taking action against employees their compliance with management procedures or directions will be taken into consideration. Action will normally only be taken against the directors of corporations where there is a failure to exercise due diligence or where there is evidence linking a director or manager with the corporation's illegal activity.

All matters must be prepared for hearing as quickly as possible and the charge or charges laid should appropriately reflect the nature and extent of the alleged offences.

Matters heard in the Local Court may not attract the full penalties provided by the legislation and, where offences have been committed willfully, consideration should be given to having matters heard before a higher Court.

3.7 Revoking or Modifying Approvals

A number of activities require approvals from Council under the *Local Government Act 1993*.

A person who fails to comply with an approval is subject to normal enforcement action, but may also have their approval modified or revoked.

Prior to taking such action, the applicant will be asked to show cause why their approval should not be modified or revoked. Failure to respond, or an inadequate response, may result in changes to conditions or immediate revocation of the approval.

All appeals against the proposed modification or revocation of an approval should be referred to the Council for determination.

Any person who carries on an activity that requires approval after their approval has been revoked should be prosecuted.

Applications for a new approval should be refused where the application is made by a person who has previously had an approval revoked.

4.0 MANAGING COMPLAINTS

4.1 Reporting Public Health Risks

Complaints or information about suspected public health risks should be lodged with the Council's Customer Service Centre on:

Telephone: 9952 8222

Facsimile: 9952 8070

E-mail: ryde.nsw.gov.au

All verbal complaints must be registered on Council's Customer Request Management System.

All written complaints must be forwarded to Council's Records Management Unit for scanning and registration.

Anonymous complaints will not be investigated unless there is the potential for a serious risk to public health.

4.2 Response Times

Complaints and reports of public health risks should be investigated within the timeframes determined by the Risk Response Model set out in Council's Enforcement Policy:

Generally, response times should be as follows:

Urgent matters – Matters that are likely to pose a serious risk to public health should be investigated immediately or as soon as resources are available. Matters requiring urgent attention include:

- investigations related to suspected Legionnaires' disease cases
- single-case foodborne illness notifications
- sale of unsafe food
- serious food hygiene issues
- urgent food recalls
- sewer overflows

Other matters – Matters that do not pose an immediate public health risk should be investigated as soon as possible and not more than 10 working days after receipt of the complaint.

4.3 Privacy

Personal information provided by a complainant will not be divulged to third parties without the complainant's permission, subject to the provisions of the *Freedom of Information Act 1989*.

4.4 Feedback

Unless the complaint is anonymous the investigating officer will contact the complainant at the end of the investigation and inform them of the outcome.

If the complaint is referred to another agency, the complainant will be advised and will need to contact that agency for feedback.

4.5 Grievances

Any person who is aggrieved by a decision can contact Council officers to discuss the decision.

Formal complaints can be lodged with Council by mail, fax or e-mail:

Mail: The General Manager
 City of Ryde
 Locked Bag 2069
 NORTH RYDE NSW 1670

Facsimile: 9952 8070

E-mail: ryde.nsw.gov.au

5.0 STAFF APPOINTMENT AND AUTHORISATION

5.1 Appointment and Authorisation

Only staff with appropriate tertiary qualifications will be appointed as Environmental Health Officers.

All Environmental Health Officers and other staff required to enter and inspect premises will be authorised under relevant legislation and provided with appropriate delegations to carry out their functions.

5.2 Certificates of Authority

All staff authorised to enter and inspect premises will be issued with a certificate of authority as required by the relevant legislation.

The certificate of authority must be produced on demand by the occupier of the premises.

6.0 OTHER MATTERS

6.1 Review of Policy

This Policy will be reviewed every three (3) years and as required to reflect changes in public health legislation.

6.2 Conclusion

This Policy has no legal status and cannot be used to limit Council's discretion to take any enforcement action.