

Guidelines

Objective

The Prosecutions Guideline (“Guidelines”) has been prepared to support decisions in relation to prosecutions of the Acts, Regulations and Local Laws administered by the City of Mandurah (referred to as “Acts, Regulations and Local Laws”) are applied impartially, transparently and in a fair and consistent manner.

Statement

The commencement of prosecutions under the Acts, Regulations or Local Laws administered by the City of Mandurah (“City”) resides with the Chief Executive Officer of the City (“CEO”) with appropriate reporting to the Elected Members of the City of Mandurah.

These Guidelines aim to ensure that decisions in relation to prosecutions and enforcement of the Acts, Regulations and Local Laws are based on being accountable, transparent, open, fair and capable of being applied consistently across the range of circumstances to which the laws apply.

The City recognises the role and importance of the “*public interest*” in determining whether or not a prosecution, or subsequent appeal, will be initiated or continued.

By application of these Guidelines, the City will ensure prosecutions are not conducted for improper purposes, capriciously or oppressively.

Scope

These Guidelines apply to all prosecutions for offences under the Acts, Regulations or Local Laws and as circumstances allow, to appeals arising out of proceedings in respect of any such prosecutions.

Authorised Officer

A City officer must be authorised in writing to commence a prosecution under a statutory or delegated authority (Authorised Officer).

Any Authorised Officer who is authorised to commence a prosecution will receive training on the application of these Guidelines in the course of their duties.

The Decision to Prosecute

In applying the law impartially and in a fair and consistent manner, it is necessary that the City consider:

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- (i) the rights of the alleged offender; and
- (ii) the interests of the community and particularly those most adversely affected.

Where an Authorised Officer obtains sufficient evidence to establish a prima facie case for serious matters, and there is a reasonable prospect of a conviction based on legal advice, consideration will be given to taking prosecution action, instead of, or in addition to applying alternative enforcement actions, in circumstances including:

- (i) where the City considers prosecution will have a role in general deterrence of non-compliance on the broader community;
- (ii) where the issue of notices/orders/directives is considered insufficient for ensuring compliance with the Acts, Regulations or Local Laws;
- (iii) where, in the opinion of an Authorised Officer, an alleged breach of the Acts, Regulations or Local Laws either has resulted, or could have resulted in serious injury, serious risk/damage or a serious health hazard;
- (iv) alleged failure to comply with a notice within a reasonable period of time;
- (v) where a person flagrantly and/or deliberately breaches an Act, Regulation or Local Law;
- (vi) where an Authorised Officer alleges a person has repeated the same serious offence; or
- (vii) wilful obstruction of an Authorised Officer.

In cases falling under one or more of the above circumstances, a prosecution only will be initiated where:

- (i) an Authorised Officer obtains sufficient evidence to establish a prima facie case; and
- (ii) it is judged to be in the "public interest", including there being a reasonable prospect of success.

Elected Members will be advised of the commencement of prosecution via a memo when the matter is or could generate moderate community interest (such as, there are more than 5 parties impacted, previous history and length of time the matter has been ongoing, local/State media interest).

Prima Facie Case and Public Interest

Consideration should be given, as early as possible in the prosecution process, as to whether the evidence discloses a prima facie case.

The question of whether there is a prima facie case is one of law. This involves consideration of whether the evidence could lead to the conclusion, beyond reasonable doubt, that all the elements of the offence can be proved.

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Where, in the opinion of the City's CEO, giving due consideration to appropriate advice, the available material does not support a prima facie case, the prosecution should not be instituted or proceed. A report shall be prepared by the Chief Executive Officer for the Elected Members specifying the reasons for such action.

Prior to commencing a prosecution, an Authorised Officer should consider the potential legal costs of prosecution and whether the benefits of prosecution to the City and the public, are either commensurate to, or outweigh the costs of a prosecution.

If a prima facie case exists, the prosecution of an offence must also be in the public interest. This requires the balancing of a broad range of factors, as they relate to the particular case. The presence of a particular factor does not necessarily mean it would be against, or in, the public interest to proceed with a prosecution, and the same factor could equally weigh in favour of prosecution in one particular case, yet weigh against it in another. Ultimately it is all the relevant factors taken together which will determine, on balance, whether it is in the public interest to proceed. It is in the public interest that prosecutions be treated fairly and impartially.

A prosecution which is instituted for improper purposes, capriciously or oppressively is not in the public interest.

The City may also become involved in prosecution proceedings if the alleged offender elects to go to Court in relation to an infringement or if the matter is escalated to the Supreme Court in response to a Court or State Administrative Tribunal (SAT) decision.

Discontinuance of a Prosecution

Decisions regarding the progression or discontinuance of a prosecution are to be undertaken on a case by case basis considering all relevant information. Decisions to progress prosecution are to be continually reviewed based on new information and at each stage of the Court process.

If, following the commencement, but prior to the conclusion of prosecution action, an alleged offender complies with any prior order that gave rise to the prosecution, or submits any application for approval, the City may choose to discontinue the prosecution.

Once Prosecution Notices and Court Hearing Notices have been issued the decision to discontinue a prosecution may only be made by the CEO or Director of Business Services.

Monitoring of Legal Expenditure

Prior to the commencing of a prosecution, the CEO should consider:

- (i) the legal costs of prosecution; and
- (ii) whether the benefits of prosecution to the City and the public, are either commensurate to, or outweigh the costs of a prosecution.

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The CEO must monitor the legal expenditure and seek a costs estimate and status update to Elected Members on a regular basis, through the bi-monthly CEO compliance report (in the CEO update) through the course of the prosecution.

Record Keeping

Any documentation received or used during in the course of the enforcement or prosecution for offences under the Acts, Regulations or Local Laws must be saved in accordance with the City's record keeping plan.

Supporting Information

Additional information on the City of Mandurah's objection and review process can be found on the City's website at <https://www.mandurah.wa.gov.au/council/governance/objections-and-review>.

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