



Manningham's Compliance and Law Enforcement Policy

Contents

1. Introduction
2. Purpose
3. Objectives
4. Manningham and the public
5. What are Compliance and Enforcement?
6. Guiding principles
7. Measures to promote compliance
8. Investigating contraventions
9. Responding to contraventions
10. Criteria for determining appropriate responses
11. Administrative action
12. Criminal action
13. Support of policy
14. Review

1. Introduction

As a local government authority, Manningham City Council is responsible for the administration and enforcement of various Acts, Regulations and its Local Laws in order to protect and support the interests of the Manningham community and its visitors.

This document explains to -

- enforcement personnel;
- Council staff;
- Councillors; and
- the public,

the policy framework that Manningham will use when dealing with statutory contraventions occurring within its municipal district.

2. Purpose

In recognising that laws are not sufficient in themselves and need to be administered and enforced in a fair, predictable and consistent manner, this policy sets out the factors that will be taken into account in determining appropriate responses to contraventions, including whether legal proceedings will be pursued.

Manningham's approach and procedures for individual cases may vary where there are specific legislative requirements.

3. Objectives

The objectives of this policy are that compliance and enforcement activities and arrangements -

- help achieve the objectives of legislation and the Council Plan;
- maximize compliance with legislation;
- enhance the Manningham community's capacity to understand and support Council's law enforcement role; and
- are generally accepted as appropriate by stakeholders and the Manningham community.

4. Manningham and the public

In the course of implementing this policy, Manningham will –

- respond in a timely manner to reports of legislative contraventions;
- have qualified and experienced personnel available during normal office hours to assist with enquiries about legislation it administers;
- respond to emergency situations on a 24 hour basis;
- attempt to broker acceptable outcomes between disputing parties;
- respond to requests for technical assistance and advice from applicants seeking approvals and permits;
- provide the most accurate, up to date information available;
- respond in an appropriate manner and time in accordance with Manningham's "Customer Service Undertaking";
- handle all information in compliance with all relevant legislative obligations relating to security, including the –
 - *Information Privacy Act 2000*;
 - *Freedom of Information Act 1982*; and
 - *Whistleblowers' Protection Act 2001*;

- administer and enforce its legislation in a coherent, consistent and objective manner; and
- operate as efficiently, effectively and transparently as possible so as to be accountable to the Manningham community.

Final responsibility for compliance with legislation, including ensuring the accuracy of all relevant information and advice, lies with the individual person or organization.

5. What are Compliance and Enforcement?

The terms “compliance” and “enforcement” are used many times throughout this policy. For purposes of clarity, these terms are defined below.

Compliance means the “state of conformity” with the law. Manningham’s enforcement personnel will secure compliance with the legislation it administers through two types of activity: promotion and enforcement.

Measures to promote compliance include –

- communication and publication of information;
- public education;
- consultation with parties affected by the legislation that Manningham administers; and
- technical assistance.

Enforcement is achieved through the exercise or application of powers granted under legislation and is carried out through the following activities –

- inspections to monitor or verify compliance;
- investigations of alleged violations;

- issuance of warnings, directions, authorizations and orders, without resorting to court action; and
- court and Victorian Civil and Administrative Appeals Tribunal actions, such as injunctions, prosecution, court orders upon conviction, and civil suits for recovery of costs.

6. Guiding principles

The following general principles govern application of the legislative provisions administered and enforced by Manningham –

- compliance with all legislation is mandatory;
- compliance will be encouraged through communication with parties affected by the legislation administered by Manningham;
- enforcement personnel will administer the legislation in a manner that is fair, predictable and consistent, relying on rules, sanctions and processes securely founded in law and supported by Council management;
- enforcement personnel will administer the legislation with an emphasis on preventing harm to the Manningham community, giving priority for action to deal with contraventions guided by –
 - the degree of harm to the Manningham community; and/or
 - whether or not the alleged offence is a blatant or repeat occurrence;
- enforcement personnel will take action consistent with this policy; and
- the public will be encouraged to report suspected violations of the legislation administered by Manningham.

7. Measures to promote compliance

Manningham believes that promotion of compliance through information, education and other means is an effective tool in securing conformity with the law. Many contraventions can be avoided by foresight and good planning. It is the responsibility of the individual to obtain information regarding any proposed activity which if undertaken may contravene the law.

Accordingly, Manningham will undertake public education and communication measures. Consultation will take place with other local governments, Federal and State departments and agencies, stakeholders and other interested parties so that information and concerns can be exchanged to maximise compliance promotion.

Manningham will promote public awareness of this information using a combination of communication techniques, through activities such as –

- interacting formally and informally with stakeholders and the Manningham community generally;
- making presentations to various community groups and schools;
- preparing and distributing specific prevention guidelines and codes of practice and policies;
- preparing and presenting educational and training materials, including audio visual materials and films;
- encouraging community projects aimed at statutory compliance; and
- providing internet and website information.

8. Investigating contraventions

Manningham will investigate all reported or detected contraventions of legislation it administers. This will be undertaken by a preliminary investigation and analysis of likely impacts in order to decide on the likelihood that a contravention has occurred or is about to occur, its seriousness and its likely consequences. Based on the outcomes of this initial investigation and the relevant provisions of legislation, Manningham will determine the appropriate level, if any, of further investigation and response.

Manningham's investigations will aim to –

- determine whether or not there has been a contravention of law;
- gather evidence which would be admissible in criminal prosecutions, or administrative or civil proceedings;
- satisfactorily prove or disprove allegations or achieve acceptable conclusions;
- deal appropriately with offenders;
- improve controls for prevention of contraventions;
- deter offenders or others from further or similar action;
- improve public confidence in Manningham's integrity; and
- be completed within a reasonable time and at reasonable cost, according to legislative requirements and the nature of the investigation.

Manningham will investigate serious contraventions to the point where enough information is available to determine whether a criminal prosecution should be pursued.

9. Responding to contraventions

Manningham will employ a range of responses that escalate according to the severity of the contravention or if non-compliant activities continue, including suspension or cancellation of permits, injunctions, pecuniary penalties (infringements) and criminal prosecution. Generally, warnings will not be issued for offences where on the spot penalty notices provisions and advice exists, and that the recipient of such administrative action may lodge a submission to Council for consideration.

10. Criteria for determining appropriate responses

In determining appropriate responses to suspected contraventions of legislation administered by Manningham, the following factors will be considered –

- objectives of the relevant legislation and the specific penalty provision;
- seriousness of the alleged contravention;
- the level of malice or culpability of the offender (was the contravention intentional, reckless, negligent or a mistake?);
- whether the offender has a history of prior contraventions;
- whether the offender has co-operated when the contravention was detected;
- the cost to Manningham or the general community of the contravention;
- the commercial value of the contravention to the offender;
- the time elapsed since the contravention;
- the standard of evidence that has been collected;
- the likelihood of the contravention continuing or being repeated;
- the prevalence of the type of contravention;

- the likely public perception of the breach and the manner with which it would be reasonably expected to be dealt;
- the most appropriate response to ensure an effective deterrent against continuing contravention or contravention by others;
- the costs of the proposed response option compared to the benefits of that option;
- whether the proposed response option could be counter-productive in terms of maximising compliance with legislation; and
- whether the use of the response option in a specific case would create a desirable precedent.

11. Administrative action

In response to relatively minor contraventions of legislation, or where the offender has been particularly co-operative, it may be appropriate to pursue administrative rather than legal remedies. Administrative measures do not involve court action and include –

- verbal cautions and educational messages;
- requiring a person to leave an area, such as a reserve;
- formal advisory or warning letters seeking future compliance;
- infringement notices issued in accordance with individual Service Unit guidelines;
- varying, revoking or imposing further conditions on permits, licences or approvals;
- suspending or cancelling permits, licences or approvals;
- retaining bonds lodged as a condition of permits to remediate any damage caused by a contravention; and
- agreements to compensate for the contravention or to prevent future contraventions.

The recipient of any administrative action may lodge a submission for consideration prior to any subsequent action. In consideration of the submission, the relevant Manager must take into account the nature of the alleged contravention and whether the reason for the contravention was beyond the control of the offender. Discretion may also be exercised on compassionate grounds.

12. Criminal action

Where Manningham's investigations have produced sufficient evidence to prove a serious offence beyond reasonable doubt, criminal prosecution may be sought, and prosecution of an offence should be conducted expeditiously and according to Service Unit KPI's. A serious offence is one for which –

- there is a significant degree of criminality on the part of the offender;
- previous administrative or civil responses to contraventions by the offender have not resulted in compliance;
- where the Manningham community would expect that a crime will be dealt with by prosecution and conducted in public before a court;
- the crime produced significant real or potential harm to Manningham or to the community; or
- the crime is of such a nature or magnitude that it is important to deter potential offenders and prosecution will act as an effective deterrent.

The final decision on whether or not a prosecution is to be instituted or continued, rests with Manningham's Chief Executive who is required to make a decision in accordance with this policy.

13. Support of policy

In recognising the importance of maintaining and promoting Manningham's integrity in upholding a fair, predictable and consistent approach to law enforcement, Council staff and Councillors will actively support and promote this policy in a manner that does not undermine its objectives or create a conflict situation in dealing with a contravention of any legislation administered by Manningham.

14. Review

Within three years of implementing this policy, Manningham will review the manner in which the policy has been applied by enforcement personnel to determine whether administration and enforcement activities have been consistent with the policy and whether changes in these activities, or in the policy, are required.