

ENVIRONMENTAL PROTECTION



Access Canberra Framework

Part of Accountability
Commitment series

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Chief Minister, Treasury and Economic Development Directorate - CMTEDD

Access Canberra

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IMPORTANT NOTE: This information is for guidance only.

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INTRODUCTION

The Environment Protection Authority (EPA), a statutory position established under the [Environment Protection Act 1997](#) (the Act) is the principal environment protection regulator responsible for administering environmental protection and associated legislation in the ACT.

For the purpose of this framework, ‘environment’ means the earth, atmosphere, water, organic or inorganic matter and any living organism.

Purpose

The purpose of this framework is to set out the objectives and general principles for compliance and enforcement activities undertaken by the EPA to ensure a healthy environment that supports a thriving and liveable ACT.

This framework outlines the risk-based approach to compliance with relevant legislation in the ACT and is intended to be a useful and transparent guide.

Key principles

Please refer to the Access Canberra Accountability Commitment as this sets out the principles that inform the decisions and regulatory action of Access Canberra and the EPA. The Accountability Commitment is available online from www.accesscanberra.act.gov.au.

Risk-based – EPA will apply a risk-based compliance approach to ensure resources are targeted to where the risks of harm, unsafe practices or misconduct are the greatest, thereby strengthening its capacity to take action where the community, workers and the environment are most at risk.

...risk-based compliance approach...

Strategic Objectives

There are four strategic objectives fundamental to Access Canberra for effective environment protection:

Protection – facilitate the protection and enhancement of the quality of the environment. We do this by assisting business, government and the community to understand and meet their legislative obligations.

Prevention – limit harmful environmental degradation and risks of harm to human health and the environment by promoting the following:

- > pollution prevention;
- > clean production technology;
- > reuse and recycling of materials; and
- > waste minimisation programs.

Environmental Improvements – promote and encourage responsibility by the whole community for the protection of the environment. Seek to ensure that decision-making incorporates effective integration of environmental, economic and social considerations in decision-making processes.

Restore – require businesses engaging in polluting activities to make progressive environmental improvements and/or undertake environmental restoration. This includes establishing a process for polluters to assess and, where appropriate, remediate land where contamination is causing or is likely to cause a significant risk of harm to human health or the environment.



The relationship between our Strategic Objectives

Legislative framework

The principal environmental protection legislation in the ACT is the [Environment Protection Act 1997](#) (the EP Act) and the Environment Protection Regulation 2005 (the EP Regulation). The EP Act establishes the statutory position of the EPA and provides a framework for regulating pollution, increasing resource efficiency, reducing waste and improving environmental performance.

The concept of environmental harm is central to the EP Act, underpinning both environmental management measures such as improvement plans and the major offence provisions. The definitions of environmental harm, material environmental harm and serious environmental harm are set out in Section 3 of the EP Act. The definitions operate to create a form of “sliding scale” of harm, ranging from environmental harm, through material environmental harm to serious environmental harm.

The EP Act also facilitates the implementation of National Environmental Protection Measures (NEPMs) made under the [National Environment Protection Council Act 1980](#). NEPMs are designed to provide consistent environmental standards and guidelines across all jurisdictions and can be found at www.scew.gov.au/nepms.

EPA = Environment Protection Authority

Environment Protection Policies (EPPs) are also prepared under the EP Act. The General EPP is designed to assist people to understand the EP Act and the EP Regulation and contains information common to several areas of environment protection. The EPPs can be found at www.environment.act.gov.au.

In addition to the EP Act, the EPA has the responsibility for administering the [Water Resources Act 2007](#) (the WR Act) and the [Water Resources Regulation 2007](#) (WR Regulation). The WR Act aims to protect waterways and aquifers from damage and ensure the use and management of the ACT’s water resources are sustainable while protecting the ecosystems that depend on the waterways. This is achieved through licensing the taking and use of water as well as the construction of bores, dams and works in a waterway. Officers authorised under the EP Act are authorised officers for the purpose of the WR Act.

The licensing and regulation units that support the EPA are also responsible for provisions of the [Lakes Act 1976](#) including responsibility for works approval for construction and activities on the ACT’s [lakes and lake warnings](#) due to blue green algae outbreaks. (Note: The National Capital Authority (Commonwealth) is responsible for Lake Burley Griffin.)

The position of the EPA also holds the statutory position of the Clinical Waste Controller under the [Clinical Waste Act 1990](#) responsible for approving transporters of clinical waste in the ACT.

Compliance model

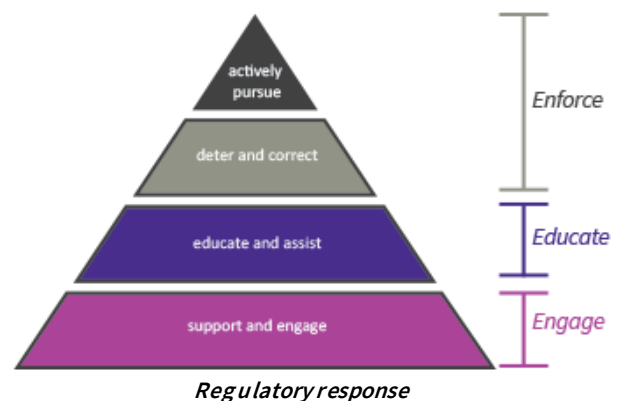
Engage, Educate, Enforce

Engage, educate and enforce are the three fundamental steps used by Access Canberra and the EPA. Compliance is encouraged through education but escalating enforcement actions will be applied to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law.

Engage means ensuring there is a positive working relationship with stakeholders and members of the community.

Educate means taking reasonable steps to ensure people know how to comply with the legislation. We provide information to the community and stakeholder to promote understanding and encourage voluntary compliance. The Access Canberra website provides links to a number of policies and other guidance materials which provide an explanation and information relating to particular activities or areas of environmental protection.

Enforce means taking action when non-compliance occurs proportional to the seriousness of the non-compliance or conduct.



Approach to enforcement

The EPA operates on a risk-based compliance model.

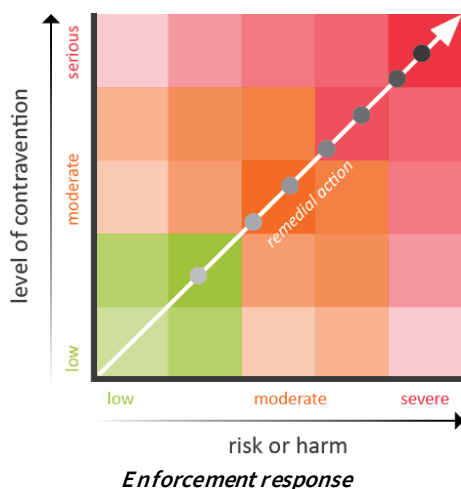
The risk-based compliance approach enables the targeting of resources to those areas where they are most needed and will be most effective. This approach involves a series of steps to identify and assess risks and to then apply the most appropriate regulatory tool to control the risk.

This means that **resource allocation** and **enforcement responses** are determined based on priorities determined through risk assessment.

Resource allocation – how compliance priorities are established, such as the frequency of proactive compliance activities and the prioritisation of complaints or allegations of non-compliance with the Act.

Enforcement responses – the appropriate enforcement response is also determined based on the risk, or realised consequences. This allows a degree of flexibility to ensure the right regulatory approach for the right situation.

Conduct which contravenes the legislation is considered on a case-by-case basis and with consideration given to the circumstances of the conduct. Access Canberra will apply the most appropriate regulatory tool to address the conduct and to achieve the desired regulatory outcome, which, depending on the circumstances, may include: a written warning; a referral to the ACT Civil and Administrative Tribunal (ACAT); civil action, or criminal prosecution.



EDUCATION

Like any regulatory regime, the optimal outcome for the protection of the environment and sustainable use of water resources is voluntary compliance. Education has a key role to play in maximising compliance by ensuring lack of information is not a contributing factor to non-compliance.

As part of its communication strategy, the EPA strives to deliver advice and education to relevant target audiences through a number of activities and tools, including newsletters, editorial/ articles for industry publications including factsheets, social media such as Facebook and Twitter, advertising campaigns, web content and features at www.accesscanberra.act.gov.au. The EPA online resources include numerous guides, brochures, factsheets and links to assist people ensure their actions comply with relevant laws.

www.accesscanberra.act.gov.au -
Access Canberra online resources

COMPLIANCE MONITORING AND INVESTIGATIONS

EPA compliance activities are aimed at improving environmental outcomes.

EPA carries out both proactive and reactive activities that are risk-based, with resources allocated based on the level of risk posed to the strategic objectives.

When the EPA identifies or becomes aware of a problem or a risk, it seeks to resolve the problem before it leads to an adverse impact on human health or the environment.

Monitoring compliance and investigating non-compliance is an important component of the compliance framework.

Proactive activities

A core function for the EPA is to monitor and determine if activities are carried out in a manner that does not cause environmental harm or if a person is taking reasonable practices to meet their general environmental duty. High risk activities are permitted via Environmental Authorisations (Authorisations), licences and other statutory instruments. Monitoring compliance ensures environmental harm is prevented or if incidents of non-compliance do occur, are corrected in a timely manner.

The EPA grants Authorisations under s49 of the EP Act as part of its risk based approach. An Authorisation sets out conditions under which activities with a significant potential to cause environmental harm may be conducted. The EPA also grants various licences under the WR Act which regulates, among other things, works within a waterway, the amount of water which can be taken, where water can be taken from and who can drill a groundwater bore.

The EPA uses routine site inspections as a method of collecting information and monitoring compliance. Authorised environment protection officers may collect samples, view records, and take photographs.

Reactive activities

Reactive monitoring relies on the community, business or industry reporting environmental concerns or events, such as pollution of our environment or illegal water use.

The prioritisation of this information is based on the assessed level of risk to determine the appropriate response:

- > element of the environment impacted (air, land, water, eco system or receptor);
- > severity of the environmental harm caused or likely to be caused;
- > controls, if any, in place to mitigate the harm;
- > sensitivity of the receiving environment;

- > including its proximity to more sensitive receiving environments or receptors (e.g. residential premises or a waterway); and
- > experience and/or past conduct of the business or person responsible, if known.

To ensure the most effective use of resources, the initial assessment will typically include a preliminary examination and analysis of the report or allegation in order to decide the likelihood that a contravention has occurred, its seriousness and the possible consequences.

DETERMINING APPROPRIATE ENFORCEMENT RESPONSES

Once it is determined that an offence has been committed the next step is to determine the appropriate response.

Authorised officers are able to exercise a level of discretion based on some of the options outlined below, particularly when the conduct in question is low risk and has caused limited or no harm to human health or the environment. However, enforcement of environmental requirements is likely to occur to:

- > better protect the environment and its economic and social uses;
- > ensure no commercial advantage is obtained by any person who fails to comply with environmental requirements; or
- > influence the attitude and behaviour of persons whose actions may have adverse environmental impacts.

...officers are able to exercise a level of discretion...

Enforcement options

There are a range of civil, administrative and criminal enforcement remedies under the legislation administered by the EPA as outlined below:

Information or Warning Letters – authorised officers may issue information letters as a response to an initial complaint or a potential contravention of the law to raise awareness of the potential breach.

Infringement Notices – mechanism for regulators to impose an immediate monetary sanction for certain types of breaches, sending a clear and timely message that there are consequences for non-compliance.

Payment of an infringement notice is not an admission of guilt nor does it constitute a conviction. However, failure to pay an infringement notice and disputing an infringement notice leaves the option of prosecution open.

A failure to make the payment that is required under an infringement notice may result in Court proceedings.

Environment Protection Orders and Directions – may be issued, under the EP Act or WR Act respectively, where the EPA is satisfied that the person has breached the EP Act, WR Act or an authorisation or licence condition. The order or direction requires the person to do, or not do, specified things to remedy the breach of the Act, authorisation or licence.

Orders or directions can require people to:

- > stop or not commence certain action;
- > provide information; and/or
- > undertake environmental restoration.

Enforceable undertakings – a legally binding agreement entered into as an alternative to having the matter decided through legal proceedings for a contravention of the EP Act. An enforceable undertaking provides an opportunity for significant environmental remediation to be undertaken.

Typically, the activities associated with an undertaking are substantial and must aim to deliver tangible benefits to the environment or those directly affected by the conduct.

The availability of an enforceable undertaking in connection with a contravention will involve consideration of a number of factors, including:

- > the nature and extent of the contravention;
- > the quality of the remedial action proposed and the extent to which it achieves measurable improvements to the environment; and
- > the likelihood that the environmental undertaking will deliver real benefits to the environment beyond that which would normally be expected.

An enforceable undertaking will generally not be accepted where the offence relates to significant environmental harm or where an infringement notice has been issued for the contravention.

Suspension/Cancellation of Authorisations, Licences, Permits and Approvals – the EPA has the power to suspend or cancel licences, permits, approvals, agreements and authorisations granted under that legislation.

The EPA may give the holder of an Environment Authorisation (Authorisation) issued under the EP Act, a notice of the intention to suspend an Authorisation, prior to the suspension or cancellation. The EPA must set out the reasons for the intended action and invite the holder to provide a written response.

The EPA may cancel an Authorisation where there is a belief that in conducting the activity, the Authorisation holder has contravened the legislation or the conditions of the document and caused serious or material environmental harm.

POWERS HELD BY AUTHORISED OFFICERS

Authorised officers are public servants appointed by the Director-General in accordance with the relevant legislation, including:

- > section 14 of the EP Act which also applies for the WR Act;
- > section 9 of the [Clinical Waste Act 1990](#); and
- > section 10 of the [Lakes Act 1976](#).

At a routine inspection, an authorised officer may:

- > inspect or examine the premises;
- > take measurements;
- > take samples for analysis;
- > examine records or documents relating to the operation of equipment or processes carried out in those premises; or
- > take photographs, films, or audio/video or other recordings.

Authorised officers are public servants appointed by the Director-General...

REVIEW OR APPEAL RIGHTS

Seeking a review

Certain decisions made by the EPA are reviewable.

Under Section 135 of the EP Act, an eligible person can make an application for review of a decision. For details of which decisions are reviewable refer to the relevant legislation at www.legislation.act.gov.au.

Applications for an internal review to the EPA must be filed with the EPA within:

- > 14 days after the applicant is given the internal review notice for the decision; or
- > any longer period allowed by the EPA before or after the end of the 14 day period.

A business or an individual served with an infringement notice has a right to dispute liability of the notice. The business or individual served may elect to have the decision to issue the infringement notice internally reviewed by the agency that issued it or to have the matter heard in court so the situation can be explained before a magistrate. Where an internal review is sought, the dispute must state the grounds for the review in writing to the relevant decision maker within the prescribed timeframe. If the decision maker was the EPA then the correspondence should be addressed to the Environment Protection Authority.

Formal reviews of decisions are undertaken by the **ACT Civil and Administrative Tribunal (ACAT)**. The ACAT is the review body for the majority of government decisions in the ACT. There are time limits to seek a review of decisions and fees may apply. The ACAT has various powers which include confirming the decision, varying the decision or setting aside the decision. For more information on ACAT or the appeals process, visit www.acat.act.gov.au.



Web: <https://www.acat.act.gov.au/>

Phone: (02) 6207 1740

Contact: ACT Civil and Administrative Tribunal
GPO Box 370, CANBERRA ACT 2601

Email: tribunal@act.gov.au

In addition to ACAT, a person who has a complaint about a decision can complain to the Ombudsman at www.ombudsman.act.gov.au.



Web: <https://www.ombudsman.act.gov.au/>

Phone: 1300 362 072

Contact: ACT Ombudsman
GPO Box 442, CANBERRA ACT 2601

Email: ombudsman@ombudsman.gov.au

APPENDIX 1: RELEVANT LEGISLATION AND INSTRUMENTS

- [*Environment Protection Act 1997*](#)
- [*Environment Protection Regulation 2005*](#)
- [*Clinical Waste Act 1990*](#)
- [*Lakes Act 1976*](#)
- [*Magistrates Court \(Lakes Infringement Notices\) Regulation 2004*](#)
- [*Magistrates Court \(Environment Protection Infringement Notices\) Regulation 2005*](#)
- [*Water Resources Act 2007*](#)
- [*Water Resources Regulation 2007*](#)
- [*Magistrates Court \(Water Resources Infringement Notices\) Regulation 2007*](#)
- [*National Environment Protection Council Act 1994*](#)

The EPA also periodically issues policies, guidelines, determinations and delegations in the form of Notifiable Instruments and Disallowable Instruments. To access these instruments and relevant legislation visit: <http://www.legislation.act.gov.au>.

Some relevant instruments for the *Environment Protection Act 1997* include:

- [*Environment Protection \(Fees\) Determination*](#)
- [*Environment Protection \(Noise Measurement Manual\)*](#)
- [*Environment Protection Policies*](#)

Some relevant instruments for the *Water Resources Act 2007* include:

- [*Environmental Flow Guidelines*](#)
- [*Efficient Use Guidelines*](#)
- [*Water Sharing Plan*](#)
- [*Water Resources \(Fees\) Determination*](#)

Some relevant instruments for the *Clinical Waste Act 1990* include:

- [*Clinical Waste Manual*](#)

APPENDIX 2: OFFENCES AND PENALTIES

Please refer to **Part 15** of the [Environment Protection Act 1997](#)

Please refer to **Part 9A** of the [Water Resources Act 2007](#)

Please refer to **Part 5** of [Clinical Waste Act 1990](#)

Please refer to **Part 1** section 4 of the [Lakes Act 1976](#)



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