

FAIR TRADING



Access Canberra Framework

Part of Accountability
Commitment series

October 2020



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

Purpose

The purpose of this framework is to set out the objectives and general principles for compliance and enforcement activities undertaken by Access Canberra to ensure compliance with the Australian Consumer Law (ACL). The ACL is schedule 2 of the *Competition and Consumer Act 2010*.

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.

The framework also supports the national consumer policy strategic objective:

“...to improve consumer wellbeing through empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly.”

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. The Accountability Commitment is available online from www.act.gov.au/accessCBR.

Risk-based – Access Canberra 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.

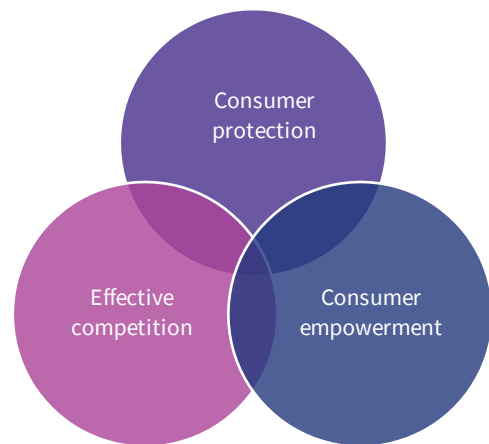
Strategic objectives

Minimising consumer detriment is central to the role of Access Canberra. There are three strategic objectives fundamental to effective regulation and our operational goals:

Consumer Empowerment – we seek to ensure that consumers are well informed so they benefit from, and stimulate, effective competition.

Consumer Protection – goods and services must be safe and fit for the purpose for which they were sold. We encourage businesses to provide redress where consumer detriment has occurred.

Foster Effective Competition – we aim to prevent unfair or non-compliant business conduct or that may impact on the market.



Relationship between our Strategic Objectives

Legislative framework

The ACL commenced in January 2011 and is the law governing consumer protection and fair trading in Australia.

The ACL applies in the same way nationally and in each State and Territory, therefore Australian consumers have the same protections and expectations about business conduct wherever they are in Australia.

Similarly, businesses have the same obligations and responsibilities wherever they operate in Australia. The ACL imposes statutory obligations upon manufacturers and suppliers of goods in terms of marketing and advertising, product safety, quality guarantees and product liability.

...ACL applies in the same way nationally and in each State and Territory...

The ACL is one national law with multiple regulators. Each regulator is independent, has its own enabling legislation and exercises powers and functions accordingly. The ACL is administered by the Australian Competition and Consumer Commission (ACCC) and each State and Territory's consumer law agency (the ACL Regulators).

Access Canberra works collaboratively with all 'ACL Regulators' and is guided by the ACL Compliance and Enforcement document which can be located at http://www.consumerlaw.gov.au/content/the_acl/downloads/compliance_enforcement_guide.pdf.

The *Fair Trading (Australian Consumer Law) Act 1992* (the Act) applies the ACL in the Territory and the ACT Commissioner for Fair Trading (the Commissioner) is the ACL Regulator for the Territory. Section 33 of the Act outlines the functions of the Commissioner.

The Commissioner may:

- > receive complaints about fraudulent conduct or unfair practices in relation to the supply of goods or services or the acquisition of interests in land;
- > deal with the complaints in a way the commissioner considers appropriate, including by investigating them or referring them to the entity the commissioner considers to be best able to take appropriate action;
- > investigate compliance with fair trading legislation;
- > conduct other investigations and research into consumer and fair trading issues and practices;
- > inspect records and accounts that must be kept under fair trading legislation;
- > make information available to, and provide guidance to, the public about consumer and fair trading issues and practices and about related laws;
- > exercise any other function given to the commissioner under a territory law; and
- > be responsible for any other function given to the commissioner by the Minister or Director-General.

Commissioner for Fair Trading... is the ACL Regulator for the Territory.

COMPLIANCE MODEL

Engage, Educate, Enforce

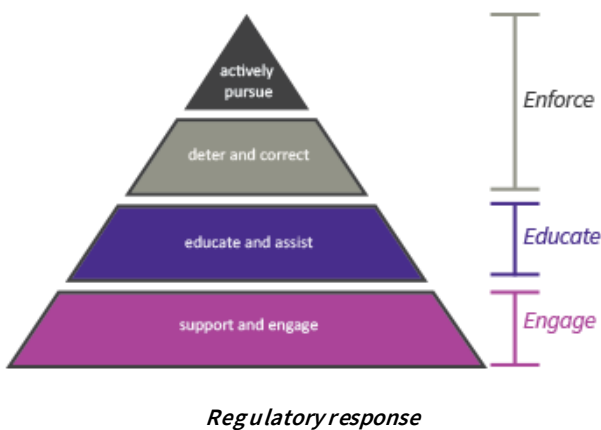
Engage, educate and enforce are the three fundamental steps used by Access Canberra. Compliance is encouraged through education but escalating enforcement actions will be applied to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law.

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

Educate means taking reasonable steps to ensure people:

- > know their rights
- > know how to comply (e.g. compliance and education inspections, newsletters).

Enforce means taking action for non-compliance proportional to the harm caused by the conduct (e.g. suspending registrations, issuing infringement notices).



Approach to enforcement

Access Canberra operates on a risk-based compliance model.

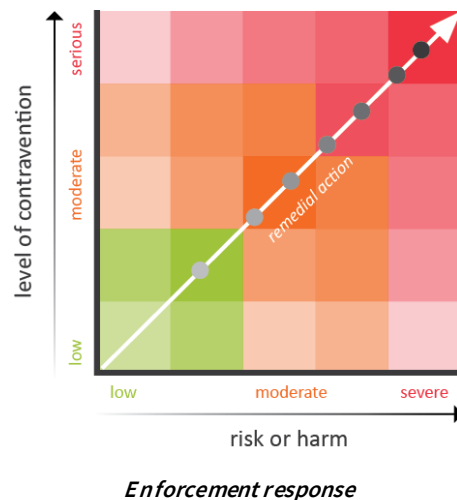
The risk-based compliance approach enables the targeting of resources to those areas where they are most needed and will be most effective. This approach involves a series of steps to identify and assess risks and to then apply the most appropriate regulatory tool to control the risk.

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: verbal compliance advice; 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 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.

Access Canberra provides advice and education to individuals, their employers and stakeholders through the course of its advice and complaints service, proactive and reactive compliance programs. The goal is to ensure that our stakeholders understand their rights, obligations and responsibilities under the Act.

As part of its communication strategy, Access Canberra 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 face book and twitter, Advertising campaigns, Web content and features at www.act.gov.au/accessCBR. The Access Canberra online resources include numerous guides, brochures, fact sheets and links to assist industry to achieve compliance and provide compliant and safe services to vulnerable people in the community. Further information about the ACL is also available at www.consumerlaw.gov.au

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

COMPLIANCE MONITORING AND INVESTIGATIONS

Access Canberra compliance activities are aimed at ensuring positive outcomes for industry and the community.

Access Canberra 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.

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

Proactive activities

A core function for Access Canberra is to monitor and determine levels of compliance with the requirements of legislation, licences and other statutory instruments. The aim is to minimise incidents of non-compliance and reduce their impacts.

Proactive and planned inspection activities are an important method by which Access Canberra can assist and encourage compliance.

Reactive activities

Access Canberra will undertake an investigation in response to complaints received from industry, small business or consumers. Investigations can also originate from pro-active compliance programs.

Access Canberra will prioritise complaints based on the risk or harm (or potential risk or harm) to a consumer, such as:

- > an allegation that a business is selling a product in contravention of a prescribed consumer product safety standard;
- > an allegation of significant financial loss (to a consumer) as a result of a trader not complying with the ACL obligations; or
- > an allegation of unconscionable conduct affecting a vulnerable consumer is received.

DETERMINING APPROPRIATE ENFORCEMENT RESPONSES

Once Access Canberra has identified that an offence has been committed the next step is to determine the most appropriate enforcement response.

Investigators are able to exercise a level of discretion particularly when the conduct in question is low risk and has caused limited or no harm. However, enforcement of legislative requirements is likely to occur in situations where conduct:

- > results in significant consumer detriment;
- > has a significant impact on market integrity;
- > affects a disadvantaged or vulnerable group; or
- > is systemic and is in the public interest.

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

Enforcement options

Access Canberra has a range of civil, administrative and criminal enforcement remedies at their disposal under the supporting legislation, including the following:

Undertakings – the Regulator¹ may accept a court-enforceable undertaking in connection with conduct regulated by the ACL.

Substantiation notices – the Regulator can issue a notice to a business requesting information relevant to substantiating claims made in the marketplace.

Public warning – the Regulator may issue a public warning notice to inform the public about conduct which may be detrimental. The ACL allows a regulator to issue a public warning notice, provided certain conditions are satisfied.

Civil pecuniary penalties – a court may impose civil pecuniary penalties for specified breaches of the ACL.

Injunctions – the Regulator or an affected person may seek an injunction to stop a business from engaging in conduct in breach of the ACL, or to require the business to do certain things.

Damages – a person may apply to a court for damages, to compensate for their loss or damage resulting from a contravention of the ACL.

Non-punitive orders – the Regulator may apply to a court for a non-punitive order in respect of a contravention of the ACL. The court may impose a remedy to redress harm suffered in the community from a contravention, and which will help those in breach to comply with the ACL in the future. Non-punitive orders are directed at redressing the harm caused by a contravention of the ACL rather than punishing the person.

Punitive orders (adverse publicity) – the Regulator may apply to a court for an adverse publicity order in respect of a contravention of the ACL. A court may order corrective advertising.

Prosecution – may be brought in relation to alleged breaches of the offence provisions in the ACL.

¹The ACT Commissioner for Fair Trading (the Commissioner) is the ACL Regulator for the Territory.

POWERS HELD BY INVESTIGATORS

Fair Trading Investigators are appointed by the Commissioner for Fair Trading in accordance with Section 36 of the [Fair Trading \(Australian Consumer Law\) Act 1992](#).

Fair Trading Investigators are appointed by the Commissioner for Fair Trading...

REVIEW OR APPEAL RIGHTS

Seeking a review

A number of decisions made by Access Canberra are reviewable. 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

- [Fair Trading \(Australian Consumer Law\) Act 1992](#)
- [Competition and Consumer Act 2010 \(Cwlth\)](#) - Schedule 2 (the Australian Consumer Law)

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



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