



**ACT**  
Government



**Environment Regulation & Protection Compliance & Enforcement  
Guideline 2016**

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## 1. Introduction

The ACT Government recognises that to effectively protect our environment, the community must participate in ‘shared responsibility’ for the environment. To engage with the community, the ACT Government has put in place a regulatory framework that supports business growth and innovation whilst maintaining a strong focus on community safety and harm minimisation.

The Environment Protection Authority (EPA) is a statutory position created under the *Environment Protection Act 1997* to administer legislation to protect and enhance the quality and resources of Canberra’s environment. The EPA aims to protect the environment by preventing environmental degradation, resource protection and adverse risk of harm to both human health and the health of the ecosystem, whilst recognising the need to achieve an effective integration of environmental, economic and social considerations.

To effectively protect the environment, the EPA must engage in good regulatory practice, consistent with the ACT Government’s strategic objectives and regulatory framework.

### 1.1 Scope

The EPA has roles and functions under a number of legislation, including:

- *Environment Protection Act 1997*; and
- *Water Resources Act 2007*.

The executive position of the EPA and supporting administrative units also have responsibility for provisions of other legislation to which the general approach to compliance and enforcement outlined in these guidelines apply. These include:

- *Clinical Waste Act 1990*; and
- *Lakes Act 1976*

### 1.2 Purpose

This Compliance and Enforcement Guideline sets out principles that inform the regulators decisions and actions. The Guideline operates by supporting the legislations objectives and the ACT Government’s strategic goals in creating a clean, healthy and sustainable environment for Canberra and the region.

This Guideline is intended to assist officers, decision makers and relevant authorities in understanding the general principles of compliance and enforcement and the types of actions available under the legislation.

### 1.3 Procedure

A risk assessment will be carried out on all notifications received by Access Canberra regarding possible contravention of legislation administered by the EPA. The risk assessment and any associated investigation will inform the type of compliance or enforcement action that will be taken.

In some cases, the decision may be to take no action, for example if an investigation reveals that no contravention of the legislation has taken place. In some cases the EPA may provide advice and guidance to assist a person to comply with their legislative obligations. In other cases, it may be necessary to take enforcement action against a person for contravention of legislation.

## **2. Elements of Compliance and Enforcement**

A regulatory framework consists of compliance and enforcement. The EPA uses a range of activities and legislative powers to encourage and enforce compliance with the legislation.

### **2.1 Compliance**

Compliance with the law means that a person is acting or conducting their activities according to a set of predetermined standards or legal obligations under the legislation.

The EPA aims to promote a high level of compliance with the legislation through the provision of information and advice to increase awareness and understanding of rights and obligations under the legislation. The EPA engages with members of the community, businesses, industry and government through:

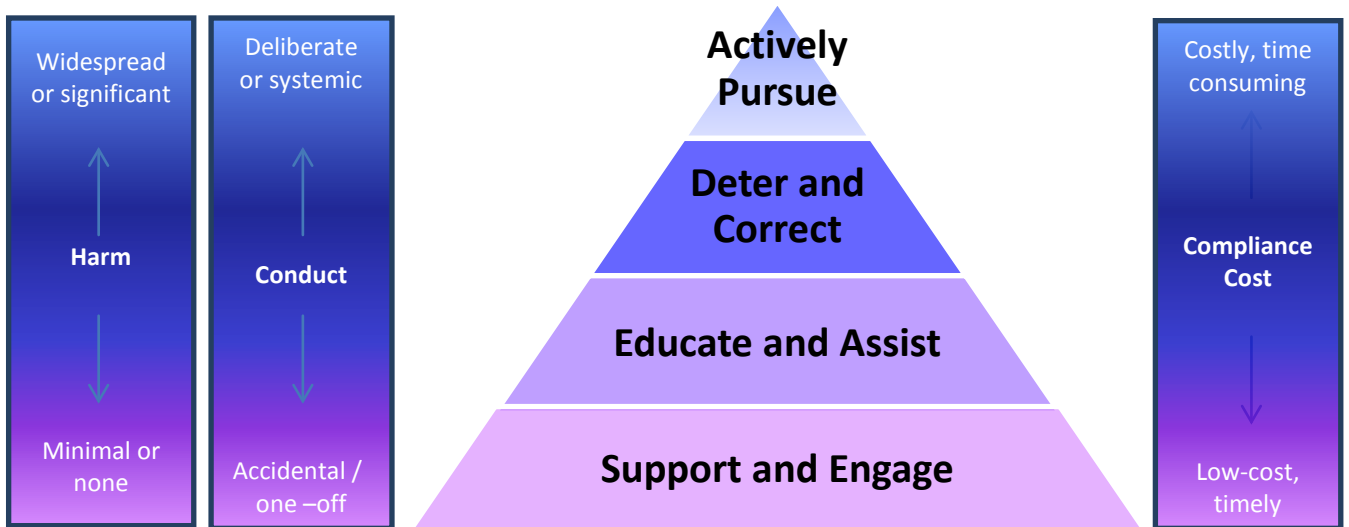
- educational media campaigns;
- publication of information fact sheets and specific policies and guidelines;
- provision of training sessions to stakeholders
- responding to specific enquiries;
- participating in pre-application meetings; and
- utilising social media for community engagement

### **2.2 Enforcement**

Enforcement is regulatory action taken by an authority to compel a person to comply with their legal obligations under the legislation.

For the EPA to effectively protect the environment from activities and actions that have the potential to cause environmental harm, the EPA's compliance measures must be supported by a range of enforcement options that can be used if a person is found to be non-compliant with the legislation. The EPA follows the ACT Government's Enforcement Response Model depicted below.

## Enforcement Response Model



The EPA has a range of administrative and criminal enforcement remedies under the legislation. When enforcing the legislation, the EPA seeks to:

- work with the alleged offender to stop immediate impact (if any) to the receiving environment;
- stop the unlawful conduct;
- take necessary steps to ensure future compliance;
- deter future offending conduct;
- encourage the effective use of compliance systems;
- when warranted, take appropriate regulatory action that is proportionate

Enforcement tools available to the EPA are discussed in Section 7 of this Guideline.

### 3. Approaches to Compliance and Enforcement

Compliance and enforcement actions are most effective when they raise environmental awareness and encourage changes in behaviour. Behavioural changes improve both the compliance rate as well as environmental improvements over time.

A fundamental consideration to compliance and enforcement is what drives businesses and individuals to comply with the law and relevant factors that lead to non-compliant behaviour. This focuses on the cause of non-compliance rather than the symptoms of non-compliance. Identifying the cause of non-compliance is essential in determining the right regulatory tool to use to lower the incidence of non-compliance.

#### 3.1 Risk-based approach

The EPA takes a risk-based approach to best use its resources and maximise public benefit. This approach targets valuable resources to the greatest risk of environmental harm and unsafe practices.

## 3.2 Outcome-focused approach

The EPA can use a range of administrative, civil and criminal enforcement actions to achieve a range of outcomes. This means that the EPA can design the compliance and enforcement strategy to achieve the following:

- awareness of how the laws impact on activities – for example the EPA can use education through advisory letters and warning letters;
- curb the offending behaviour using penalties – for example the EPA may issue an infringement notice to penalise a person for contravention of the legislation; and
- Minimise, reduce or eliminate environmental harm – for example the EPA may issue an environment protection order to stop a person carrying out certain actions

## 3.3 Guiding Principles

The following principles guide decision making on taking enforcement actions:

**Proportionality** – Enforcement responses are proportionate to the seriousness of non-compliance.

**Transparency** - Openness to the public decisions and the decision making process, whilst protecting the integrity of investigations.

**Accountability** – Willingness to explain compliance and enforcement decisions.

**Consistency** - Consistency in decision making. Consistent compliance and enforcement action ensures the regulated community understands the expectations of them and in turn, what they can expect..

# 4. Contraventions

## 4.1 General Environmental Duty

Everyone has a responsibility to protect the environment. Section 22 of the *Environment Protection Act 1997* states:

A person must take the steps that are practicable and reasonable to prevent or minimise environmental harm or environmental nuisance caused or likely to be caused, by an activity conducted by that person.

This means that the law expects a specific standard of behaviour from individuals, businesses, industry and the government. Upholding the general environmental duty therefore reduces the risk of breaching the law, where activities are undertaken in a manner with the least impact to the environment.

## 4.2 Contravention/Breach of the Law

A breach of the general environmental duty is not in itself an offence. However, the law and its supporting policies impose legal obligations on individuals, businesses and the government. If these legal obligations are contravened or breached, whether intentionally or not, this may constitute an offence where the EPA may consider taking enforcement action against the person responsible.



## 5. Authorised Officers and Investigations

### 5.1 Authorised Officers

Authorised officers are public servants appointed by the Director-General in accordance with the relevant legislation. This means, officers are appointed under the following provisions:

- section 14 of the *Environment Protection Act 1997* which also applies for the *Water Resources Act 2007*.
- section 9 of the *Clinical Waste Act 1990*;
- section 14 of the *Lakes Act 1976*, and

The relevant legislation provides authorised officers with certain powers to exercise in undertaking their duties. For example, under the *Environment Protection Act 1997*, an authorised officer may enter premises (other than residential premises) at any reasonable time to conduct a routine inspection. An authorised officer may also enter any premises with the consent of the person in charge of the premises. If consent is obtained, the authorised officer must produce his or her identity card and inform the person that the person may refuse to give consent and obtain a written acknowledgment from the person regarding the entry.

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;
- take photographs, films, or audio/video or other recordings.

### 5.2 Investigating a Contravention

In determining whether a contravention has occurred and who is responsible for the contravention, authorised officers under the EPA may investigate the incident and the circumstances which lead to the incident resulting in the contravention.

The investigation process involves:

- gathering all available evidence;
- exploring all known lines of inquiry; and
- conducting interviews or obtaining statements for all known persons involved in the matter under inquiry.

Once all evidence has been gathered, it is then necessary to evaluate the evidence and assess whether there is sufficient information to determine if a contravention has occurred; the persons responsible and the most appropriate enforcement action to be taken in response to the contravention.



## **6. To whom the enforcement action will be taken**

### **6.1 Identifying the offender(s)**

The legislative intent in making a contravention of the law a criminal offence is to deter potential offenders from behaviour that will result in an unwanted outcome. By expanding the liability to as many people (for example, landowners, contractors, managers of corporation and government agencies) the law increases environmental awareness and responsibility.

In most situations, responsibility for the commission of an offence may not be clear and it is important that the right person is identified. It may not be possible to take enforcement action for every person who has played a role in an offence. In determining to whom enforcement action will be directed, the EPA will consider the following:

- who was primarily responsible for the offence; and
- if there is more than one alleged offender, the role of each alleged offender.

### **6.2 Corporate Liability**

Corporations and individuals can be liable for an offence against the legislation. Determining the structure of a business is therefore very important in identifying who would be liable for an offence under the law.

When an offence is committed by an employee, agent or officer of a corporation, in the course of undertaking their duties as part of their employment, enforcement action will usually be taken against the corporation. However, if the employee, agent or officer acted of their own will, outside the scope of their employment, then enforcement action may be taken against the individual.

### **6.3 Liability of employees and contractors**

The obligation to comply with the legislation applies to all employees and contractors. This obligation cannot be overruled by instructions and directions of employers. It is not a defence for an employee to assert that he/she was under instructions to undertake the specific action determined to have caused or facilitated the offence. However, this may be a mitigating factor in considering the choice of enforcement action.

The guiding principle to determine whether an employee or contractor should be pursued and be liable for the offence is the degree of their culpability or responsibility. To assess the degree of culpability, the EPA would consider the following:

- whether the employee or contractor knew, or should have known, that the activity was likely to be illegal; and
- the employees position and the scope of their duties; and
- whether the person complied with the general environmental duty (see section 4) and took steps to bring the matter to the attention of the employer.

### **6.4 Liability of external administrators**

External administrators (including liquidators, receivers and managers and administrators) are entities that assume control of a corporation. External administrators are subject to the same legal obligations as directors and executive officers of a corporation.

## 6.5 Liability of Government Agencies

The general, ACT environmental legislation binds all persons including ACT Government agencies, but does not bind the Commonwealth Government. The decision to take enforcement action against a government agency will be dependent on the public interest test.

In taking enforcement action against a government agency where allowed for by the legislation, the following factors will be considered:

- the law applies equally to both the private and public sectors;
- the taxpayers bear the cost of penalty imposed on the government agency; and
- agencies are under the umbrella of 'One Government'.

## 7. Choice of Enforcement Action

In responding to contraventions of the law, enforcement action must be proportionate to the seriousness of the offence committed.

### 7.1 Determining the seriousness of a contravention/breach of the law

The following factors will be considered in determining the seriousness of the contravention/breach of the law:

- objectives of the legislation;
- legislative intent of the offence provision;
- actual and potential impact of the offence;
- level of culpability/responsibility of the alleged offender.

The decision on the appropriate enforcement action will be informed by assessing the seriousness of the contravention/breach of the law.

### 7.2 Objectives and Principles of the Legislation

The objects and principles of the legislation can often be found at the beginning of the legislation. The objects and principles set out the fundamental purpose of the law and provide context to the provisions of the legislation.

### 7.3 Intent of the offence provision

To understand a particular provision it is often useful to refer to the objects and principles of the legislation and supporting documents such as the explanatory statement and Legislative Assembly Speeches. The supporting documents will usually provide clarity and reasons why specific provisions have been included as part of the law, as well as how provisions are intended to operate. In the case of the *Environment Protection Act 1997*, Environment Protection Policies are also made to clarify the intent and application of the provisions within the legislation and accompanying regulations.

### 7.4 Actual and Potential Impact

The law has been designed to minimise and prevent environmental harm by deterring actions which would cause environmental degradation. The consequences of an act or

omission are not necessarily limited to physical harm to the environment but include the following:

- nature of the impact to the environment (from a potential impact to permanent long-term impact);
- scale/intensity of the environmental impact (whether it was localised or wide-scale)
- level of public concern; and
- level at which the act or omission undermines the legislative scheme.

In determining the level of impact the act or omission has caused, the criteria at Table 1 should be considered.

### 7.5 Level of Culpability/Responsibility of the Alleged Offender

Culpability is the term used for the fault and responsibility of an alleged offender. The degree of culpability can be classified into three levels:

- **Low Culpability** – actions which caused the breach was inadvertent;
- **Moderate Culpability** – actions which caused the breach was a careless act; and
- **Serious Culpability** – actions which caused the breach was intentional or wilful.

In determining the degree of culpability of an alleged offender, Table 2 below should be considered.

**TABLE 1. Criteria to be considered in determining impact of breach**

<b>IMPACT</b>	<b>5. Serious Impact or Risk of Impact</b>	<b>4. Major Impact or Risk of Impact</b>	<b>3. Moderate Impact or Risk of Impact</b>	<b>2. Minor Impact or Risk of Impact</b>	<b>1. Low Impact or Risk of Impact</b>
	<ul style="list-style-type: none"> <li>• permanent, or potential for permanent, long-term impact on the environment;</li> <li>• impact on the environment is on or potentially on a wide-scale or great intensity;</li> <li>• widespread or high level of public concern about the incident; and/ or</li> <li>• where the offence is of an administrative nature, it severely undermines the legislative scheme or the offender wilfully provides false or misleading information</li> </ul>	<ul style="list-style-type: none"> <li>• medium to long-term impact or potential impact on the environment;</li> <li>• impact on the environment is on or potentially on a medium to wide-scale or of medium to great intensity</li> <li>• high level of public concern; and/or</li> <li>• where the offence is of an administrative nature, it undermines the legislative scheme or the offender conceals information or avoids liability for fees or taking necessary actions to prevent the offence.</li> </ul>	<ul style="list-style-type: none"> <li>• temporary to medium-term impact, or potential impact, on the environment;</li> <li>• impact on the environment is on or potentially on a localised to medium scaled, or is of a low to medium intensity;</li> <li>• moderate level of public concern;</li> <li>• where the offence is of an administrative nature, it has a moderate impact on the legislative scheme, or the offender recklessly fails to comply with the administrative requirement.</li> </ul>	<ul style="list-style-type: none"> <li>• transient impact or potential impact on the environment</li> <li>• impact on the environment is on a localised scale, or is of low intensity</li> <li>• low level of public concern</li> <li>• where the offence is of an administrative nature, it has no impact on the legislative scheme or is of an inadvertent nature</li> </ul>	<ul style="list-style-type: none"> <li>• no impact or potential impact on the environment;</li> <li>• no public concern;</li> <li>• where the offence is of an administrative nature, it could not have been prevented</li> </ul>

**TABLE 2. Criteria to be considered in determining culpability of alleged offender**

<b>CULPABILITY</b>	<b>3 Serious culpability</b>	<b>2 Moderate culpability</b>	<b>1 Low culpability</b>
	<ul style="list-style-type: none"> <li>• intentional or wilful acts;</li> <li>• past non-compliances or convictions involving the same or similar legislative provisions;</li> <li>• non-compliances of an ongoing duration;</li> <li>• no attempt at clean-up or remedial action undertaken;</li> <li>• motivated by profit or clearly benefits from the non-compliance;</li> <li>• involves fraud or serious misleading conduct;</li> <li>• failure to notify the department effectively or notification outside of reasonable timeframes;</li> <li>• wilful ignorance of clear directions or warnings (from either employees, consultants, the department, or other government officers) which may have prevented or mitigated the impact; and/or</li> <li>• the impact or risk of impact was obvious and/or preventable by implementing or following accepted industry standards.</li> </ul>	<ul style="list-style-type: none"> <li>• careless acts;</li> <li>• isolated prior non-compliances with legislation or similar legislation;</li> <li>• non-compliance of an medium duration;</li> <li>• genuine attempt at remediation or remediation partly effective;</li> <li>• attempt at notification of department of incident within reasonable timeframe;</li> <li>• may have benefitted from the non-compliance;</li> <li>• was aware of the risk of impact or the impact was foreseeable; and/or</li> <li>• the impact or risk of impact may have been prevented by following accepted industry standards</li> </ul>	<ul style="list-style-type: none"> <li>• Inadvertent acts;</li> <li>• No prior non-compliances with legislation or similar legislation;</li> <li>• Non-compliance of short-term duration;</li> <li>• Remediation effective;</li> <li>• Notification of department of incident within reasonable timeframe;</li> <li>• Did not benefit from the non-compliance;</li> <li>• The impact or risk of impact was not foreseeable; and/or</li> <li>• The impact or risk of impact was not prevented by high standards of operation (greater than accepted industry standards).</li> </ul>

## 8. Types of Enforcement Action

### 8.1 Letters, Warning Notices and Disciplinary Action

The *Environment Protection Act 1997*, the *Lakes Act 1976* and the *Clinical Waste Act 1990* do not have specific provisions for information letters and warning letters. However, authorised officers may issue information letters and warning letters as a response to a potential contravention of the law to raise awareness of the potential breach.

This type of enforcement action is appropriate for minor incidents with:

- no or transient environmental impact; and
- where the alleged offender has a low level of culpability; and
- where monetary fine is considered not appropriate.

This enforcement response is not appropriate for on-going or repeat minor contraventions.

### 8.2 Infringement Notices

The *Magistrates Court Act 1930* sets the infringement notice scheme. The scheme allows for infringement notices to be issued to an alleged offender for prescribed offences under specific Magistrates Court Regulations.

An Infringement Notice allows for minor offences to be dealt with more quickly than the usual prosecution procedures by imposing monetary penalty for the offence. Paying an infringement notice does not constitute an admission of guilt for the offence for which the infringement notice was issued for. However, non-payment of infringement notice within the prescribed period means that the infringement notice may be referred to the Director of Public Prosecutions (DPP) for commencement of proceedings.

An alleged offender may choose to:

- pay the infringement notice – the consequences are:
  - (i) the liability for the offence is discharged;
  - (ii) no prosecution proceedings will commence against the alleged offender; and
  - (iii) no conviction will be recorded against the alleged offender.
- dispute liability for the offence by stating the reasons for the dispute, in writing to the relevant authority within the prescribed timeframe – the consequences are:
  - (i) the relevant authority may review the merits and reasons of the infringement notice;
  - (ii) if the relevant authority upholds the decision, the matter may be referred to the DPP for prosecution.
- have the matter to be heard in court – the consequences are:
  - (i) the alleged offender will go before the Court to explain the matter before the magistrate.

### 8.3 Environment Protection Order

Under the *Environment Protection Act 1997*, the EPA has statutory function to issue an Environment Protection Order. If the EPA has reasonable grounds for believing that a person has contravened or is contravening a licence, an environmental authorisation or a provision of the legislation, the EPA can issue an Environment Protection Order on that person.

Environment Protection Orders can impose a variety of requirements on people, as long as they are reasonably necessary for the purposes for which the Environment Protection Order is served. For example, orders can require a person to:

- stop or not commence certain actions;
- provide information; and/or
- undertake environmental restoration of a public place.

The legislation provides for penalties for the contravention of an Environment Protection Order.

### 8.4 Directions

The issuance of Directions specifically relates to the use of water bores under the *Water Resources Act 2007*. Before issuing Directions to a person, the EPA must be satisfied that an act or omission in relation to a water bore would result directly or indirectly in the:

- pollution or deterioration of water;
- inequitable distribution of water;
- loss of water;
- wastage or undue depletion of water; or
- unlicensed taking of water.

The EPA may issue Directions for a person to:

- shut off the supply of ground water;
- restrict or limit the amount of water taken;
- install and maintain a suitable meter to record the amount of water taken or discharged from a bore;
- discontinue the use of a water bore;
- close, or partly or completely plug, seal off or backfill the bore in the way stated in the direction;
- use the water taken from a bore for a specific use; and/or
- do any other stated thing necessary for the protection of ground water or an aquifer.

The person to whom the Directions are issued to may be liable if they do not comply with the Directions. The legislation provides penalties for the contravention of the Directions.

### 8.5 Injunctive Orders

The *Environment Protection Act 1997* contains provisions that allow the EPA to apply to the ACT Supreme Court for Injunctive Orders. These are orders to prevent, stop or remedy contraventions of the Act. The orders are made against a person/s who are contravening or about to contravene the legislation.

The Supreme Court may make an Injunctive Order if it is satisfied that the person/s has, is or is likely to contravene the legislation or an environmental authorisation resulting in serious or material environmental harm.



## 8.6 Interim Orders

The Supreme Court can also make Interim Orders where an application for an injunctive order has been made, but is yet to be determined and the Supreme Court is satisfied that there is a real or significant likelihood of serious or material environmental harm occurring before the application is determined.

It must be noted, that there are significant grounds under the legislation that distinguish Environment Protection Orders from an Injunctive Order and how they should be applied respectively.

## 8.7 Enforceable Undertakings

An Enforceable Undertaking (the Undertaking) is a voluntary action offered by a person to the EPA in response to offence/s under the *Environment Protection Act 1997*. Undertakings are designed to secure effective remedies for the damage caused to the environment.

An Undertaking is a legally binding agreement between a person and the EPA, for the person to undertake specific tasks to remedy the environmental harm caused and provide significant and ongoing commitments to improve environmental practices to ensure compliance.

If the Undertaking is contravened, it is enforceable by the Courts and often with additional penalties for the contravention of the Undertaking.

Undertakings are considered by the EPA in circumstances of a serious breach of the *Environment Protection Act 1997*, but only where it is likely that a better and more effective outcome will be achieved than what would be achieved in pursuing prosecution.

In determining whether to enter into an Undertaking, the EPA will consider the following:

- the impact of the harm caused to the environment (see Table 1);
- the culpability of the alleged offender and whether the alleged offender gave an indication of genuine remorse (see Table 2);
- previous history of non-compliance;
- whether the offender will act in good faith to undertake the commitments within the Undertaking;
- public concern generated by the offence committed;
- cost of enforcement and whether an Undertaking is a cost effective measure for the EPA leading to rapid resolution;
- the precedent that the Undertaking may set;
- the timeliness of the actions from the Undertaking;
- the nature of enforcement taken against others arising from the same incident; and
- any other relevant matter.

## 8.8 Prosecution

Prosecution remains part of any regulatory strategy to achieve its legislative and policy objectives. As outlined in these guidelines prosecution is not the only enforcement action available and careful consideration should be given to the enforcement model at section 2.2 and the guiding principles at section 3.3 before deciding the appropriate enforcement response.

If prosecution is being seriously considered, the decision to prosecute should be based on:

- whether the evidence provides reasonable prospects of successfully obtaining a conviction; and
- if so, whether it is in the public interest to exercise the discretion to commence prosecution.

When determining the prospects of success of a proposed prosecution, consider the following:

- whether the evidence collected is capable of proving each element of the offence beyond reasonable doubt;
- whether the evidence is admissible;
- the credibility of available witnesses;
- the availability or strength of any expert evidence required to prove the offence; and
- any defences that are plainly open to the alleged offender.

The *Legislation Act 2001* contains provisions outlining when prosecution for offences are to commence. The provisions specify criteria for offences that must commence within 12 months and those that may commence at any time.

Ultimately, the decision to commence prosecution lies with the Director of Public Prosecutions (DPP).

## 9. Suspension and Cancellation of Licences, Permits, Approvals and Authorisations

The relevant delegate under the respective legislation has the power to suspend or cancel licences, permits, approvals, agreements and authorisations granted. However, given the legal status of these documents, revocation should not be taken lightly.

For example, for Environmental Authorisations (Authorisation) under the *Environment Protection Act 1997*, the EPA may give the holder, prior to suspension or cancellation, a notice of the intention to suspend an Environmental Authorisation. 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 Environmental Authorisation where there is a belief that in conducting the activity, the Environmental Authorisation holder has contravened the legislation or the conditions of the document and caused serious or material environmental harm.

Each legislation has specific requirements for suspending and cancelling such instruments. It is important to assess the risks and benefits of the action and refer to the relevant provisions of the legislation when suspending or cancelling licences, permits, approvals and authorisations.

## 10. Review or Appeal Rights

### 10.1 Tribunals and Courts

Decisions made by Government Ministers, Government Departments or a Statutory Authority are called administrative decisions. Some of these decisions can be formally challenged by a person affected by the decision.

For decisions under the *Environment Protection Act 1997*, a person may write to the EPA within 14 days after the decision is made to seek an internal review of that decision. The internal review does not prevent a person affected by the decision to challenge the decision in the tribunal or the courts. This type of challenge is called an 'appeal' and is the legal process in which the court or a tribunal independently reviews the decision.

There are two types of processes in which decisions can be independently reviewed. These are:

- Merits review; and
- Judicial review

Matters that fall under the merits review are matters taken to the *ACT Civil, and Administrative Tribunal (ACAT)*. Administrative review tribunals such as ACAT function differently from the Courts, in that, the merit review task is to examine whether the decision made by the relevant authority is substantially correct, after consideration of all the relevant issues of law, fact, policy and discretion.

On the other hand, judicial review is a type of proceeding where the Courts look at the lawfulness of the decision-making process. If the Courts decide that the decision made is unlawful, the Courts can quash the decision and order the decision-maker to re-make the decision according to the law.

Some of the types of faults in decision-making which could invalidate the decision are:

- the decision-maker has wrongly applied the law or misunderstood the law;
- irrelevant considerations taken into account;
- failure to take into account relevant considerations;
- decision-maker has acted with an improper purpose that is beyond their responsibility;
- the decision is one that no reasonable decision-maker could have reached;
- the decision was affected by dishonesty, corruption or bribery;
- failure to give someone reasonable opportunity to be heard if the law requires it; and
- the decision was not free of bias or the appearance of bias.

### 10.2 Ombudsman

The Office of the Ombudsman is commonly referred to as the Ombudsman. This office is instituted under the *Ombudsman Act 1989*.

One of the roles of the Ombudsman is to investigate action that relates to a matter of administration, fairness and legality of administrative decisions and actions taken by the ACT Government agencies and public authorities.

In the course of any investigation, whether it is into a simple complaint or a larger issue, there is potential for the actions of officers to come under scrutiny of the Ombudsman. If the Ombudsman decides to undertake a review of actions undertaken, the officer will be notified in writing. All cooperation should be given to the Ombudsman during the investigation. This may include:

- providing documentation;
- giving evidence at a hearing;
- providing written submissions.