

FOOD SAFETY



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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W: website - <https://www.accesscanberra.act.gov.au/app/home>

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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 the Health Protection Service on behalf of Access Canberra to ensure the sale of safe and suitable food in the ACT.

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

...general principles for compliance and enforcement activities...

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.accesscanberra.act.gov.au.

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.

... risk-based compliance approach...

Strategic objectives

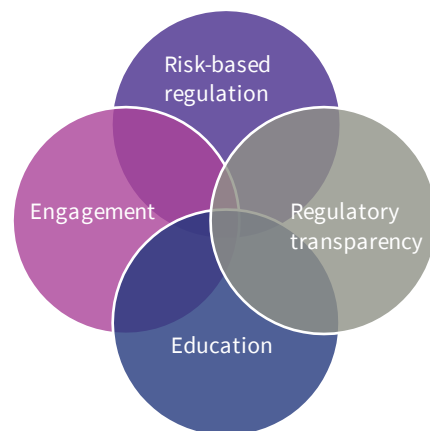
There are four strategic objectives central to the role of the Health Protection Service:

Risk-based regulation – we will undertake proactive and risk-based food safety regulation.

Engagement – we will continue to engage with industry and other key stakeholders in food safety regulation to develop collaborative relationships and a functional rapport.

Education – we will continue to look for opportunities to educate and assist industry and other key stakeholders.

Regulatory transparency – we will maintain a policy of regulatory transparency that builds trust and supports the ACT Government’s commitment to Open Government.



The relationship between our Strategic Objectives

Legislative framework

There are three key pieces of food law in the ACT under which food businesses are regulated by Public Health Officers:

Food Act 2001 – the objectives of the Act include:

- > to ensure food for sale is both safe and suitable for human consumption;
- > to prevent misleading conduct in relation to the sale of food, and
- > to provide for the application of the Food Standards Code in the ACT.

The Act performs many functions:

- > provides important definitions (e.g. the meaning of 'food' and 'sell')
- > outlines inspection and seizure powers of authorised officers
- > allows the issuing of improvement notices and prohibition orders
- > describes offences relating to food (e.g. selling unsafe food).

For details of offences and relevant penalties, see the ***Food Act 2001*** (available on the ACT Legislation Register at www.legislation.act.gov.au).

...three key pieces of food law in the ACT...

Food Regulation 2002 – is made under the ***Food Act 2001*** and clarifies the intent or function of certain sections of the Act (e.g. details about requirements for food safety programs, food safety supervisors and kilojoule displays at certain food businesses). The regulation is also available on the [ACT Legislation register](http://www.legislation.act.gov.au).

Australia New Zealand Food Standards Code -

The Code includes general food standards (e.g. standards for food additives, labelling requirements), compositional requirements, food safety standards, and primary production and processing standards.

The Food Standards Code is divided into four chapters:

- > **Chapter 1** – General Food Standards includes requirements that apply to most foods e.g. labelling requirements, substances that can be added to food, etc.
- > **Chapter 2** – Food Product Standards includes compositional requirements for specific foods e.g. meat, eggs, fish and alcoholic beverages.
- > **Chapter 3** – Food Safety Standards includes a range of food safety requirements e.g. keeping food at the correct temperature, washing hands, keeping equipment and premises clean, etc.
- > **Chapter 4** – Primary Production Standards includes primary production and processing standards for foods such as seafood, poultry meat, certain cheeses, wine and dairy products.

The Food Standards Code is a nationally agreed document and is available on the [Commonwealth legislation](http://www.commonwealthlegislation.gov.au) website.

Compliance model

Engage, Educate, Enforce

Engage, educate and enforce are the three fundamental steps used by the Health Protection Service (HPS). Compliance is encouraged through education but escalating enforcement action 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 proprietors, stakeholders and members of the community.

Educate means taking reasonable steps to ensure people know how to comply (e.g. having a publicly available inspection manual, self-audit tool, food business fit out guideline, and providing onsite information visits). The Access Canberra website provides links to HPS food safety information that is applicable to both food businesses and members of the public.

Enforce means taking action for non-compliance, proportional to the harm, or potential harm, caused by the conduct (e.g. enforcement actions include the provision of compliance advice, improvement notices, seizure, prohibition orders, and suspension of registration).

Approach to enforcement

The HPS 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.

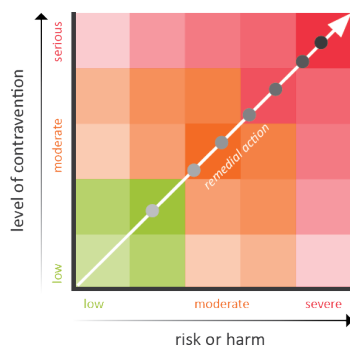
This means that **resource allocation** and **enforcement responses** are determined based on priorities determined through risk assessment.

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.

Enforcement is not undertaken by Access Canberra and remains the responsibility of the Health Protection Service, ACT Health.

Conduct which contravenes the legislation is considered on a case-by-case basis and with consideration given to the circumstances of the conduct. The HPS 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; written advice of non-compliance on an inspection report; service of an improvement notice or prohibition order; seizure of items; destruction of food, or prosecution.



Enforcement response

EDUCATION

Like any regulatory regime, the optimal outcome for HPS 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. Education is also a way of pre-empting non-compliance and reinforcing norms regarding obligations under the Food Act and Food Standards Code.

Education is a key part of the role of Public Health Officers when undertaking food safety regulation. Through the course of proactive and routine compliance work, Public Health Officers provide advice and education to proprietors, food handlers and food industry stakeholders on behalf of Access Canberra. The aim is to ensure that stakeholders understand their obligations and responsibilities under the Food Act and Food Standards Code. We acknowledge that the majority of food businesses want to do the right thing and will comply if they understand their obligations.

...Public Health Officers provide advice and education to proprietors, food handlers and food industry stakeholders...

As part of providing education on food safety, a number of resources are available on the Health Protection Service website at www.health.act.gov.au/public-information/businesses/food-safety-regulation. These include fact sheets, food safety posters, guidelines and access to free online food safety training through Environmental Health Australia's I'M ALERT program. Translated versions of popular resources are also available in the 11 most commonly used languages in the ACT (besides English). The aim of our resources is to assist food businesses to achieve compliance in relation to food safety.

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

REGISTRATION AND COMPLIANCE MONITORING

There are two key activities that the HPS carries out on behalf of Access Canberra:

- > food business registration, and
- > proactive routine inspections.

Proactive inspections are determined on food safety risk, while resource allocation is based on the level of risk posed to our strategic objectives.

**HPS = Health Protection
Service.**

Proactive activities

The HPS has a proactive compliance program to ensure food businesses are compliant with obligations and food safety responsibilities under the Food Act and Food Standards Code. The proactive program focuses on inspections and visits to registered food businesses to ensure compliance and promote food safety.

The HPS targets their proactive compliance inspections on the basis of food safety risk. There are five main areas of compliance under the Food Act and Food Standards Code that are focused on in determining the level of risk:

- > hand washing facilities (non-compliance must be addressed immediately);
- > temperature control of potentially hazardous food;
- > cleanliness;
- > pest control, and
- > provision of a food grade digital probe thermometer accurate to $\pm 1^{\circ}\text{C}$

**...program to ensure food
businesses are compliant
with obligations...**

Reactive activities

The HPS is responsible for investigating and responding to complaints from industry and members of the public, and referrals from external agencies, regarding food safety.

DETERMINING APPROPRIATE ENFORCEMENT RESPONSES

Enforcement responses and actions are the responsibility of the Health Protection Service, ACT Health and are not conducted on behalf of Access Canberra.

Once a Public Health Officer has identified a non-compliance or offence, the next step is to determine the appropriate enforcement response.

Public Health Officers 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 those situations where food safety has been compromised. Examples include, but are not limited to, the following:

- > no hand washing facilities available;
- > temperature control not maintained for potentially hazardous foods;
- > the presence of live pests;
- > lack of cleaning, resulting in a build-up of grease, dirt and food waste, and
- > no appropriate food grade digital probe thermometer.

**...Public Health Officers are
able to exercise a level of
discretion...**

Enforcement options

Available enforcement tools include, but are not limited to:

Verbal advice – where a non-critical food safety issue is identified, a Public Health Officer may provide verbal advice on how to address the issue and will note the advice on the food business inspection report. While it may not be critical at the time, some matters can become critical food safety issues if not addressed and may result in further action, for example:

- > minor cleaning required or potential for cleaning of hard-to-reach areas to escalate to a major non-compliance;
- > removing/unpacking items stored in cardboard boxes to reduce entry and harbourage of pests, or
- > advise on areas where the business can reduce potential food safety risks.

...enforcement tools...

Improvement Notice – is a formal document (authorised by section 79 of the Food Act) that directs a food business to address noncompliance identified during an inspection. An improvement notice includes a compliance date for each noncompliance; the compliance date is based on the food safety risk posed. Failure to comply with an improvement notice can be grounds for service of a prohibition order.

An Improvement notice can be issued for:

- > hand washing basins not supplied with liquid soap and single use towel;
- > an accumulation of grease, dirt and food particles;
- > lack of an appropriate probe thermometer;
- > temperature control issues;
- > pest issues; or
- > maintenance issues including holes in the ceiling, damaged flooring, degraded/rusty equipment.

Prohibition Orders – can direct a proprietor not to use particular premises or equipment for the handling or sale of food. Other directions under an order can include not handling food for sale in a particular way or for a particular purpose. Prohibition orders can be issued where there has been a failure to comply with an improvement notice or where service of the order is necessary to prevent or mitigate a serious danger to public health. Prohibition orders are authorised by section 82 of the Food Act.

Prohibition orders remain in effect until all matters outlined in the order are addressed and this is confirmed by a reinspection. Once all matters have been addressed, a clearance certificate is issued. A fee applies for reinspections. A reinspection will be arranged within 48 hours of its written request.

Common problems that have resulted in a prohibition order include:

- > inappropriate, inaccessible or lacking designated hand washing facilities;
- > vermin or cockroach infestation;
- > unclean food preparation and food storage areas;
- > inadequate temperature control of potentially hazardous food, or
- > major structural/plumbing issues.

...orders remain in effect until all matters outlined in the order are addressed...

Closure Notice – where a prohibition order results in the closure of the business, section 84A of the Food Act requires a closure notice be placed at each public entrance to the premises as soon as practical after the prohibition order is served. A closure notice can only be removed by an authorised officer.

Disciplinary Action – the Food Act provides for the Chief Health Officer to take disciplinary action against registered food businesses if there has been a breach of the Act in the conduct of the food business. Disciplinary action can include imposing a condition or amending a condition of the registration, registration cancellation or suspension. Section 101 outlines the procedure that is to be followed where action is proposed to be taken against a food business registration. This includes providing a disciplinary notice and the opportunity to respond.

The Chief Health Officer may also take immediate action to suspend a registration if it is in the public interest to do so before providing the disciplinary notice. The decision to take disciplinary action is a reviewable decision. For more information see the [‘Review or appeal rights’](#) section of this document.

As an example, disciplinary action may be taken when a number of prohibition orders have been served on the same proprietor or business within a relatively short period of time, to prevent or mitigate a serious danger to public health.

...prevent or mitigate a serious danger to public health...

Seizure and Destruction Powers – Public Health Officers have the power, under section 52 of the Food Act, to seize food, vehicles, or equipment (‘a thing’), if the thing being seized is connected with an offence against the Act (to collect evidence or to prevent further offences being committed). Seizure may also be undertaken if food is considered unsafe or unsuitable, spoiled and putrid, or poses an immediate risk to health or property. A Public Health Officer may direct that the food business destroy or dispose of the food under section 53 of the Food Act.

A receipt will be issued for anything seized as soon as practicable. An application may be made to the Magistrates Court to disallow a seizure. This application must be made within 10 days.

...Public Health Officer may direct that the food business destroy or dispose of the food...

Examples of when powers to seize or destroy food may be used include:

- > food found out of temperature control and has the potential to cause food poisoning;
- > food processing equipment that cannot be effectively cleaned and sanitised, or
- > food contact surfaces (such as wooden chopping blocks) are in a condition that is a risk to food safety.

Prosecution – may be brought against an individual or company as the proprietor of a food business in relation to alleged breaches of offence provisions under the Food Act. A brief of evidence may be prepared and referred to the ACT Director of Public Prosecutions.

Register of Food Offences – when an individual or company is found guilty of an offence against the Food Act, ACT Health publishes a summary of the conviction on the Register of Food Offences. This is permitted by section 146 of the Food Act. Publishing offences allows consumers to make informed decisions about where they eat or buy food. The offence register is available at www.health.act.gov.au/foodsafety.

Information on each offence will generally be published for two years following any appeal period. Publication will not occur where the court has made an order preventing publication. ACT Health updates the register as appropriate. A person may apply to the Chief Health Officer to amend the register at any time by completing the *Application for change to the Register* form, available from www.health.act.gov.au.

...ACT Health publishes a summary of the conviction on the Register of Food Offences.

POWERS HELD BY PUBLIC HEALTH OFFICERS

Food regulation in the ACT is undertaken by Public Health Officers. Public Health Officers are appointed by the Director-General of ACT Health under the [Public Health Act 1997](#). This appointment under the Public Health Act is recognised by the Food Act, as the Food Act provides powers to authorised officers, who are defined as follows in the Food Act dictionary:

Authorised officer – a public health officer who is authorised under the [Public Health Act 1997](#), section 12A (2) (Functions of public health officers) to exercise a function under this Act.

As such, a Public Health Officer (who is an authorised officer under the Food Act) may exercise any power provided for in the Food Act. For example as part of a food business inspection, a Public Health Officer may:

- > ask questions;
- > request reasonable assistance e.g. to access certain areas;
- > request and copy documents;
- > examine anything in or on the premises e.g. food, equipment, surfaces, temperatures;
- > take photographs, videos and/or and samples;
- > conduct tests, and / or
- > if necessary, seize items such as food or equipment.

The Food Act provides that a Public Health Officer may inspect a food business premises at any reasonable time without notice. The occupier of the food business is entitled to ask any inspecting Public Health Officer to produce their identify card.

...Public Health Officers are appointed by the Director-General of ACT Health...

REVIEW OR APPEAL RIGHTS

Seeking a review

There are a number of decisions under the Food Act that are reviewable (see part 11, Food Act).

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 Commonwealth 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

- [Food Act 2001](#)
- [Food Regulation 2002](#)
- [Australia New Zealand Food Standards Code](#)
- [Public Health Act 1997](#)

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



Chief Minister, Treasury and Economic Development Directorate

Access Canberra

⚙️ Accountability Commitment Framework

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