

WORKING WITH VULNERABLE PEOPLE



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 in relation to the [Working with Vulnerable People \(Background Checking\) Act 2011](#) (the WWVP Act) to reduce the risk of harm or neglect to vulnerable people in the Territory.

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

WWVP = Working with Vulnerable People

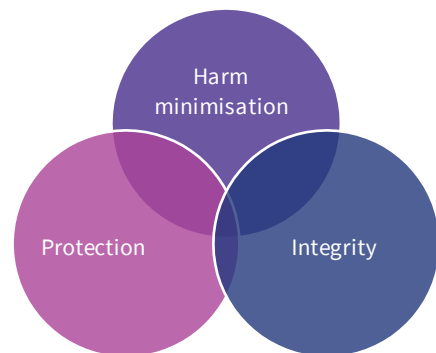
Key principles

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.

Strategic objective

The strategic objective central to the WWVP legislation is to protect vulnerable people from harm. The intent is not to ensure that all individuals can engage in an activity of their choice, particularly if they are assessed as posing an unacceptable risk of harm to a vulnerable person. Importantly, amendments to the Act which will commence in early 2021 identify that the best interests of vulnerable people is the Act's paramount consideration.



The relationship between our Strategic Objectives

Legislative framework

The WWVP Act commenced in November 2012 and aims to reduce the risk of harm or neglect to vulnerable people in the Territory.

A person is defined as being vulnerable if they are a child under the age of 18 years or an adult who is experiencing disadvantage and accesses a regulated activity or service related to the disadvantage.

This definition has the advantage of establishing a basis for the determination of the types of services or activities that might attract background checking. The definition also recognises people's changing circumstances, as they will not be considered vulnerable at all times.

The WWVP Act requires individuals working in specified regulated activities and services to hold a WWVP registration with Access Canberra.

The WWVP Act provides for background checking as part of a risk assessment of people working with children or vulnerable adults in the ACT and, from early 2021 includes those people working in NDIS activities. The Commissioner for Fair Trading (the Commissioner) conducts a background check and risk assessment before registering suitable applicants for a period of three years (which increases to five years as a result of changes to the Act which commence in early 2021).

The premise of background checking is that the past behaviour of an individual can provide an indication of the possible future behaviour of that individual.

Examples or patterns of abusive or inappropriate behaviour can sometimes be evident in information available for assessment, which includes an individual's criminal record.

*...a child under the age of 18 years
or an adult who is experiencing
disadvantage...*

Compliance model

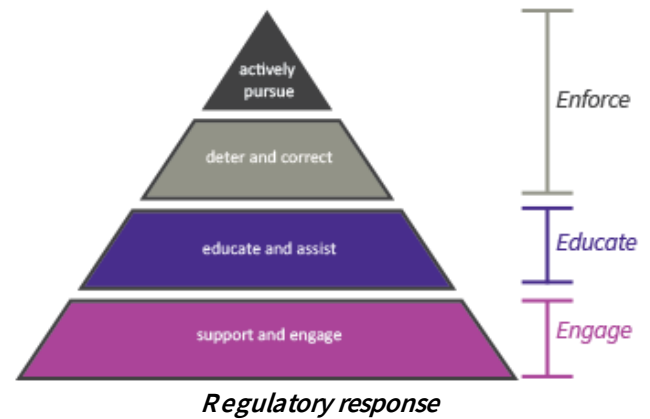
Engage, Educate, Enforce

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

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 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: a written warning, the issuing of an infringement notice or prosecution. Compliance actions may also result in the suspension of a registration and the initiation of an additional risk assessment in accordance with the WWVP Act. Action of this latter type can also result in cancellation of a registration.

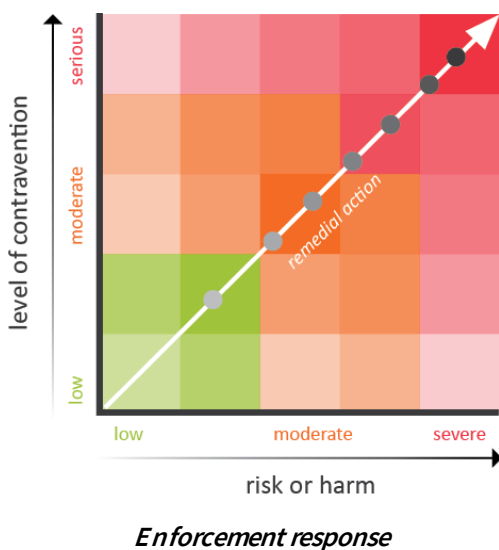
...appropriate regulatory tool to address the conduct and to achieve the desired regulatory outcome...

Risk assessment describes the process of considering available criminal and non-conviction history, past working with vulnerable people registration history and other relevant information to arrive at a determination about the risk of harm to vulnerable people posed by a particular applicant.

A risk assessment will be conducted in accordance with the Risk Assessment Guidelines made by the Commissioner.

An additional Risk assessment may be conducted in accordance with the WWVP Act if the Commissioner believes on reasonable grounds that there is new relevant information about a registered person (for example a registered person is suspected of having committed a relevant offence).

Risk assessment does not determine guilt or innocence but seeks to determine whether a person poses an unacceptable risk of harm to a vulnerable person.



As a result of amendments to the Act, from early 2021 there will be ongoing monitoring of registered persons by Access Canberra to ensure that they continue to not present a risk of harm to vulnerable people. Furthermore, the Commissioner is able to receive information from any source about changes in relevant information about a registered person.

This includes but is not limited to links to like agencies in other jurisdictions, as well as with policing agencies and national databases all of which can provide ongoing information about people that are registered in the scheme.

EDUCATION

Like any regulatory regime, the optimal outcome for the WWVP scheme is voluntary compliance. Education has a key role to play in maximising compliance by ensuring lack of understanding is not a contributing factor to non-compliance.

The Access Canberra Compliance Team provides advice and education to individuals, their employers and stakeholders through the course of its proactive and reactive compliance programs. The goal is to ensure that our stakeholders understand their rights, obligations and responsibilities under the Act. The Team also regularly interacts with peak body groups in order to provide an opportunity to offer advice and raise awareness of the scheme.

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 Facebook and Twitter, advertising campaigns, web content and features at www.accesscanberra.act.gov.au. The Access Canberra online resources include numerous guides, brochures, factsheets and links to assist people ensure their actions comply with relevant laws.

COMPLIANCE MONITORING AND INVESTIGATIONS

Access Canberra compliance activities are aimed at ensuring positive outcomes for 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

Access Canberra has developed a pro-active compliance program to ensure that employers, registrants, and those people who ought to be registered comply with their obligations under the WWVP Act. The program primarily focuses on unscheduled visits and desktop activities to monitor workplaces to ensure compliance and to promote continuous monitoring practices.

Access Canberra will attend workplaces during normal working hours and actively liaise with employers about the existing controls that are in place to monitor staff and volunteer registrations. This may include requesting employees or volunteers to present their proof of registration, or where it is not practicable to do so, view or arrange to view records of staff registrations. Where a workplace is yet to implement a process for monitoring registrations, compliance officers will work with those workplaces to implement processes and controls to help meet their obligations under the WWVP Act.

...actively liaise with employers about the existing controls that are in place to monitor staff and volunteer registrations.

Workplace visits provide an opportunity for Access Canberra to engage with employers and employees about the WWVP registration scheme and to provide education resources to improve compliance with the WWVP Act. The visits also give organisations the opportunity to share information and to ask questions about any aspect of the scheme.

Reactive activities

Access Canberra will undertake an investigation in response to complaints received from industry, the general public, or referrals from external agencies. Investigations can also originate from the pro-active compliance programs and other internal referrals.

...investigation in response to complaints received from industry, the general public...

Access Canberra prioritises complaints based on the risk of harm (or potential risk of harm) to the vulnerable person, as follows:

- > an allegation is received that a person is engaging in a regulated activity, and does not have a WWVP registration allowing them to engage in the activity.
- > if information is received suggesting new, relevant information about a registered person, Access Canberra will seek to substantiate this information and if validated the Commissioner will conduct an additional risk assessment for the person taking into account the new information.

DETERMINING APPROPRIATE ENFORCEMENT RESPONSES

Once Access Canberra has confirmed that an offence has been committed, or has concluded that there has been other concerning conduct, the next step is to determine an appropriate enforcement response.

Access Canberra Inspectors 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:

- > a registered person fails to disclose a charge, conviction or finding of guilt for a relevant offence;
- > a person recklessly engages in a regulated activity without a WWVP registration or pretends to be registered;
- > a person whose WWVP registration is subject to a condition contravenes a requirement of the condition; or
- > a registered person's conduct is such that a vulnerable person would be likely to be at risk of harm or may have actually been harmed.

Enforcement options

Access Canberra has a range of civil, administrative and criminal enforcement remedies at its disposal which are supported by legislation.

Additional Risk Assessment – conducting an additional risk assessment for a registered person (taking into account the new relevant information) may trigger the suspension of the person's WWVP registration, whilst the risk assessment is being completed. In some circumstances an 'Interim Bar' or 'Interim Condition' may be imposed on the person while their application is being considered.

...range of civil, administrative and criminal enforcement remedies at its disposal...

Upon completion of an additional risk assessment the Commissioner may do one of the following:

- > leave the person's registration unchanged;
- > add, remove or amend a condition on the registration; or
- > suspend or cancel the registration.

Infringement notices – a mechanism 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.

The WWVP Act includes offences that are part of the Territory's infringement notice scheme. Please also refer to the *Magistrates Court (Working with Vulnerable People Infringement Notices) Regulation 2012*.

Prosecution – Prosecutions may be brought in relation to alleged breaches of the offence provisions in the WWVP Act.

POWERS HELD BY INVESTIGATORS

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

The [Working with Vulnerable People \(Background Checking\) Act 2011](#) is defined as 'fair trading legislation' in the dictionary of the [Fair Trading \(Australian Consumer Law\) Act 1992](#).

REVIEW OR APPEAL RIGHTS

Seeking a review

There are a number of decisions made by Access Canberra that are reviewable.

A business or an individual served with an infringement notice has a right to dispute liability of the notice. You may elect to have the decision to issue the infringement notice internally reviewed by the agency that issued it. You may also elect to have your matter heard in court so you can explain yourself to a magistrate.

If you chose to seek an internal review, the dispute must be in writing and state the grounds for the review.

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.

...the dispute must be in writing and state the grounds for the review...



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

- [Working with Vulnerable People \(Background Checking\) Act 2011](#)
- [Working with Vulnerable People \(Background Checking Regulation 2012](#)
- [Human Rights Act 2004](#)
- [Discrimination Act 1991](#)
- [Fair Trading \(Australian Consumer Law\) Act 1992](#)
- [Criminal Code 2002](#)
- [Magistrates Court \(Working with Vulnerable People Infringement Notices\) Regulation 2012](#)
- [Children and Young People Act 2008](#)
- [Crimes Act 1914 \(Federal\)](#)
- [Disability Discrimination Act 1992 \(Federal\)](#)
- [Disability Services Act 1991](#)
- [National Disability Insurance Scheme Act 2013 \(Federal\)](#)
- [Senior Practitioner Act 2018](#)

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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⚙️ Accountability Commitment Framework

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