

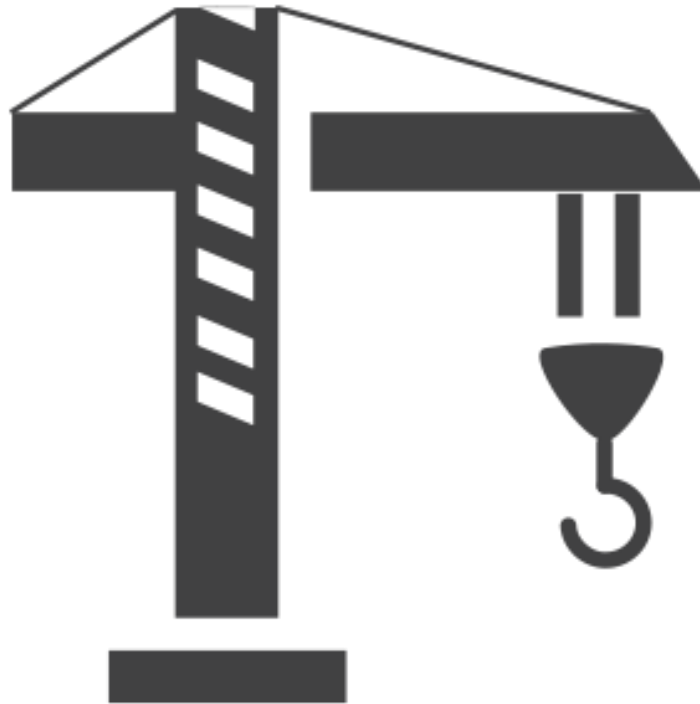
BUILDING, PLANNING AND CONSTRUCTION REGULATORY SERVICES



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 protect the life, health and property of our community and to minimise loss and consumer detriment in relation to building and construction in the 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. 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.

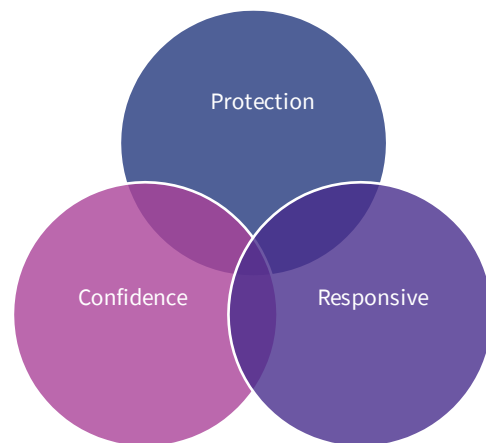
Strategic objectives

There are three strategic objectives central to the role of Access Canberra:

Protection – through our actions we will seek to protect the community from harm.

Confidence – we seek to improve confidence in the construction industry by raising the quality of buildings and improving the livability of the ACT for all citizens through our regulatory compliance activities.

Responsive – we seek to be responsive to matters and will ensure that we achieve community safety and industry compliance through implementing comprehensive regulatory regimes and by taking visible regulatory action, applying the most appropriate means available.



The relationship between our Strategic Objectives

Legislative framework

The ACT has an integrated scheme of legislation for buildings, building services and utility services.

The [Building Act 2004](#) establishes the regulatory system for the construction, alteration or demolition of buildings in the ACT (excluding work health and safety requirements). It includes a system for building approvals, building certification, stage inspections, residential warranties and insurance, stop notices and offences.

The [Construction Occupations \(Licensing\) Act 2004](#) (COLA) is the principal legislation governing the responsibilities of construction occupation licensees including builders, plumbers, and electricians and building certifiers in the ACT. It also includes disciplinary and complaints processes for construction practitioners (including in relation to work undertaken under 'operational Acts' such as the [Building Act 2004](#), the [Electricity Safety Act 1971](#) and the [Gas Safety Act 2000](#)).

The Construction Occupations Registrar (the Registrar), appointed under section 103 of COLA:

- > oversees the administration of the COLA and its operational Acts;
- > maintains the standard of construction occupations by—
 - ▷ acting on complaints made about construction licensees practitioners, including by applying to the ACAT for occupational discipline if appropriate; and
 - ▷ providing construction licensees with information about developments in the construction industry;
- > regulates construction services and audits the work of construction occupations;
- > investigates complaints against and disciplines construction occupation practitioners; and
- > oversees inspection of building, electrical, plumbing, drainage, gas-fitting, gas appliance, building assessment and works assessment work.

The Registrar is empowered to make decisions under COLA and other construction legislation. The Registrar may also appoint Deputy Registrars, inspectors, compliance auditors and delegate functions to officers.

The [Planning and Development Act 2007](#) (PDA) is the principal legislation regulating development and the ACT leasehold system. The Planning and Land Authority is responsible for preparing and administering the Territory Plan, planning and regulating the development of land, administering leases and licenses over unleased Territory land, advising on spatial planning and deciding applications for approval to undertake development.

Officers of Access Canberra are delegated under the PDA to undertake a range of regulatory functions, including the management of complaints, carrying out investigations and undertake enforcement actions, which includes the issuing controlled activity orders, directing rectification works.

COLA also includes disciplinary and complaints processes for construction practitioners

The [Electricity Safety Act 1971](#) outlines the requirements for electrical work, certification and sale of electrical equipment and appliances, and the reporting and management of serious electrical accidents. Electrical inspectors are appointed under this Act.

The [Gas Safety Act 2000](#) outlines the requirements for gas fitting work, gas appliance work, certification and sale of certain gas using appliances, reporting and management of serious gas accidents and general gas safety obligations for owners of piping and installations. Gas inspectors are appointed under this Act.

The [Utilities \(Technical Regulation\) Act 2014](#) provides a regulatory framework for the safe and reliable performance and operation of utility network infrastructure (including electricity, gas, water and sewerage) and smaller-scale utility services and installations. Technical inspectors can also be appointed under this Act. This Act creates the Technical Regulator (the Director General of the Environment and Planning Directorate) who has the following functions:

- > prepare and consult on draft technical codes;
- > monitor and enforce compliance with technical codes by regulated utility services and listed dams;
- > audit the performance and compliance of regulated utility services, owners of isolated infrastructure and listed dams;
- > prepare and publish a compliance report; and
- > provide advice to the Minister and the Independent Competition and Regulatory Commission about the operation of the Act.

The [Water and Sewerage Act 2000](#) regulates plumbing plan approvals, plumbing work (water supply, sanitary plumbing and drainage), and installation of appliances and plumbing products. Plumbing inspectors are appointed under this Act.

The ACT has an integrated scheme of legislation for buildings, building services and utility services.

The [Building and Construction Industry \(Security of Payments\) Act 2009](#) provides a rapid dispute resolution process for payment disputes between primary, head and sub-contractors or others, supplying goods and services for building and construction. The purpose of the Act is to assist with the flow of payments throughout the industry and help contractors receive overdue payments. The Act also provides for persons to be authorised as a nominating authority.

The [Architects Act 2004](#) outlines the system of voluntary registration for architects in the ACT. The Architects Act is administered by the ACT Architects Board with support from the ACT Architects Registrar and Access Canberra.

The [Unit Titles Act 2001](#) gives a role to works assessors and building surveyors licensed under COLA to assess compliance with unit title requirements such as landscaping.

Compliance model

Access Canberra compliance model consists of two key elements:

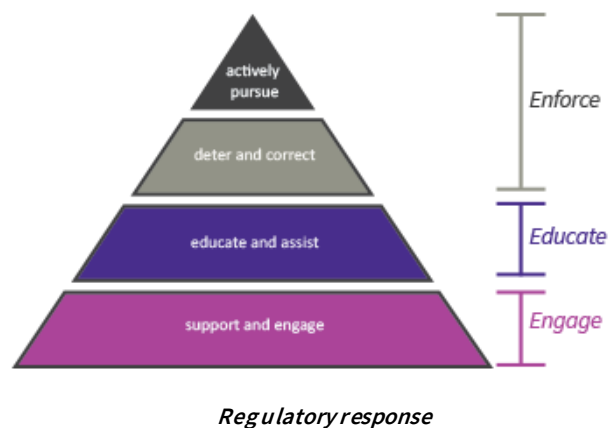
- > engage educate enforce;
- > a risk based approach.

Engage, Educate, Enforce

Engage means ensuring that 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. We provide information to the industry and community to promote understanding and to encourage voluntary compliance. The Access Canberra website provides links to a number of publications and facts sheets which provides information relating to particular areas of the construction processes and legislative obligations.

Enforce means taking action when non-compliance occurs proportional to the harm caused by the conduct (e.g. issue a warning, a rectification order, or an infringement notice).



A risk-based approach

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 identifies and assess risks and to apply the most appropriate regulatory tool to control the risk.

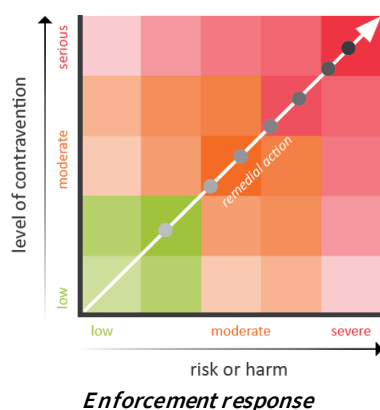
This means that **resource allocation** and **enforcement responses** are determined based on priorities determined through risk assessment.

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.

Complaints with a risk to public safety are treated as priority one. Complaints about a serious breach but not a safety risk are treated as priority two. All other complaints are priority three. Complaints will be investigated in order of priority.

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 and engagement

Like any regulatory regime, the optimal outcome for Access Canberra 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. Across Access Canberra, the emphasis on different elements of this framework will vary and building and construction services need an approach that is tailored very differently for industry and the community

In the ACT, we have a Building and Construction industry that is well educated, through tertiary and trade qualifications and industry training s well as regulation through licensing and industry bodies. This framework, provides for a building and construction industry that is aware of it functions and responsibilities, and has the skills, knowledge and experience to undertake their work to provide construction services that are safe, sustainable and meet the expectations of the community. Access Canberra will continue to regulate the licensed occupations, and engage and work with industry across these areas to maintain standards and address issues as they arise.

Conversely, it cannot be expected that the community is fully aware of its rights and obligations in relation to building and construction services. Building, buying or renovating a property is a significant part of many people's lives, personally and financially, but which may happen rarely. Access Canberra will deliver advice and education to the community through a number of activities and tools, including newsletters, factsheets, social media, advertising campaigns, web content and features at www.accesscanberra.act.gov.au. The Access Canberra online resources include numerous guides, brochures, fact sheets and links to assist people to make sure their actions are compliant with the relevant laws (including gaining the required development and building work approvals and providing safe and competent services to the community).

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.

Different regimes for monitoring licensed construction activities exist in Access Canberra, ranging from the 100% inspection of new electrical installations and plumbing installations, through to assessment of building and construction activities under an ongoing compliance and assessment work program that will target specific areas of risk.

Access Canberra will use site inspections as a method of collecting information, monitoring compliance and directing that any non-compliance is remedied.

Site inspections and compliance assessment are an important method by which Access Canberra can encourage compliance and identify issues which need to be resolved.

Proactive compliance programs also assist in detecting and deterring unlicensed contractors from engaging in construction activities.

Findings of a site inspection may lead to an investigation and enforcement action.

Site inspections and compliance assessments are an important method in encouraging compliance

Reactive activities

Reactive activities are in response to a member of the public, business or industry reporting concerns.

Access Canberra prioritises this information based on the assessed level of risk to determine the appropriate investigation and where relevant enforcement response.

Access Canberra prioritises this information based on the assessed level of risk

Access Canberra engage early to gain compliance with the regulatory regime. There will be a rapid response to regulatory issues, to assess all new complaints. This will be for the purpose of a preliminary investigation to determine if there is a breach of building or planning legislation, regulations and codes

Determining appropriate enforcement responses

Once Access Canberra has determined that non-compliance has occurred the next step is to determine the appropriate regulatory response.

In some cases, regulatory officers are able to exercise a level of discretion. However, enforcement of legislative requirements is likely to occur in situations where:

- > an unlicensed person undertakes work that requires a licence;
- > work occurs without required approvals or insurance;

- > there is a failure to comply with standards, including the Building Code of Australia, the Plumbing Code of Australia, the Electrical Wiring Rules (AS 3000), AS/NZS 5601 for gas fitting work, codes of practice and technical codes for utilities; or
- > there is an unacceptable standard of work or conduct.

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

Enforcement options

The legislative framework includes a variety of options for dealing with non-compliance. Some decisions and actions can be made by officers in Access Canberra while others may only be made by the ACT Civil and Administrative Tribunal (ACAT).

Where appropriate for the protection of community safety or to prevent ongoing negative impacts, immediate regulatory action may be taken against builders, developers or leaseholders by Access Canberra.

For complex and high level building and planning complaints, Access Canberra will undertake detailed investigation and analysis to consider regulatory actions that are proportionate to the issues, informed by the necessary technical professional knowledge and that are legally defensible.

Planning and Development Act 2007

Formal written warning – can be provided to leaseholders and other parties who are identified as being in breach of planning laws or a Crown lease.

Controlled activity orders – a direction to a person or entity to do one or more things set out in section 358(3) of the Act.

Prohibition orders – an order that prevents or stops a person or entity from undertaking prohibited development or development that is otherwise unlawful as set out in section 377 of the Act.

Rectification work direction – a direction to a person or entity to undertake rectification work to ensure compliance with a development approval or a controlled activity order.

Lease Termination – termination of a lease for contravening orders or the Crown lease.

Licence Termination – termination of licences to use land given by the Commonwealth or the Territory.

Injunction – A power for the Supreme Court to issue an injunction upon application from Construction Services.

Infringement notices – are a 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.

Prosecution – the legislation listed in Appendix 1 include criminal offences that can be prosecuted by Access Canberra by referral of a brief to the Director of Public Prosecutions.

Alleged offences under the *Criminal Code 2002* or the *Crimes Act 1900* committed in the context of the legislation administered by Access Canberra are referred to ACT Policing for investigation.

...variety of options for dealing with non-compliance...

Construction Occupations (Licensing) Act 2004 (COLA)

Formal written warning – can be provided to licensees who are identified as being in breach of COLA or an operational Act.

Licence conditions – the Registrar may impose conditions on construction licences to ensure public protection or in response to finding a disciplinary breach.

The ACT Civil and Administrative Tribunal (ACAT) is also empowered to impose conditions on licences during or as a consequence of disciplinary proceedings.

Suspension of licence – COLA includes automatic suspension of licences for three months under certain circumstances. Licences can also be suspended as a disciplinary action.

Cancellation of licence – licences can be cancelled as a disciplinary action.

Demerit points – COLA includes a demerit point scheme which registers points for disciplinary breaches. A licensee must be advised in writing when the licensee has accrued 10 or more demerit points within a three year period. At 15 points worth of disciplinary breaches accrued within a three year period, the Registrar must suspend, cancel or take other disciplinary action.

Rectification orders – the Registrar may make emergency rectification orders or rectification orders that require a licence holder or former licence holder to undertake rectification work.

Rectification Undertakings – the Registrar may accept a written undertaking given by an entity relating to the entity's contravention or alleged contravention of the COLA or an operational Act in providing a construction service.

Occupational Discipline – if the Registrar believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the Registrar may undertake disciplinary action or apply to ACAT for occupational discipline order.

Reprimand – the Registrar may issue a reprimand to a licence holder or the holder of a construction occupations licence holder as a form of occupational discipline.

Publication – the COLA requires the Registrar to keep a register of licensees that is available to the public. The register must include particulars, such as suspension or rectification orders, as set out in Part 9 of the Act. The Registrar may include other information as relevant and authorised under COLA.

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Building Act 2004

Stop notices – can be issued if, amongst other things, building work is carried out without a required building or development approval or is not in accordance with a building approval or the Building Act. A stop notice may allow work for the building to be brought into compliance and may also allow work on parts of the building that are not in contravention to continue if it is safe, practical and will not cause further non-compliance.

Section 50 and 50A notices – in certain circumstances a building certifier must notify:

- > the construction occupations registrar of suspected breaches of the Building Act;
- > the planning and land authority of suspected breaches of the Planning and Development Act.

A notification has the status of a complaint to the relevant regulator, who then determines how the potential breach is managed.

Notices to carry out building work – the Registrar can give a notice to a building owner to do building work, or arrange for building work to be carried out. The reasons a notice can be given include that the work has not been carried in accordance with the building code, the building or part of the building is not structurally sound, or the building or part of the building is unsafe because of fire hazard or unfit for use because of a danger to health.

Utilities (Technical Regulation) Act 2014

Stop notice – can be issued to a regulated utility or a person undertaking utility infrastructure works in the following circumstances:

- > the Act has been contravened;
- > failure to comply with a technical regulator's direction under section 18 or section 55;
- > failure to comply with a technical regulator's urgent direction under section 20; or
- > undertaking work without a licence under the *Utilities Act 2000*, in circumstances where a licence is required.

Injunctions – the Registrar may seek an injunction to stop a person/regulated utility from engaging in conduct in breach of the Act.

Infringement notices – are a 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.

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Other Acts

The *Electrical Safety Act 1971*, *Gas Safety Act 2000*, *Water and Sewerage Act 2000*, include the ability for an inspector or the Registrar to give a direction to a person to make an installation safe or compliant.

The *Architects Act 2004* establishes a disciplinary system for registered architects.

Authorisation as a nominating authority, under the *Building and Construction Industry (Security of Payments) Act 2009*, may be suspended, cancelled for breaches of the Act and eligibility requirements, or withdrawn if the authorisation was given on false or misleading information from the applicant.

POWERS HELD BY INSPECTORS AND COMPLIANCE AUDITORS

Powers held by inspectors and compliance auditors will depend on the Act they are appointed under. In general, inspectors have powers to enter premises, inspect work regulated under the relevant law and collect documents and materials. Some inspectors may also be authorised to seize things on premises and execute search warrants issued by a court.

Inspectors appointed by the Registrar are:

- > electrical inspectors under section 41 of the [Electricity Safety Act 1971](#);
- > plumbing inspectors under section 40 of the [Gas Safety Act 2000](#);
- > gas fitting and gas appliance work inspectors under section 23 of the [Water and Sewerage Act 2000](#);
- > building inspectors under section 128 of the [Building Act 2004](#); and
- > inspectors for building assessment and works assessment work in accordance with section 80CA of [COLA](#).

The Planning and Land Authority and Technical Regulator for utilities may also respectively appoint inspectors under the [Planning and Development Act 2007](#) and the [Utilities \(Technical Regulation\) Act 2014](#).

Compliance Auditors are appointed in accordance with section 76 of [COLA](#).

...inspectors have powers to enter premises, inspect work...and collect documents...

REVIEW OR APPEAL RIGHTS

Seeking a review

A number of decisions made by Access Canberra 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 and the court will determine the matter.

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.



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

- [Architects Act 2004](#)
- [Building Act 2004](#)
- [Building \(General\) Regulation 2008](#)
- [Building and Construction Industry \(Security of Payments\) Act 2009](#)
- [Construction Occupations \(Licensing\) Act 2004](#) (COLA)
- [Construction Occupations \(Licensing\) Regulation 2004](#)
- [Electricity Safety Act 1971](#)
- [Electricity Safety Regulation 2004](#)
- [Gas Safety Act 2000](#)
- [Gas Safety Regulation 2001](#)
- [Planning and Development Act 2007](#)
- [Planning and Development Regulation 2008](#)
- [Unit Titles Act 2001](#)
- [Utilities \(Technical Regulation\) Act 2014](#)
- [Water and Sewerage Act 2000](#)
- [Water and Sewerage Regulation 2001](#)

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>.



Chief Minister, Treasury and Economic Development Directorate

Access Canberra

⚙️ Accountability Commitment Framework

October 2020