



**ACT**  
Government

**Access  
Canberra.**

# REGULATORY CONTINUUM

Fair Trading and Compliance

JUNE 2023

*We work to ensure Canberrans live in a vibrant, safe city and are part of a fair economy.*



## OUR MISSION

Our mission is to **protect the consumer**, particularly the most vulnerable, and support the **growth of the economy**.

We do this through supporting the functions of the Commissioner for Fair Trading, the Gambling and Racing Commission, the Controlled Sports Registrar, the Registrar-General and the Road Transport Authority. We undertake engagement, compliance and enforcement activities to ensure positive outcomes for both community and industry.

## OUR FUNCTIONS

We **engage** with business and industry to provide **support** for new and existing businesses to grow and thrive. We manage incoming complaints and intelligence in accordance with our **Accountability Commitment** and our thresholds under the **Regulatory Complaint and Investigation Policy**. We **monitor** the regulatory landscape to ensure regulatory protections are being applied, and we **enforce** the law when they are not.

### Engage

We coordinate regulatory approvals for major events for the benefit of community and industry.

We provide information and support for new businesses to gain the necessary approvals they need. We provide a case management service for new and existing business to obtain advice and information, and to coordinate approvals. For event organisers we are the face of the ACT Government for the purpose of regulatory approvals. This service is provided on a first come first served basis and will coordinate across all necessary functions of Government to ensure businesses can seek the approvals they need to operate in a safe and healthy environment.

We engage with individuals and stakeholders in issuing of Working with Vulnerable People (WWVP) registrations, to protect the interests of vulnerable persons.

### Educate

We support existing businesses to grow and expand through our ongoing business engagement and education program, visiting businesses to discuss their general compliance and obligations, while seeking out whether these businesses require any targeted assistance or information.

We provide support for innovative businesses to test the regulatory framework through engagement across the ACT Government. We work with emerging businesses and other Government functions, such as Economic Development and the Better Regulation Taskforce, to support innovative models that may not be considered through existing or traditional regulatory frameworks to remove obstacles to success.

We provide advice to consumers in relation to their rights. We link their feedback to the correct area of Government to ensure a holistic approach and a seamless journey for the consumer.



We undertake baseline intelligence gathering activities to monitor the regulatory landscape. We manage complaints and act upon the intelligence we gather. We carry out targeted campaigns to address areas of key regulatory focus. Where compliance cannot be achieved or it appears there has been a breach of legislation causing risk or harm to the community, we investigate and determine how best to rectify the non-compliance.

**Enforce**

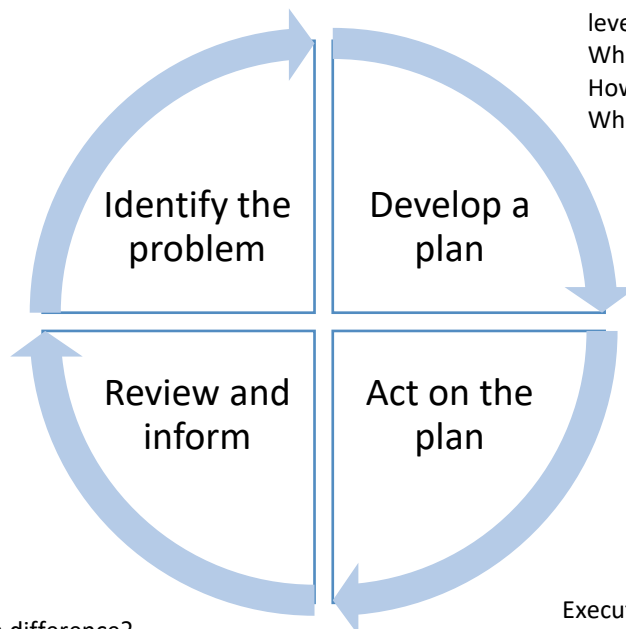
We provide access to justice through conciliation as an alternative dispute resolution mechanism. Where there is a serious or systemic breach of legislation resulting in harm to the community, we undertake litigation and, where necessary, intervene to stop risk from escalating as outlined in the Access Canberra Accountability Commitment.

We also issue Infringement Notices for traffic offences, including red light, speed and mobile device usage.

**OUR APPROACH**

What is the risk of harm that is, or may be, happening?  
What does our data tell us?  
What intelligence do we have?  
What is our hypothesis?  
Does our hypothesis make sense?

**Engage:** How and when do we engage with industry, specific businesses and broader stakeholders?  
**Educate:** How do we communicate what our focus is?  
**Enforce:** What is the actual risk and what levers are available to treat that risk? What outcome are we seeking? How much effort will we put in? When will we undertake our activities?



Did we treat the risk?  
Did the program make a difference?  
Is this what we expected to happen?  
Who needs to know the outcome?  
Have we closed the loop with the complainant?  
What learnings should be implemented in our next activity?

Execute the plan.  
Focus on the risk of harm.  
Review at the midway point to confirm if the actions are having their intended effect.  
Test the approach and implement amendments where required.



## OUR PRIORITIES

We prioritise our actions based on a range of considerations as outlined in the Access Canberra Accountability Commitment, including conduct that:

- causes harm or risk to life, health or the environment;
- disproportionately affects vulnerable people;
- is systemic and is likely to have a detrimental effect on the community and/or the environment; and
- demonstrates a blatant disregard for the law.

We focus our time and attention on matters where the risks of harm, unsafe practices or misconduct are greatest in the community.

While we carefully consider all matters that involve a potential breach of the law, we do not undertake a formal investigation of every matter that is brought to our attention. We consider all remedies available, including undertaking engagement or educative activities or referrals to another agency where appropriate.

We are more likely to investigate matters where:

- there is evidence of significant consumer harm or detriment, particularly where the conduct is ongoing or systemic;
- there is a blatant disregard for the law, or pattern of deliberate non-compliance by an individual or business, that may have the potential for substantial harm or detriment in the future;
- the conduct is impacting on vulnerable or disadvantaged groups;
- the conduct is industry-wide, involves a new or emerging issue or has a significant impact on market integrity;
- enforcement action is likely to have a strategic educative or deterrent effect; or
- education or engagement is not considered to be an appropriate and proportionate response to address the alleged conduct.

## OUR PROCESS

We protect Canberra consumers by:

- making information available to the public about consumer and fair trading issues;
- using data and intelligence to inform our activities;
- designing our programs to consider the greatest risk of consumer harm;
- undertaking baseline intelligence gathering and compliance activities;
- providing advice and conciliation services to consumers; and
- applying appropriate enforcement actions to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law.



We support the growth of economy by:

- making it easier to do business;
- reducing regulatory barriers;
- supporting business and industry through coordinated approvals to ensure vibrant operations and safe activities;
- providing advice to businesses on how to grow and expand within the regulatory context; and
- simplify operations with government to provide a single point of contact for any questions and concerns.

## OUR REGULATORY TOOLS

We protect the consumer and grow the economy by using the right regulatory tool at the right time for the right outcome.

- **Business education:** We work with businesses to answer their queries and concerns and explain regulatory obligations.
- **Business improvement engagement:** We engage with licensees and industry directly to improve identified compliance failures and support voluntary ongoing compliance with legislation. We proactively communicate with business to explain our regulatory focus.
- **Compliance monitoring audits and inspections:** We may undertake checks and proactive inspections to monitor compliance.

Where our engagement and education activities are unsuccessful, Access Canberra uses a range of tools to encourage and ensure compliance with the law.

- **Compulsory conciliation conference:** We bring consumers and traders together to achieve an agreed upon outcome to remedy instances of non-compliance.
- **Warning letters and cautions:** A warning letter or a caution may be issued where there is evidence that the law has been broken and the business can be reasonably expected to know and understand their obligations.
- **Statutory notices or directions:** We may issue a statutory notice requiring an individual or business to take action, cease non-compliant conduct, or remedy a defect.
- **Infringement notices:** We may issue an infringement notice asserting a breach of the law and imposing a financial penalty. An infringement notice may allow straightforward breaches of the law to be resolved by payment of a fine, rather than court action.
- **Licence conditions, suspensions or cancellations:** We may place conditions on a licence or seek to cancel or suspend a licence.
- **Occupational discipline actions:** We may take occupational discipline action through the ACT Civil and Administrative Tribunal (**ACAT**) for alleged contraventions of licence conditions.
- **Enforceable undertakings:** An enforceable undertaking is a high level sanction which is legally binding and is used where the alleged contravention is of a serious nature. An enforceable undertaking provides an opportunity for individual and organisational reform to implement better practices and to remedy harm.
- **Public warning notices:** We may issue a public warning notice to alert consumers to a suspected breach of certain provisions of the law. A key consideration when issuing a public warning notice is whether there is an imminent need to inform consumers so they can avoid suffering detriment.



- **Civil court actions:** We may commence civil proceedings in response to non-compliant activity. We may seek a range of civil remedies including injunctions, penalties, consumer redress, disqualification orders, and adverse publicity orders.
- **Criminal prosecutions:** We may refer a matter to the Director of Public Prosecutions for the conviction and punishment of a party under the criminal provisions of the law.

## OUR FOCUS IN 2023/24

On behalf of the Commissioner for Fair Trading, we will focus on:

- the use of trust accounts by real estate agents;
- risk mitigation measures employed by liquor licensees;
- vaping in the context of holding a tobacco licence; and
- Working with Vulnerable People requirements for Road Transport Authority licences.

On behalf of the Gambling and Racing Commission, we will focus on:

- Casino operations in the context of new upstream ownership; and
- the management of excluded persons by licensees.

On behalf of the Road Transport Authority, we will focus on:

- The commencement of the Mobile Device Detection Camera enforcement scheme.

On behalf of the Controlled Sports Registrar, we will undertake:

- Continuous monitoring of registrable events with a focus on contestant safety and the integrity of the sport.

## RESPONDING TO THE UNKNOWN

Our areas of focus are only a part of the work we undertake. We respond to and manage complaints received from our community, and act upon intelligence gathered.

When complaints are raised, or issues emerge that are outside of our regulatory focus programs, we address these in line with the **Access Canberra Regulatory Complaint and Investigation Policy**.

We have governance mechanisms in place to prioritise matters on the level of harm and impact of alleged conduct. This allows us to act in a structured and coordinated way to respond to actual and perceived harm. Complaints are prioritised proportionately to the risk that may occur from the conduct. While we may not act upon every complaint we receive, these complaints contribute to our intelligence base to inform future operations.

In cases where a complainant's conduct goes beyond what is reasonable or acceptable, this is managed in accordance with the Managing Unreasonable Complaints Policy.



## Threshold assessment

- **Decision point:** Does the matter meet the thresholds set out in the Accountability Commitment?
- Is the matter linked to a strategic activity?
- Is the matter novel or significant?

## Authority to commence

- **Decision point:** Are there reasonable grounds to believe an offence has been, may be, or is being committed?
- What is the most appropriate enforcement or investigative method for the breach?

## Authority to continue

- **Decision point:** Is the investigation still likely to achieve its threshold assessment?
- Does the information obtained support the choice of enforcement or investigative method utilised?

## Authority to take regulatory action

- Are there reasonable prospects of success?
- Does the matter meet the model litigant guidelines?
- Will the action elicit the necessary outcome?

The Regulatory Activity Monitor (**RAM**) is the primary control mechanism for regulatory activities within Fair Trading and Compliance. It functions as the gatekeeper for determining operational regulatory actions at key points of the lifecycle.

Through the RAM, we critically analyse the matters on hand to determine whether to commence an activity, change course or close the matter. This ensures that our actions are appropriate to the risk and harm inherent in the matters we take on, and that our priorities reflect the changing regulatory environment. The RAM does not replace the Regulatory Advisory Committee (RAC), but rather acts as a branch-specific governance mechanism.