

LIQUOR LICENSING



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 [Liquor Act 2010](#) (the Act), and the sale, supply, promotion and consumption of liquor 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 objective

The three strategic objectives central to the Act are:

Harm minimisation – the liquor industry should operate and be regulated in a way that minimises harm caused by alcohol abuse.

Community safety – community amenity, social harmony and wellbeing should be protected and enhanced through the responsible sale, supply, promotion and consumption of liquor.

Responsibility – the Act encourages responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor.



Figure1-The relationship between our Strategic Objectives

Legislative framework

The [Liquor Act 2010](#) (the Act) provides for licensing and regulation of liquor in the ACT.

The object of the Act is to regulate the sale, supply, promotion and consumption of liquor in the Territory and seeks to:

- > minimise the harm associated with the consumption of liquor;
- > facilitate the responsible development of the liquor and hospitality industries in a way that takes into account community safety; and
- > encourages and supports liquor consumers to take responsibility for:
 - ▷ their consumption of liquor; and
 - ▷ their behaviour if it is affected by the consumption of liquor.

...regulate the sale, supply, promotion and consumption of liquor in the Territory...

The Commissioner for Fair Trading (the Commissioner) is responsible for issuing of licences and permits and for taking disciplinary action against licensees and must consider the Harm Minimisation and Community Safety Principles in all decisions. The principles are outlined as follows:

- > responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor should be encouraged;
- > community safety should not be jeopardised, particularly in relation to events involving large numbers of people;
- > the liquor industry should be regulated in a way that minimises harm caused by alcohol abuse, including:
 - ▷ adverse effects on health;
 - ▷ personal injury;
 - ▷ property damage, and
 - ▷ violent or anti-social behaviour.

- > the sale of liquor should be regulated in a way that contributes to the responsible development of the liquor, tourism and hospitality industries;
- > community amenity, social harmony and wellbeing should be protected and enhanced through the responsible sale, supply, promotion and consumption of liquor;
- > the safety, health and welfare of people using licensed premises and permitted premises should not be put at risk;
- > noise from licensed premises and permitted premises should not be excessive;
- > licensed premises and permitted premises should not be located where they would be likely to cause undue disturbance, inconvenience or offence to people:
 - ▷ lawfully at adjacent or nearby premises. and
 - ▷ because of the premises' proximity to a place of public worship, a hospital or a school.
- > licences and permits should only be issued to people who comply with ACT law, and are likely to continue to comply with ACT law; and
- > licences and permits should only be issued for premises that comply with ACT law, and are likely to continue to comply with ACT law.

Compliance model

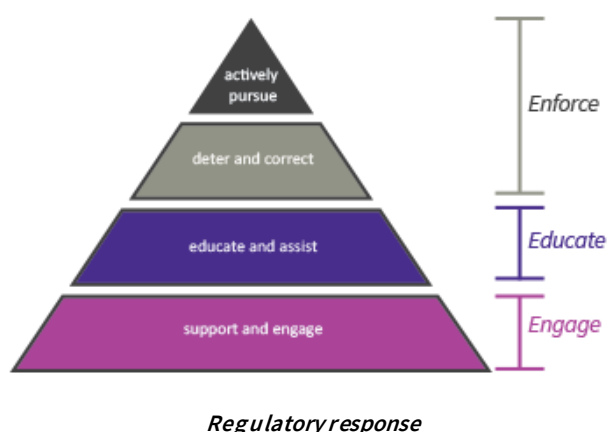
Engage, Educate, Enforce

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, or those who demonstrate a disregard for the law.

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. compliance advice, a warning letter, issuing an infringement notice or taking disciplinary action).



Approach to enforcement

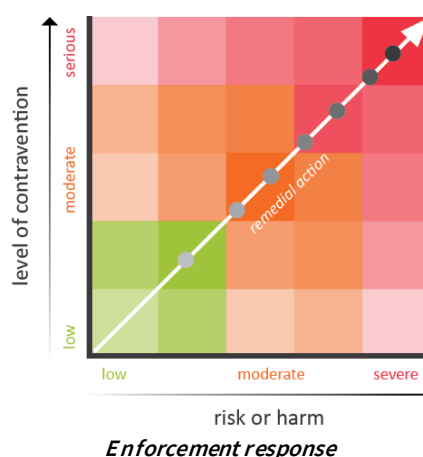
Access Canberra operates on a risk-based compliance model.

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: verbal compliance advice; a written warning; a referral to the ACT Civil and Administrative Tribunal (ACAT); civil action, or criminal prosecution.

...consideration given to the circumstances of the conduct....

EDUCATION

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.

Access Canberra provides advice and education to individuals, licensees and liquor industry 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. We acknowledge that the majority of liquor licensees and permit holders want to do the right thing and will comply if they understand their obligations.

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, fact sheets and links to assist industry to achieve compliance and provide compliant and safe 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 and reactive activities that are risk-based, with resources allocated based on the level of risk posed...

Proactive activities

Access Canberra has developed a pro-active compliance program to ensure compliance with obligations under the Act. The program primarily focuses on visits to licensed premises to ensure and promote compliance.

Access Canberra and ACT Policing focus their proactive compliance activities based on risk. There are a number of obligations imposed by the Act for which Access Canberra and ACT Policing will take immediate action to rectify the concern if non-compliance is identified. These circumstances are outlined below:

- > Exceed a designated occupancy loading – (which has been determined based on a safety loading recommendation).

Why is this important? – because it relates to safety.

The Act requires that licensed premises where liquor is consumed on the premises have an occupancy loading determined by the Commissioner indicating the maximum number of people allowed in each public place of the licensed premises.

Upon receiving a liquor licence application the Commissioner will refer the matter to the Chief Officer (Fire Brigade) to make a recommendation about the maximum number of people that can **safely** be in each public area of the premises.

***Access Canberra and
ACT Policing focus their proactive
compliance activities
based on risk...***

After the Commissioner receives this recommendation, the Commissioner will determine the occupancy loading for each public area taking into account the Fire Brigade's safety recommendation, the harm minimisation and community safety principles, the needs of the licensee, and facilities available to patrons at the licensed premises. The occupancy loading determined by the Commissioner may be less than (but never greater than) that recommended by the Chief Officer (Fire Brigade) in certain circumstances.

- > Supplying liquor (by a licensee, permit-holder, their employees and/or members of the public) to an intoxicated person on licensed premises.

Why is this important? – because it relates to safety and harm minimisation.

...harm minimisation and community safety principles...

The supply of liquor to intoxicated people contributes to anti-social behaviour, alcohol-related violence can place young women and men at increased risk of assault, the costs of which are borne by the individuals and the whole of the community.

- > A patron or anyone who is abusing, threatening, intimidating staff who are exercising the new Responsible Service of Alcohol principles by refusing to sell an intoxicated patron liquor on licensed or permitted premises.

Why is this important? – Because it relates to safety and harm minimisation.

- > The range of offences that relate to a child being in a licensed premise, being supplied liquor.

Why is this important? – Because it relates to harm minimisation and community safety.

- > Failure to ensure that designated emergency exits are unlocked and clear from obstacles when the premise is open to the public. This issue is likely to contravene an approved Risk-Assessment Management Plan (RAMP).

Why is this important? – because it relates to safety.

- > Allowing the rapid or excessive consumption of alcohol.

Why is this important? – because it relates to safety and harm minimisation.

RAMP = Risk- Assessment Management Plan

Reactive activities

Access Canberra will undertake an investigation in response to complaints received from industry, the general public, or referrals from external agencies.

The Act provides that a person who believes that a ground for occupational discipline exists in relation to a licensee or commercial permit-holder may complain to the Commissioner.

The Act requires the Commissioner to take reasonable steps to investigate each complaint that is accepted for consideration. However, further action is not needed on complaints that lack substance, are frivolous, are vexatious, are not genuine or have been adequately dealt with.

Access Canberra prioritises complaints based on the risk or harm (or potential risk or harm) posed by the activity, as follows:

- > an allegation is received that liquor is being sold to a child from a licensed premise; or
- > information is received suggesting that a liquor licensee is failing to comply with the approved Risk-Assessment Management Plan (RAMP) for their licensed premise or permitted premise.

DETERMINING APPROPRIATE ENFORCEMENT RESPONSES

Once Access Canberra has identified that an offence has been committed the next step is to determine the appropriate enforcement response.

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 those situations where safety has been compromised, such as, but not limited to, the following:

- > a designated occupancy loading has been exceeded;
- > a condition of the licence or permit has been contravened – and that condition relates to the safety of the premise;
- > ‘A licensee must provide and maintain a safe environment at and around the licensed premises’ (section 1.15 of the [Liquor Regulation 2010](#));
- > supply liquor to a child or young person; or
- > supply liquor without an RSA certificate.

Inspectors are able to exercise a level of discretion...

Enforcement options

Access Canberra and ACT Police have a range of civil, administrative and criminal enforcement remedies at their disposal under the supporting legislation.

Infringement notices – 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 Act includes offences that are part of the Territory’s infringement notice scheme. Please also refer to the [Magistrates Court \(Liquor Infringement Notices\) Regulation 2010](#).

Occupational discipline – the Act provides for the ACT Civil and Administrative Tribunal (ACAT) to take action against licensees or commercial permit-holders following an application by the Commissioner. The Commissioner will apply for disciplinary action to be taken either following a complaint or following an investigation by investigators or ACT Police.

The grounds for disciplinary action are:

- > the licensee/permit-holder has contravened, or is contravening, a provision of the Act;
- > the licensed/permitted premises do not comply with the requirements of the Act;
- > the licensee/permit-holder is not a suitable person to hold a licence;
- > the licensed/permitted premises are not suitable premises for the licence;
- > the commissioner has made a commissioner’s direction for the licensee/permit-holder and they have not complied with the direction;
- > a senior police officer has made an emergency closure order for the licensee/permit-holder and they have not complied with the order;
- > the licensee/permit-holder has allowed the premises to be used in a way that causes undue disturbance or inconvenience to people:
 - ▷ lawfully at the premises;
 - ▷ occupying premises in the neighbourhood.

- > a loss of amenity has arisen in the vicinity of the licensed/permitted premises that is attributable to the premises and about which there has been a complaint;
- > a licensee/permit-holder has allowed people to smoke in a part of the licensed/permitted premises that is an enclosed public place; and
- > the licensee/permit-holder has failed to take reasonable steps to prevent smoke from another area occupied by the licensee/permit-holder entering an enclosed public place.

The ACAT can make a variety of decisions, including to suspend or cancel a licence, issue a direction or impose a monetary penalty. These actions usually happen following an inquiry by the ACAT where the applicant has the opportunity to be heard on the matter and can be represented by a legal practitioner.

The ACAT must consider all matters that come before it and the existence of facts relevant to those matters, on the basis of proof on the balance of probabilities.

Any decision made by the ACAT can be appealed to the Supreme Court, with leave of the Court.

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

...suspend or cancel a licence, issue a direction or impose a monetary penalty...

POWERS HELD BY INVESTIGATORS

The Act refers to an “authorised person” which is defined as:

- i. an investigator
- ii. a police officer

An investigator is a Fair Trading Investigator, appointed by the Commissioner for Fair Trading in accordance with Section 36 of the [Fair Trading \(Australian Consumer Law\) Act 1992](#).

The [Liquor Act 2010](#) 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

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 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.



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

- [Liquor Act 2010](#)
- [Liquor Regulation 2010](#)
- [Fair Trading \(Australian Consumer Law\) Act 1992](#)

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

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