



ACT
Government

**Access
Canberra.**



WorkSafe ACT: Compliance Framework

Workplace Safety: Compliance Framework

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1. Introduction

1.1. 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 keep workers safe from harm and to ensure they are appropriately compensated when injuries do occur.

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

1.2. 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.

1.3. Strategic objectives

There are four strategic objectives central to the role of WorkSafe:

Safety – through our actions we seek to protect workers and other persons from harm. We act to minimise risks to safety, health and welfare. We do this by assisting the public, business and industry to understand and meet their legislative obligations. We will target our regulatory actions in a way that is proportionate to the actual or potential harm caused by the conduct.

Prevention – we will limit and prevent harm, damage or loss by promoting compliance with workplace safety obligations.

Health – we actively encourage healthy workplaces.

Compensation – we seek to ensure that all employees comply with Workers Compensation obligations. Workers' compensation protects a business from financial claims when a worker sustains a work related injury or disease and importantly workers are compensated when injured in the workplace.

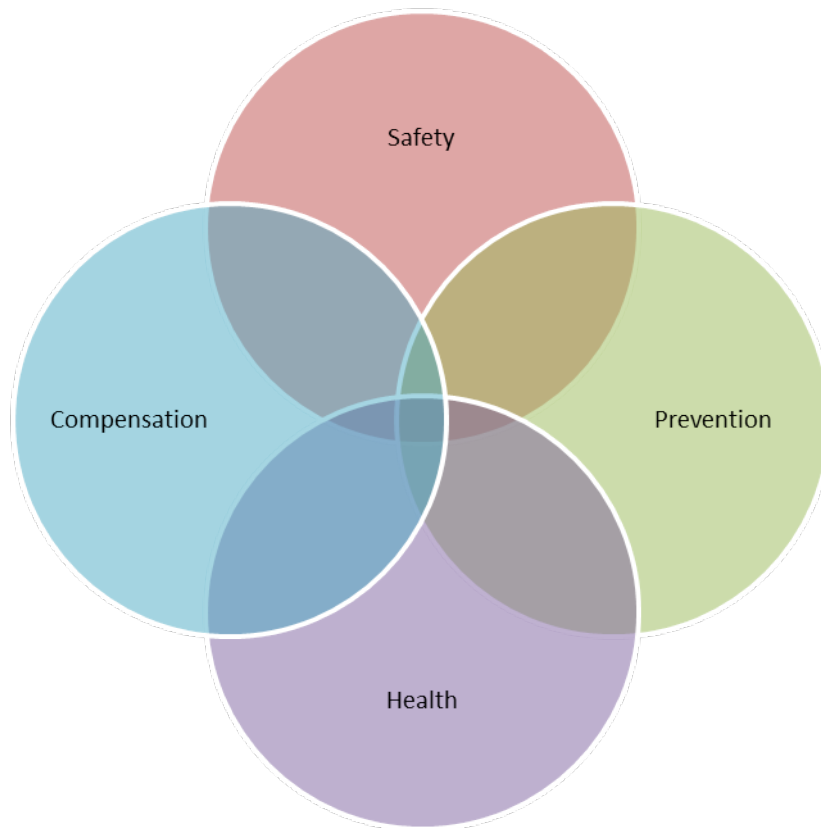


Figure 1 – The relationship between our Strategic Objectives

1.4. Legislative framework

The *Work Health and Safety Act 2011* (the Act) is the principal legislation which sets out the overall framework for work safety and a range of duties designed to ensure work health and safety in the ACT.

The ACT Work Safety Commissioner is a statutory office holder appointed by the ACT Government under the Act. The primary functions of the Work Safety Commissioner are to:

- promote an understanding and acceptance of as well as compliance with the Act and associated laws;
- undertake research and develop educational material for the purposes of promoting health and safety in the ACT, and
- advise the relevant Minister on matters pertaining to health and safety in the ACT.

The ACT's Work Safety Council is established under Schedule 2 of the Act.

The council's primary functions are to:

- advise the Minister on matters relating to work safety or workers compensation, and
- inquire into and report to the Minister on matters referred to the council by the Minister in relation to work safety or workers compensation.

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The Act has brought health and safety laws in the ACT into harmony with similar legislation adopted by most of the other Australian states and territories. This harmonisation process has significantly narrowed the differences in work health and safety legislation across Australia.

The *Work Health and Safety Regulation 2011* (the Regulation) spells out minimum standards for the duty holders to ensure work safety in relation to specific hazards and risks (such as the performance of manual tasks).

Underpinning the Act and the Regulation are a number of:

- Codes of Practice, and
- National and Australian Standards.

Codes of Practice provide practical guidance on how to comply with legal duties. Codes have formal status, allowing courts to consider whether a Code has been complied with in deciding whether legal duties have been met.

National Standards and National Codes of Practice are developed by Safe Work Australia and its predecessors (NOHSC, ASCC). Once adopted in each jurisdiction, they are then legally enforceable. Australian Standards are separate technical guides which may also assist a person to comply with a particular work safety duty.

WorkSafe is responsible for administering the *Dangerous Substances Act 2004* (DS Act) which provides a statutory framework for regulating the way dangerous goods and hazardous substances are managed. The goal is to minimise the risk these materials can pose to the health and safety of people working with these substances, the general community and the environment.

The DS Act complements other legislative schemes that regulate workplace safety, environmental protection, the handling of infectious or radioactive material, control of firearms and ammunition, drugs and the transportation of dangerous goods. The *Dangerous Goods (Road Transport) Act 2009* applies specifically to the transport of dangerous goods.

The *Workers Compensation Act 1951* (the WC Act) aims to provide timely, safe and durable return to work through effective injury management and income support to injured workers. WorkSafe is responsible for the administration and regulation of the workers compensation legislation.

WorkSafe is also responsible for the administration of the *Long Service Leave Act 1976*, which provides workers with minimum conditions of service provisions involving long service leave.

1.5. Compliance model

1.5.1. 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

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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 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 and WorkSafe website provide 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 for non-compliance proportional to the harm caused by the conduct (eg issuing a prohibition notice or an infringement notice).

1.5.2. 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.

Type one category event – workplace incidents causing death of a worker or a member of the public.

All type one events will be prioritised and will subject to investigation unless there is a valid reason not to undertake an investigation.

Examples of when an investigation may not proceed are when:

- the incident does not fall under the Act or the DS Act, or
- another agency is taking the lead role in the investigation (for example the Australian Federal Police).

Type two category event – WorkSafe will take necessary action to determine the cause/contributing factors and ensure appropriate control measures are implemented at the workplace to prevent reoccurrence.

A type two event is a workplace incident notified under section 38 of the Act causing:

- serious injury/illness;

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- workplace dangerous incidents, or
- substantial damage to property or the environment from the handling of or exposure to dangerous substances.

Type three category event – matters reported as involving circumstances of substantial risk of serious injury, or exposure of people to substantial risk of serious harm; risk of damage to property or the environment from the handling of dangerous substances.

Type four category event – all other complaints that do not involve an immediate risk to safety. WorkSafe will contact the workplace and to determine if any intervention is warranted to assist in resolution of the matter.

Where complaints involve substantial risks to workplace health and safety, intervention will occur in order to determine the validity of the complaint and assist in the resolution of the matter, including taking appropriate enforcement action.

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.

2. Education

Like any regulatory regime, the optimal outcome for guaranteed workplace safety 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.

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 and www.worksafe.act.gov.au. The Access Canberra and WorkSafe 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.

3. 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.

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When WorkSafe identifies or becomes aware of a problem or a risk, it seeks to resolve the problem before it leads to an impact on safety or wellbeing.

Monitoring compliance and investigating non-compliance is an important component of the compliance framework.

3.1. Proactive activities

A core function for WorkSafe is to monitor and determine levels of compliance with the requirements of legislation, licences and other statutory instruments. The aim is to assess the extent of compliance by duty holders with work health and safety laws, and to support compliance by providing advice and increasing awareness of persons with obligations under the Act.

WorkSafe uses routine site inspections as a method of collecting information and monitoring compliance. During inspections, Inspectors may collect samples, view records, and take photographs.

Proactive and planned site inspections are an important method by which WorkSafe can determine compliance and prevent incidents and minimise risks.

Visits by Inspectors to workplaces or work sites can occur at random or may be part of targeted programs. An Inspector may also visit a workplace to promote better awareness of tools, processes and options for achieving a compliant safe workplace.

3.2. Reactive activities

Reactive monitoring relies on the community, business or industry reporting concerns. WorkSafe prioritises this information based on the assessed level of risk to determine the appropriate response.

4. Determining appropriate enforcement responses

Once WorkSafe has determined that an offence has been committed the next step is to determine the appropriate regulatory 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 situations of work-related fatalities and serious injuries or where there is a risk of such outcomes.

4.1. Enforcement Options

WorkSafe has a range of civil, administrative and criminal enforcement remedies at their disposal under the Act.

Advice or guidance – aims to raise workplace parties' awareness of their rights and obligations and help duty holders know how to comply with work health and safety laws and build their capability to address work health and safety issues and achieve compliance.

Having provided the duty holder with advice or guidance as to how compliance may be achieved, if satisfied that a person has taken timely and satisfactory steps to remedy a breach at the time of detection or through agreed action, the regulator may decide to take no further action.

Advice and guidance can also be provided to support the use of other compliance and enforcement tools, such as improvement and prohibition notices.

Improvement Notice – cautions the workplace about an unsafe practice, particular hazard or potential risk to health and safety. The notice requires corrective action to be taken within a specified timeframe.

Prohibition Notice – issued to people in the workplace where there is a risk of imminent and serious injury. It requires the person in charge of the activity to cease the activity. However, in some circumstances the Inspector may allow the activity to continue in accordance with the directions specified in the notice.

Where there is a failure to comply with an inspector's notice, the regulator may prosecute or, if there is a serious risk to health and safety, may also seek an injunction against the person to whom the notice was directed.

Improvement and prohibition notices are 'remedial' enforcement measures, not 'punitive' measures (i.e. they are not punishment).

Injunctions – may be sought to compel a person to comply with an inspector's improvement, prohibition or non-disturbance notice. Injunctions are used when there is a serious risk to health and safety which has not been remedied by the person to whom the notice has been issued and other mechanisms available to the regulator have not resulted in compliance being secured.

Injunctions are likely to be sought when there are exceptional, pressing or urgent circumstances (for example, where the breach involves a significant risk to public safety).

Enforceable undertakings – legally binding agreement entered into as an alternative to having the matter decided through legal proceedings for a contravention of the Act. An enforceable undertaking provides an opportunity for significant work health and safety reform to be undertaken.

Typically, the activities associated with an undertaking are substantial and must aim to deliver tangible benefits to the workplace, industry or the broader community.

The availability of an enforceable undertaking in connection with a contravention will involve consideration of a number of factors, including:

- the nature and extent of the contravention;

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- the quality of the remedial action proposed and the extent to which it achieves measurable improvements in workplace safety, and
- the likelihood that the enforceable undertaking will deliver real benefits to the workplace, industry or community beyond that which would normally be expected of a duty holder.

An enforceable undertaking will generally not be accepted where the offence relates to reckless conduct or where an infringement notice has been issued for the contravention.

Revoking, suspending or cancelling authorisations – WorkSafe will authorise certain people to undertake certain types of work and organisations to conduct certain types of undertakings. For example, work involving the removal of dangerous substances such as asbestos and to operate major hazard facilities.

WorkSafe may decide to revoke, suspend or cancel a person's authorisation given in order to deal with inappropriate conduct or practices identified during inspection work or as a result of information received. Such action is a protective measure and may be undertaken even where steps have been taken to remedy a contravention or where an offender has otherwise been punished (i.e. fined).

It is recognised that the revocation, suspension or cancellation of authorisations may have serious consequences for a person or business. When making decisions about authorisations, WorkSafe will balance these considerations with the paramount need to protect the health and safety of workers and other persons.

Infringement notices – 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.

A failure to make the payment that is required under an infringement notice may result in Court proceedings.

Prosecution – may be brought in relation to alleged breaches of offence provisions in work health and safety laws.

In relation to work health and safety offences, the time for the regulator to bring charges against a person is limited. Proceedings for a criminal offence under work health and safety laws may be brought within the latest of the following:

- within two years after the offence first comes to the regulator's attention;
- within one year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against this Act;

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- within six months of a contravention of an enforceable undertaking, or
- if an offence relates to reckless conduct that creates a risk of death or serious injury/illness, at any time thereafter if fresh evidence is discovered.

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

5. Powers held by Inspectors and Compliance Auditors

Inspectors are appointed in accordance with Section 156 of the Act.

Part 9 of the Act refers to enforcement powers.

6. Review or Appeal Rights

6.1. Seeking a review

There are a number of decisions made by WorkSafe that are reviewable.

The *Work Health and Safety Act 2011* sets out a range of decisions which are reviewable. An eligible person may apply to Worksafe for an internal review of the decision.

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.

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.

Appendix 1: Relevant legislation

Work Health and Safety Act 2011,

Work Health and Safety Regulation 2011

Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011

Dangerous Substances Act 2004

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Dangerous Substances (Explosives) Regulation 2004

Dangerous Substances (General) Regulation 2004

Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004

Fuels Control Act 1979

Workers Compensation Act 1951

Workers Compensation Regulation 2002

Workers Compensation Rules 2002

Long Service Leave Act 1976

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>.