

Offences, compliance and enforcement

(Draft Planning Bill - Chapters 12 & 13)

Access Canberra exercises compliance and enforcement powers on behalf of the Territory Planning Authority.

The Access Canberra accountability commitments and compliance frameworks explain how Access Canberra makes regulatory decisions and approaches its role as both a service provider and a risk-based regulator, including what factors will be considered when dealing with non-compliance.

More information is available at <https://www.accesscanberra.act.gov.au/s/article/about-access-canberra-tab-access-canberra-accountability-commitment>.



The compliance powers available under the 2007 Act are generally fit for purpose and comprehensive. The Planning Bill will largely retain these provisions and processes, but we have sought to simplify processes and make them easier to understand.

Offences

The 2007 Act contains a series of offences, predominantly in relation to development. The substance of these offence provisions is proposed to remain unchanged. However, the offence provisions relating to development will be moved out of the development assessment provisions and placed into a consolidated development offences and controlled activities chapter. This will make these offences clearly identifiable and place them next to the compliance and enforcement powers in the Planning Bill.

Snapshot of offences in the Planning Bill:

- Undertaking development without approval
- Undertaking prohibited development
- Contravening a development approval or conditions

Controlled activity orders



What is a controlled activity order?

A controlled activity order may be issued to require a person to cease a controlled activity or to remedy damage done by a controlled activity. Controlled activities are set out in Schedule 5 of the Planning Bill.

The Planning Bill retains much of the controlled activity order process but will omit the concept of applications for a controlled activity order.

Presently, a person may apply to the Authority for a controlled activity order to be made, where the person thinks another person is conducting a 'controlled activity' (broadly, an action which is not allowed under a lease or is an offence under the Act). Unlike with the complaints process, the Authority has no discretion to dismiss the application if it is frivolous or vexatious, and cannot consider whether, having regard to Access Canberra's risk-based regulatory model, compliance action is appropriate.

The Planning Bill will introduce discretion into the controlled activity order process. A person will be able to lodge a complaint in accordance with the existing complaints process. The Authority will then have discretion whether to consider making a controlled activity order. Discretion is considered necessary given that compliance and enforcement activities are resource intensive, and those limited resources should be allocated in line with the risk-based compliance policy. This formalises the important risk-assessment undertaken by Access Canberra in undertaking compliance functions on behalf of the Planning Authority.

Snapshot of controlled activity orders in the Planning Bill:

An order can be issued to require a person to:

- Not begin or carry out a development without approval
- Comply with a lease provision or development agreement
- Restore leased land or buildings
- Comply with development approval or conditions
- Demolish a building or structure constructed without approval/permission
- Apply for development approval
- Clean up a leasehold and keep it clean
- Comply with a land management agreement

Enforcement

The enforcement chapter of the Planning Bill (Chapter 13) sets out the provisions enabling enforcement to be undertaken. This chapter provides for: the appointment of inspectors and their powers of entry; the Authority's power to require information; seizure, forfeiture and return of seized items, search warrants and monitoring warrants; and rectification works orders.

The provisions of the 2007 Act are fit for purpose in supporting compliance and enforcement action, so the Planning Bill retains the provisions of the enforcement chapter.